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WORKING DOCUMENT

REVIEW AND MONITORING OF CHILD SEXUAL ABUSE CASES IN SELECTED SITES IN SASKATCHEWAN

Studies on the Sexual Abuse of Children in Canada

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Peat, Marwick, Stevenson and Kellogg
Management Consultants

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University of Saskatchewan, Saskatoon

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EXECUTIVE SUMMARY

Introduction

Bill C-15 is intended to improve aspects of the Criminal Code and Canada Evidence Act relating to child sexual abuse so as to facilitate prosecutions while still ensuring the fundamental rights of the accused. There were four general goals of the new legislation:

- to provide better protection to child sexual abuse victims,
- to enhance successful prosecution of child sexual abuse cases,
- to improve the experience of the child victim/witness, and
- to bring sentencing in line with the severity of the offence.

Included in the Bill is a mandatory review of the legislation in 1992, four years from the January 1988 declaration date. Statistical documentation on the impact of Bill C-15 on the justice system is the purpose of this study. In general, two principal questions are of concern:

- Are the new and revised sections to the Criminal Code and Canada Evidence Act being used?
- When used, are the desired outcomes being achieved?

Methodology

Data were gathered from police files, court transcripts, court observations, key informants, and local newspapers using a number of instruments and procedures:

- Direct observation of child witnesses in court.
- Review of court transcripts.
- Review of police files.
- Surveys and interviews with key informants.

- Parent/child interviews.
- Analysis of articles in newspapers.

Limitations of the study included:

- a lack of premeasures with which to compare present results,
- small numbers of observations in some of the comparison groups, and
- incomplete data.

In general, however, the large amount of data gathered from the police files in Regina and Saskatoon (1101 cases) provides a reliable assessment of the impact of Bill C-15 on the court system in the province.

There were two general purposes to this study:

- To examine the nature of the child victim/witness experience in the criminal justice system since the proclamation of Bill C-15.
- To identify the degree to which the goals and objectives of Bill C-15 have been achieved.

Following are conclusions regarding the study purposes. Conclusions are based on the findings presented in chapters 3.0, 4.0, and 5.0 of this report.

The Nature of the Child Victim/Witness Experience in the Criminal Justice System

Protocols

There is a difference in the way the Saskatoon and Regina police departments record reported incidents of suspected child sexual abuse when the initial investigation is concluded and no charge is laid. In Regina, such a case is classified as "other", with no reference to sexual abuse, while in Saskatoon, this type of case is classified as "unfounded" or "cleared otherwise" under the category of sexual abuse. As a consequence, there were differences between Regina and Saskatoon in reporting, unfounded and clearance rates of cases. Regina had

lower levels of reporting, but higher levels of unfounded and clearance rates, compared with Saskatoon.

Processing of Cases

Of 1101 occurrences reported to the police in Saskatoon and Regina, 1014 were substantiated; of these, 520 were charged, some with more than one charge, leading to 796 charges. The majority of these went to trial (46.9 percent), with a significant proportion going to preliminary inquiry (35.9 percent), and a smaller proportion pleading guilty (17.1 percent).

- The reported rates of child sexual abuse in Saskatoon and Regina were 65, 114, and 124 cases per 100,000 population for the years 1988, 1989 and 1990, respectively. These rates are comparable with those in Edmonton (119, 111 and 114 cases per 100,000 for 1988, 1989 and 1990, respectively), although higher than those in Calgary (88, 89 and 90 cases per 100,000 for 1988, 1989 and 1990, respectively).

- The cases unfounded rate was 8.2 percent, which is comparable with that for Calgary (8 percent), and Edmonton (7 percent).

- The cleared rate was 51.3 percent. This is higher than that for Calgary (44 percent) and considerably higher than that for Edmonton (25 percent).

- The overall conviction rate was 82.8 percent, which is higher than that for Calgary (74 percent) and significantly higher than that for Edmonton (59 percent). This would seem to be owing to the high proportion of guilty pleas and convictions in Saskatoon and Regina. Youth Provincial Court obtained the highest proportion of convictions, while Criminal Provincial Court received the highest proportion of guilty pleas.

- The two most common methods of disposition were incarceration, and incarceration with probation. The most frequent length of incarceration was 11-12 months.

- Three quarters (77.3 percent) of the victims were female.

- At the time the abuse began, two thirds (69 percent) of the victims were 11 years old or younger, with 22 percent being four years old or younger.

- Child victims most often disclosed the sexual abuse to their mothers (30.5 percent). However, child welfare workers (31.2 percent) reported disclosure to the police more often than did mothers (21.3 percent).

  More than half of disclosures (59.9 percent) were reported to the police within one month.

- Most of the children were victimized by one offender (85.7 percent). Males were the offender in most cases (94.9 percent).

- Most of the offenders were extrafamilial: unrelated to the victim (56.4 percent). These included strangers, friends, teachers and neighbours.

- Intrafamilial perpetrators included fathers (or stepfathers), brothers, male cousins and grandfathers.

- A small percentage of the victims were reported to have suffered physical and/or emotional injuries (12 percent).

- The majority of offenders were 18 years of age or older (71.3 percent); 7 percent were age 16-17, 19 percent age 12-15.

- Most of the offenders were white (60 percent); one third were native Indian (33 percent).

- A majority of the offenders were single (57 percent); 24 percent were married and 8 percent were living common-law.

- A large proportion (81 percent) of the offenders had one prior unrelated conviction.

- The vast majority of offenders did not admit guilt (80 percent).

- In almost half (45 percent) of the cases of sexual abuse, the assaults involved only one incident.

- The most common form of sexual abuse was genital fondling of the victim by the offender (45.1 percent), followed by vaginal penetration with the penis (19.5 percent), fondling of the breasts (18.7 percent) and oral sex by the victim on the offender (12.6 percent).

- Weapons, alcohol, drugs or the use of pornography were rarely factors in sexual abuse incidents.

- Physical force was used to obtain compliance in 35.8 percent of the cases; verbal force was used in 4.4 percent of the cases, and no force was used in 55.9 percent of the cases.

- The first incident most often took place in the home of the offender (25.2 percent), or the home of the victim (23.5 percent).

- Investigative videotapes of the victim were made by the police in one third (33.9 percent) of the cases. Videotapes included disclosure by the victim in 86 percent of the cases, and identified the offender in 81 percent of the cases. Little recorded use of the videotapes was made.

Impact of Bill C-15

The conclusions below relate to the impact of selected sections of Bill C-15.

Section 150.1: Consent No Defence

Both consent and mistaken age (section 150.1) are being raised as issues by defence counsel during preliminary inquiry and trial. Consent was invoked as a defence during preliminary inquiry in 15.2 percent (16 of 105) of the cases, and during cross-examination at trial in 17 percent (six of 35) of the cases. Relatively small numbers are involved here, particularly with regard to trial, so that caution must be exercised in their interpretation. Mistaken age was raised by defence counsel during preliminary inquiry in 4.8 percent of the cases (five of 105).

Subsection 150.1(2): Consent and Age Difference

Relatively few cases were relevant to section 150.1(2), (14 of 1101, or 1.3 percent). Of the 14 cases meeting the age difference criteria for the use of consent as a defence, three were charged and 11 cleared otherwise. No disposition information was available on these cases.

Section 151: Sexual Interference

The number of charges laid under section 151 (sexual interference) is increasing. Indeed, it is about equal to the number laid under section 271 (sexual assault). The scope of sexual behaviour covered by this section has broadened, ranging from sexual intercourse though fondling, masturbating, anal intercourse, oral sex, to forced prostitution, with genital and chest fondling as the most frequent behaviours charged.

The conviction rate for charges under section 151 was high (88.5 percent) in Saskatoon and Regina. This is higher than those reported in Edmonton (62 percent) and Calgary (52 percent) (Hornick et al., 1992). This would seem to be owing primarily to a higher proportion of convictions, and a lower ratio of acquittals/discharges in Saskatoon and Regina, compared with Edmonton and Calgary. There was also a relatively high degree of guilty pleas in Saskatoon and Regina, which would increase the conviction rate, but more importantly, obviate the need for children to testify.

Section 152: Sexual Invitation

Compared with those laid under section 151 (sexual interference), relatively few charges were laid under section 152 during the period 1988 to 1990. However, as with section 151, a fairly wide range of sexual conduct was included, involving invitation to sexual touching, inappropriate kissing, genital fondling, and the victim performing oral sex on the offender, with genital fondling as the most frequently reported behaviour.

The conviction rate for charges under section 152 was 62.5 percent, lower than those reported in Edmonton (84.6 percent) and Calgary (100 percent). Again, the proportion of convictions and guilty pleas was relatively high for Saskatoon and Regina, compared with Edmonton and Calgary. Small numbers were involved in Saskatoon and Regina (n=10), as they were in Calgary (n=10), and Edmonton (n=20), so that results must be interpreted with caution.

Section 153: Sexual Exploitation

A small number of charges were also laid under section 153 (sexual exploitation), although these too covered a range of sexual conduct, including invitation, showing pornography, fondling, and oral sex, with genital and chest fondling as the most frequently reported behaviour.

The conviction rate for charges under this section was 100 percent. Again, results are owing to a high proportion of convictions and guilty pleas in Saskatoon and Regina. These results are based on only five completed cases, however, and must be interpreted with extreme caution. By way of comparison, Calgary had a zero percent conviction rate for charges under this section (15 completed cases), while Edmonton reported a 50 percent conviction rate (four completed cases).

Section 155: Incest; Section 159: Anal Intercourse; Section 160: Bestiality; Section 170: Parent/Guardian Procuring; Section 171: Householder Permitting Sexual Activity; Section 172: Corrupting Children

Insufficient numbers of charges were available under these sections to provide any significant conclusions.

Subsection 173(2): Exposure to Children Under 14 Years of Age

Increasing use was made of section 173(2) (indecent exposure to a child under 14 years); although no charges were laid in 1988, two were laid in 1989 and 12 in 1990. Insufficient data were available to reliably determine a conviction rate. "Exposure" was the sexual behaviour associated with charges under this subsection.

Subsection 212(2) and 212(4): Living off the Avails and Obtaining for Sexual Purpose Persons Under 18 Years Old

Little use was made of section 212(2) (living on the avails of a prostitute under 18 years), or section 212(4) (obtaining a person under 18 years for sexual purpose). No charges were laid in 1988 and 1990, while seven charges were laid under these sections in 1989. This may be because of difficulties in police enforcement of these sections, requiring prostitutes to testify against their pimps under section 212(2), for example, and the "john to be caught in the act" in the case of section 212(4). No disposition data were available on these charges.

Section 271: Sexual Assault

The use of section 271 (sexual assault) declined dramatically as the use of section 151 (sexual interference) increased from 1989 to 1990; there were twice the number of charges laid under section 271 as under section 151 in 1989, whereas in 1990 this ratio was almost exactly reversed. This suggests that section 151 (and perhaps to some extent section 153, whose use is also increasing) is

being effectively used to deal with cases of child sexual assault in Saskatoon and Regina.

Section 274: Corroboration not Required

There is a suggestion that, contrary to the intent of section 274, corroboration of the victim's testimony is important in the decision to commit the accused to trial. In 11 of 13 cases that were discharged during preliminary inquiry, the judge commented on the lack of corroboration as a factor in the decision. Moreover, multivariate analyses of predictors of clearance by charge showed that, for female victims, the presence of witnesses was significant in this regard. Notwithstanding the above, questionnaire data provided contrary information: police, crown prosecutors, defence counsel and judges were unanimous in their opinions that there was less of a requirement for corroboration of child victim/witness testimony following Bill C-15. Still, one would have to place more emphasis on the hard data than on questionnaire results that are limited because of their subjectivity and generalizability (small numbers of responses).

Section 275: Recent Complaint Abrogated

Data showed that 14.1 percent of the cases in Regina and Saskatoon were relevant to section 275 (recent complaint abrogated), that is, charges were laid one year or more after disclosure to the police. This is considerably higher than such cases in Edmonton (2 percent), and Calgary (6 percent) (Hornick et al., 1992).

The conviction rate for these cases was 76.9 percent in Saskatoon and Regina, which is slightly higher than that of Calgary (60 percent). No similar information was available for Edmonton. This section therefore would seem to be operative.

Section 276(1): Past Sexual Activities

Issues of past sexual conduct (section 276(1)) were raised at both preliminary inquiry and trial in only a small proportion of cases: defence raised the matter of past sexual conduct of the victim in 8.6 percent of the cases during preliminary inquiry, and in 11.4 percent of the cases during cross-examination at trial. This section would seem to be functioning as intended.

Section 277: Reputation Evidence

Reputation evidence (section 277) also was raised at preliminary inquiry and trial in only a small proportion of cases: the issue of reputation of the victim was raised by defence during preliminary hearing in 2.9 percent of the cases, while it was raised during trial in 8.6 percent of the cases. This section also seems to have had the intended effect.

Subsection 486(2.1): Testimony Outside the Courtroom

Pursuant to subsection 486(2.1), child victims/witnesses testified from behind a screen using closed-circuit television in the courtroom in five of 21 cases (24 percent) observed in Saskatoon. The combination of screen and closed-circuit TV in the courtroom is an innovative procedure developed during a demonstration study (Ell, 1990) and is now available throughout Saskatchewan. It involves placing a solid screen to block the witness's view of the accused in the courtroom. A video camera is then set up to focus on the witness in the witness box, with a monitor placed directly in front of the accused. This configuration allows direct contact and communication with the child by the judge, defence, and crown, and viewing of the proceedings by the accused.

Subsection 486(3): Order Restricting Publication

Section 486(3), (publication ban), was extensively utilized to limit publication of evidence and identity of the victim. During trial a request for a ban on publication of identity of the victim was made in 26 of 33 cases (78.8 percent). The judge granted the ban in 24 cases (92.3 percent). During preliminary inquiry, a ban on the publication of the identity of the victim was requested and ordered in 84 of 105 cases (80 percent). And a request for a ban on the publication of evidence was granted in 100 percent of the cases.

Section 715.1: Videotaped Evidence

With regard to section 715.1, videotapes were made during the investigative stage in 34 percent of the cases. The videotapes included disclosure in 86 percent of the cases. It appears that limited use was made of the videotapes in a court setting: less than 10 cases were involved. Videotapes are reported to have helped the police lay charges, in understanding the child and his or her family, and in preparing the child for court appearance. However, very few videotapes were

used in evidence: in only 10 cases during preliminary inquiry were videotapes used.

Subsection 16(3) Canada Evidence Act: Oath

Pursuant to section 16(1) and 16(3) of the Canada Evidence Act, child victims/witnesses (age 14 years or less) were questioned during preliminary inquiry and trial about their competence to give evidence, their understanding of the nature of the oath, and their ability to communicate under the promise to tell the truth; and were sworn/affirmed and/or gave testimony under the promise to tell the truth.

Perceived Impact of Bill C-15 by Professionals

Perceptions of the impact of Bill C-15 were obtained through questionnaires from police (n=24), crown (n=17), defence (n=11), and judges (n=21). In view of the small numbers of respondents, it is difficult to generalize the findings. However, a few summary comments can be offered: there appear to be few substantive problems with Bill C-15; there are requests for, and judges are allowing, evidentiary procedures such as the child witness turning away from the accused while testifying, supporting adults in the courtroom, adults accompanying the child to the witness stand and holding him or her on their knee during testimony, the use of props and toys in the courtroom, and the use of screens, microphones, closed-circuit TV; there is general agreement that the court experience is traumatic for the child victim/witness; there are increased numbers of child sexual abuse cases, younger children testifying, and corroboration was no longer important. Finally, there appears to be a need for more training relating to Bill C-15 for professionals.

1.0 INTRODUCTION

Bill C-15, An Act to Amend the Criminal Code and the Canada Evidence Act, was proclaimed and new legislation related to child sexual abuse came into effect in Canada on January 1, 1988. "The Bill is intended to increase protection for children through the facilitation of prosecutions, while still ensuring the fundamental rights of the accused." (Stewart, 1987; p. 1). Included in the Bill is a mandatory review of the legislation by 1992, four years from the January 1988 declaration date. Statistical documentation on the impact of Bill C-15 on the justice system is the purpose of the present study. In general, two principal questions are of concern:

- Are the new and revised sections being used?
- When they are used, are the desired outcomes being achieved?

1.1 Limitations of Criminal Code Provisions Prior to Bill C-15

Bill C-15 was enacted in January 1988, the culmination of a critical review of offences under the old Criminal Code relating to child sexual abuse. The Badgley Committee report on "sexual offences against children and youths" in 1984 was instrumental in this respect. Briefly, the limitations of the Criminal Code included the following:

- Gender Bias

Girls and boys were given different protection by the law. In many offences, the victim had to be female and the accused male. For example, although stepfathers and foster fathers committed a crime if they had sexual intercourse with their stepdaughters or foster daughters, the same prohibition did not apply to stepmothers with stepsons or foster sons. Also, only females could be victims of the seduction offences, and only males could be the offenders.

- Limited Range of Sexual Activity

Some offences prohibited only vaginal sexual intercourse and did not encompass the range of sexual activities that could constitute child abuse, such as fondling, masturbation and oral intercourse by the child on the offender: activities from which both girls and boys should be protected.

- Requirement of Previous Chaste Character

A girl who had been sexually active and/or sexually abused in the past could not be considered of "previously chaste character" and therefore could not be protected. The victim of such sexual abuse could well be in need of more protection from the law rather than less, after the first act of sexual abuse.

- Victim's Sexual Reputation and Activity Used as Defence

In the past, defence counsel often attempted to make the argument that the accused is "not more to blame" than the victim. This approach required cross-examination of the victim's sexual reputation and past sexual activity. To many observers this was often seen as unjust. Women's groups, in particular, believed that victims were often victimized a second time by a legal system that permitted such tactics.

- Presumption that a Male Under 14 was Incapable of Intercourse

The legal presumption in the Criminal Code that a boy under 14 years is incapable of sustaining a penile erection and engaging in sexual intercourse is not consistent with biological reality. This level of maturity often occurs in boys at least as young as 12, which is also the age of criminal responsibility. Under the former law, youths under 14 could not be held criminally responsible for acts of sexual intercourse with girls under 14, or for such acts committed in an incestuous relationship.

- Issues Regarding Age of Consent

The age of legal consent varied, depending on the particular sexual act and the sex of the participant. A male could consent to sexual intercourse at any age. A female of 14 years or more could consent to vaginal intercourse. Neither sex could consent to anal intercourse or acts of gross indecency until age 21, with the exception that a female could marry at age 16 and then consent to such acts with her husband.

- Invitation to Sexual Touching

Sexual assault legislation prior to Bill C-15 did not make it an offence for a person to invite a child to touch him or her in a sexual way. In surveying the incidence of sexual abuse, the Badgley Committee found this to be a common type of activity.

- Time Restrictions

Under sexual assault legislation prior to Bill C-15, certain sexual offences had to be prosecuted within a year of their commission. Many children have difficulty talking about such experiences, and delayed disclosure often precluded the prosecution of sexual offences against children.

1.2 Bill C-15: Goals, Objectives, and Amendments

The amendments to the Criminal Code were guided by four general goals vigorously debated in the House of Commons. These were that the amendments to the Criminal Code should:

- provide better protection to child sexual abuse victims;
- enhance successful prosecution of child sexual abuse cases;
- improve the experience of the child victim/witness; and
- bring sentencing in line with the severity of the offence.

The strategy for accomplishing the above goals involved simplification of the law relating to sexual offences; creation of new offences specific to acts of child sexual abuse; changes regarding procedure and evidence, and testimony of child witnesses.

Simplification of the law involved legislative changes of several kinds (see Table 1.1). Some provisions were repealed completely (sections 146, 151, 152, 153, 154 and 157 XCC). Other sections were rewritten to extend their protection to young males (sections 166, and 167 XCC) or to add additional provisions where the offence involved a child under the age of 18 years (sections 155, 169 and 195 XCC). Three new offences were created: sexual interference, invitation to sexual touching, and sexual exploitation (sections 151, 152 and 153 CC). As a result of these changes, there are now 10 sexual offences in the Criminal Code which are applicable to cases of child sexual abuse:

- sexual assault;
- sexual interference;
- invitation to sexual touching;

Table 1.1 Criminal Code Number Transformations Relevant to the Assessment of Bill C-15[1]

Old Criminal Code Prior to January 1, 1988		New Criminal Code as of January 1, 1988		
XCC	Section Description	Interim[2] Code (C-15)	CC	Section Description
s. 140	Consent no defence	s. 139	s. 150.1	Consent no defence
s. 141	Time limitation (repealed 1987)			
s. 146(1)	Sexual intercourse with female under 14 years (repealed 1987)			
s. 146(2)	Sexual intercourse with female between 14-16 years of previous chaste character (repealed 1987)			
		s. 140	s. 151	Sexual interference for children under 14
		s. 141	s. 152	Invitation to sexual touching for children under 14
		s. 146	s. 153	Sexual exploitation for children 15-18
s. 150	Incest - Intercourse with a blood relative	s. 150	s. 155	Incest
s. 151	Seduction of a female 16-18 years old of previous chaste character (Repealed 1987)			
s. 152	Seduction of a female under 21 years old under promise of marriage (Repealed 1987)			
s. 153	Sexual intercourse with stepdaughter/foster daughter (Repealed 1987)			
s. 154	Seduction of a female passenger on vessels (Repealed 1987)			
s. 155	Buggery or bestiality (Repealed 1987)	s. 154	s. 159	Anal intercourse
		s. 155	s. 160	Bestiality
s. 157	Gross indecency (Repealed 1987)			
s. 166	Parent/guardian procuring sexual activity (Repealed 1987)	s. 166	s. 170	Parent/guardian procuring sexual activity
s. 167	Householder permitting sexual activity (Repealed 1987)	s. 167	s. 171	Householder permitting sexual activity
s. 168	Corrupting children (Repealed 1987)	s. 168	s. 172	Corrupting children

Table 1.1 (continued)

Old Criminal Code Prior to January 1, 1988		New Criminal Code as of January 1, 1988		
XCC	Section Description	Interim[2] Code (C-15)	CC	Section Description
s. 169	Indecent act	s. 169(1)	s. 173(1)	Indecent Act
		s. 169(2)	s. 173(2)	Exposure to child under 14 years
s. 195(1)	Procuring	s. 195(1)	s. 212(1)	Procuring
s. 195(2)	Living off avails (repealed 1987)	s. 195(2)	s. 212(2)	Living off avails of a prostitute under 18 years
		s. 195(4)	s. 212(4)	Obtaining person under 18 years for sexual purpose
s. 195.1	Soliciting	s. 195.1	s. 213	Soliciting
s. 246.1	Sexual assault	s. 246.1	s. 271	Sexual assault
s. 246.2	Sexual assault with a weapon/threats/bodily harm	s. 246.2	s. 272	Sexual assault with a weapon/threats/bodily harm
s. 246.3	Aggravated sexual assault	s. 246.3	s. 273	Aggravated sexual assault
s. 246.4	Corroboration not required	s. 246.4	s. 274[3]	Corroboration not required
s. 246.5	Rules re: recent complaint abrogated	s. 246.5	s. 275[3]	Rules re: recent complaint abrogated
s.246.6(1)	No evidence concerning sexual activity	s. 246.6(1)	s. 276(1)[3]	No evidence concerning sexual activity
s. 246.7	Reputation evidence	s. 246.7	s. 277[3]	Reputation evidence
		s. 442(2.1)	s. 486(2.1)	Testimony outside the courtroom
s. 442(3)	Order restricting publication	s. 442(3)	s. 486(3)[3]	Order restricting publication
		s. 643.1	s. 715.1	Videotaped evidence
CEA s.16	Sworn/unsworn evidence of a child (repealed 1987)	CEA s. 16	s. 16	Child witness oath/promise to tell truth

[1] Throughout this report old code numbers (XCC) will be used when the old code (Prior to January 1, 1988) is referred to. When the new code is referred to the new code numbers (CC) will be used and interim code numbers (Bill C-15) will be ignored.

[2] The interim code numbers were introduced with Bill C-15. They related to new sections introduced by Bill C-15 and, in addition, include sections carried over from the old Criminal Code. The interim codes were used for approximately one year.

[3] These section were enacted by Bill C-127 (August 1982), however, they were extended to the sexual offences enacted by Bill C-15.

- sexual exploitation;
- indecent acts and indecent exposure;
- incest;
- anal intercourse;
- bestiality and associated offences;
- parent or guardian procuring sexual activity; and
- householder permitting sexual activity.

Changes regarding procedure and evidence included (see Table 1.1): repealing the requirement for corroboration (section 274 CC); abrogating the doctrine of recent complaint (section 275 CC); extending the provisions excluding evidence of past sexual conduct and sexual reputation (subsection 276(1) and section 277) to Bill C-15 offences; permitting testimony outside the courtroom (subsection 486(2.1) CC); restricting publication of the identity of the complainant or a witness (subsection 486(3) CC); and permitting the use of videotaped evidence (section 715.1 CC).[1] Finally, amendments to the Canada Evidence Act allow both victims and witnesses less than 14 years of age to give sworn evidence if they understand the nature of the oath and are able to communicate the evidence. The amendment also makes it possible for a child under 14 years of age to give unsworn evidence if he or she is able to communicate, understands the nature of a promise and "promises to tell the truth".

For research purposes, these changes are linked to expected outcomes or objectives so that the impact of Bill C-15 on the judicial system can be studied. Table 1.2 presents the broad legislative goals, objectives, and the research questions designed to addressed each objective.

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[1] A number of these provisions (specifically sections 274, 275, 277, and subsections 276(1) and 486(3) CC) were enacted by Bill C-127 proclaimed August 4, 1982; however, the provisions were extended to the sexual offences enacted by Bill C-15. For ease of reference, these provisions are simply referred to as Bill C-15 amendments throughout the report. Section 486(1) also predates Bill C-15 but as this provision is particularly applicable to sexual offences, the extent of its use was also analyzed in this report.

Table 1.2 Bill C-15, Goals, Objectives and Research Questions

Goal 1: To provide better protection to child sexual abuse victims.

Objective 1: To broaden the range of conduct captured by the Criminal Code.

Research Questions:

ss.151,152,and 153

1.1 Are overall rates of charges under ss. 151, 152, 153 CC compared to s. 146(1), s. 146(2) XCC going up?

1.2 Are the new offences ss. 151, 152, 153 covering a broader range of conduct, not just intercourse?

1.3 What is the rate of conviction?

1.4 What factors are associated with:

(a) charges being laid
(b) guilty pleas
(c) convictions?

Objective 2: To provide more protection for young victims.

Under 18
ss. 212(2) and 212(4)

2.1 Are charges being laid under ss. 212(2) and 212(4)?

2.2 Are convictions obtained?

Under 14
s. 173(2)

2.3 Are charges being laid under s. 173(2)?

2.4 What conduct is being associated with s. 173(2)?

2.5 What is the rate of conviction?

Table 1.2 (continued)

		s. 150.1
		2.6 Has consent been accepted by the courts as a defence?
		2.7 Has mistaken age been accepted by the courts as a defence?
		s. 150.1(2)
		2.8 How does the age difference between the victim (age 14-17) and the offender relate to charges under ss. 151, 152, 173(2), 271?
Objective 3:	To eliminate gender bias regarding victims and offenders.	ss. 151, 152, 153
		3.1 Are charges being laid in cases involving male victims?
		3.2 Are these charges resulting in guilty pleas/convictions?
		3.3 Are charges being laid in cases involving female offenders?
		3.4 Are these charges resulting in guilty pleas/convictions?
Objective 4:	To provide protection for children in cases where disclosure is delayed.	ss. 151, 152, 153, 155, 159, 160(2) & (3), 170, 171, 172, 173(2), 271, 272, 273
		4.1 Are charges being laid in cases where reporting to police is more than one year after the incident occurred? (s. 275)
		4.2 Are these charges resulting in convictions?

Table 1.2 (continued)

Goal 2: To enhance successful prosecution of child sexual abuse victims.

Objective 5: To minimize the problem of child sexual abuse victim giving evidence.

5.1 Are videotapes being used in evidence?

- (a) has their use been challenged?
- (b) what arguments have been used to challenge?
- (c) is the use of videotape leading to convictions?
- (d) in what types of case is the use of videotape aiding prosecution?
- (e) does use of the videotape reduce the time that the child must testify?
- (f) what other uses are made of video tapes?

5.2 Are child victims/witnesses under 14 years of age being sworn?

5.3 Are younger child victims/witnesses giving testimony under the new "promise to tell the truth" provision of 16(3) CEA?

5.4 What types of questions are asked by the judge and others?

5.5 What factors are associated with the use/nonuse of the provisions under 16(1)?

- (a) children under 14 taking oath?
- (b) children under 14 giving testimony under "promise to tell the truth"?

5.6 Is unsworn testimony (i.e., promise to tell the truth) weighed differently by the courts?

Table 1.2 (continued)

Objective 6:	To protect the credibility of the child victim/witness in cases of child sexual abuse.	6.1 Is corroboration still important in the decision to: (a) commit to trial? (b) convict at trial? 6.2 Are there areas of alleged behaviour and/or types of cases where credibility of the witness is a problem (e.g., status/occupation of offender)? 6.3 Are expert witnesses used? What type of evidence are they giving? 6.4 Is "sexual activity" and/or "reputation" evidence being raised as a defence in court proceedings?
Goal 3:	To improve the experience of the child victim/witness.	
Objective 7:	To avoid repetitious interviews with the child victim/witness.	7.1 Are videotapes being made at the initial investigative stage? 7.2 Who is present at the videotaped interview? 7.3 How many times are victims/witnesses made to repeat their disclosures? 7.4 Does use of the videotape reduce the number of times a child must tell the story?
Objective 8:	To provide support and assistance to the child victim/witness	8.1 Have any innovative programs or procedures been implemented? (a) Victim Assistance Program (b) Crown attorney preparing witness (c) Other (e.g., court workbooks, etc.)

Table 1.2 (continued)

	8.2 Videotape used to refresh memory?
	8.3 Have screen and/or closed circuit televisions been used in the court (s. 486(2.1))?
	8.4 Have supporting adults accompanied the child witness to court? (a) Who are these adults? (b) Do supporting adults accompany the child to the stand?
	8.5 Are other innovative supports used?
	8.6 What is the effect of these procedural and evidentiary changes on the child witness?
	8.7 Has s. 486(1) been used to exclude the public while giving testimony?
Objective 9: To provide protection for the child victim/witness regarding identity and the circumstances of the occurrence.	9.1 Has s. 486(3) been used to ban publication of identifying information? In what type of cases?
Goal 4: To bring sentencing in line with the severity of the incident.	
Objective 10: To provide for a range of sentence responses to a broad range of severity of abuse.	10.1 Does the type of sentence relate to: (a) characteristics of the offence (e.g., nature of incident, frequency, etc.)? (b) conditions and/or characteristics of the victim? (c) characteristics of the offender?

1.2.1 Goal 1: To Provide Better Protection to Child Sexual Abuse Victims

The specific amendments that relate to this goal can be viewed as falling into four areas of expected outcome. First, the repeal of subsection 146(1) XCC (intercourse with a female under 14 years) and subsection 146(2) XCC (intercourse with a female 14 to 16 years) and the replacement of these sections with section 151 CC (sexual interference), section 152 CC (invitation to sexual touching), and section 153 CC (sexual exploitation), seem to have at least two intended outcomes. These are: broadening the range of conduct captured by the Criminal Code, and eliminating gender bias regarding victims and offenders.

Second, the proclamation of section 150.1 CC (consent of child under 14 years old no defence), subsection 173(2) CC (exposure to a child under 14 years old), subsection 212(2) CC (living off the avails of a prostitute under 18) and subsection 212(4) CC (obtaining a person under 18 years old for sexual purpose) seems to be aimed at providing more protection for young victims.

Third, the repeal of section 141, which provided a one-year limitation period for certain sexual offences, and the abrogation of the doctrine of recent complaint with respect to all sexual offences, was aimed at protecting children in cases where disclosure was delayed. The proclamation of section 275 CC removes the one-year time limitation for reporting offences under the previous Criminal Code provision (section 141 XCC) for the new sections 151, 152, 153, 155, 159, 160(2) and (3), 170, 171, 172, 173, 271, 272, and 273.

The expected outcomes associated with the amendments relevant to Goal 1 are expressed as the following objectives:

Objective 1: To broaden the range of conduct captured by the Criminal Code.

Objective 2: To provide more protection for young victims.

Objective 3: To eliminate gender bias regarding victims and offenders.

Objective 4: To provide protection for children in cases where disclosure is delayed.

1.2.2 Goal 2: To Enhance Successful Prosecution of Child Sexual Abuse Cases

The amendments that relate to Goal 2 fall into two areas. First, the introduction of section 715.1 CC, permitting a videotape of the victim's description of events to be admissible in evidence, and subsection 16(1) of the

Canada Evidence Act, allowing victims/witnesses under 14 years old to give testimony under oath or on a promise to tell the truth, facilitates the giving of evidence by children. Second, the removal of the requirement for corroboration under section 274 CC for charges related to child sexual abuse, and the exclusion of evidence of sexual activity (subsection 276(1) CC) and reputation (section 277 CC) of the victims, attempt to eliminate previous impediments to the credibility of the child victim/witness.

The expected outcomes associated with the amendments relevant to Goal 2 are as follows:

Objective 5: To minimize the problems of the child sexual abuse victim giving evidence.

Objective 6: To recognize the credibility of the child victim/witness in child sexual abuse cases.

1.2.3 Goal 3: To Improve the Experience of the Child Victim/Witness

A number of amendments to Bill C-15 are relevant to the improvement of victim/witness experience during the proceedings. First, the proclamation of section 715.1 CC, permitting the use of videotape of the victim's description of events, is intended to avoid repetitious interviews with the child victim/witness. The videotape also can be used to support a child's testimony by allowing the child to refresh his or her memory by viewing the tape during proceedings. Second, support and assistance can be provided to the child victim/witness through the exclusion of the public from the courtroom by subsection 486(1) CC and by subsection 486(2.1), which permits the child witness to testify outside the courtroom or behind a screen. Support can also be provided by adults accompanying the child in court and on the witness stand. Finally, subsection 486(3) provides for a ban on publication of the identity of the witness, providing protection to the child victim/witness by preventing broad public knowledge of his or her identity and the circumstances of the occurrence.

The expected outcomes associated with the amendments relevant to Goal 3 are identified in the following objectives:

Objective 7: To avoid repetitious interviews with the child victim/witness.

Objective 8: To provide support and assistance to the child victim/witness while giving testimony.

Objective 9: To provide protection to the child victim/witness from public knowledge of the child's identity and the circumstances of the occurrence.

1.2.4 Goal 4: To Bring Sentencing in Line with Severity of the Offence

The new legislation is designed to cover an increased range of behaviour, and to permit finer discriminations in severity of abuse. It is expected, therefore, that sentencing will reflect this change.

Objective 10: To provide for a range of sentence alternatives to reflect a broader range of sexual abuse behaviours varying in severity of abuse.

1.3 Summary

Bill C-15 is intended to increase protection for children through the facilitation of prosecutions, while still ensuring the fundamental rights of the accused. There were four general goals of the new legislation: to provide better protection to child sexual abuse victims, to enhance successful prosecution of child sexual abuse cases, to improve the experience of the child victim/witness, and to bring sentencing in line with the severity of the offence. Included in the Bill is a mandatory review of the legislation in 1992, four years from the January 1988 declaration date. Statistical documentation on the impact of Bill C-15 on the justice system is the purpose of the present study. In general, two principal questions are of concern: Are the new and revised sections being used? When they are used, are the desired outcomes being achieved?

A number of limitations to the old Criminal Code existed: there was gender bias (i.e., girls and boys were given different protection by the law); only a limited range of sexual activity by the child on the offender was captured; a previously chaste character on the part of the victim was required on certain offences; there was opportunity for the victim's sexual reputation and past sexual conduct to be raised by defence council; there was presumption that a male under the age of 14 was incapable of sexual intercourse; age of consent varied according to sexual act and sex of the participant; invitation to sexual touching was not an offence; and certain sexual assault offences had to be prosecuted within a year after their commission.

For research purposes, changes introduced by Bill C-15 are linked to expected outcomes or objectives and research questions, so that the impact of Bill C-15 on the judicial system can be studied. Ten objectives were identified: to

broaden the range of conduct captured by the Criminal Code; to provide better protection to child sexual abuse victims; to eliminate gender bias regarding victims and offenders; to provide protection for children in cases where disclosure is delayed; to minimize the problems of the child sexual abuse victim giving evidence; to recognize the credibility of the child victim/witness in child sexual abuse cases; to avoid repetitious interviews with the child victim/witness; to provide support and assistance to the child victim/witness while giving testimony; to protect the child victim/witness from public knowledge of the child's identity and the circumstances of the occurrence; and to provide for a range of sentence alternatives to reflect a broader range of sexual abuse behaviours varying in severity of abuse.

2.0 METHODOLOGY

2.1 Research Design

Data were gathered from police files, court transcripts, court observations, key informants, and local newspapers using the following instruments and procedures:

- Direct observation of children in court
- Review of court transcripts
- Review of police files
- Surveys and interviews with key informants
- Parent/child interviews
- Analysis of articles in newspapers

Data collection began in November 1990, more than two and one-half years after Bill C-15 was proclaimed, making it impossible to implement a pretest/post-test design. Instead, data were gathered retrospectively for the period January 1, 1988, to March 31, 1991.

2.2 Instruments and Procedures

Data for the Saskatchewan sexual abuse study were gathered principally by two trained female research assistants in Saskatoon and Regina. Permission was obtained to review police files and court transcripts. Trials and preliminary inquiries were observed when not prohibited by judicial order. On only two occasions were researchers asked to vacate the courtroom. Police file and disposition data were obtained retrospectively for the period January 1, 1988, to December 31, 1990, while observation, interview and survey data were obtained during the period November 1990 to March 1991.

Data were obtained on cases as they progressed through stages of the judicial system, beginning with the initial complaint of sexual abuse to the police and ending in the completion of the judicial process (i.e., cleared by charge -- sentenced -- or otherwise cleared). In some cases, data gathering began after the process was begun. For these cases, tracking was done both forward and

backward throughout the system. Attempts were made to track cases throughout the judicial system so that the same cases would be represented in the different data sets (i.e., police file, trial, disposition).

All of the measuring instruments (questionnaires, interview schedules, file review forms, observation schedules) employed in the present study were developed by Hornick et al. (1992) (see Appendix A). These included:

Police File Review

Preliminary Inquiry Transcript Review

Trial Transcript Review

Court Disposition Review

Termination of Court Proceedings Prior to Conclusion of Trial

Child Victim/Witness Court Observation Schedule

Sexual Abuse of Children (under 18 years): A Questionnaire for Judges

Sexual Abuse of Children (under 18 years): A Questionnaire for Crown Prosecutors

Sexual Abuse of Children (under 18 years): A Questionnaire for Defence Lawyers.

Sexual Abuse of Chiidren (under 18 years): A Questionnaire for Police Officers

Guardian/Parent Interview Schedule: Post Court

Child Interview Schedule

2.2.1 Police File Review

The police file review was used to collect general case information for each occurrence involving a child victim (under the age of 18 years) and an alleged perpetrator of sexual assault. Occurrence refers to each combination of victim and offender. The police file review (PFR) provides general information relating to: the victim and offender (e.g., age, gender, racial origin, relationship, whether the accused had a prior criminal record); the incident (e.g., whether a weapon was

used, whether drugs or alcohol were involved, number of offenders, whether there were witnesses to whom the disclosure was made and when, whether there were injuries); and the investigative procedure (e.g., whether a videotape of the interview with the victim was created and who made use of it, whether the case was classified as unfounded, cleared by charge, or cleared otherwise, and the type of charge).

A total of 1101 files were reviewed in Saskatoon and Regina. This number constituted all of the files available during the period January 1, 1988, to December 31, 1990.

2.2.2 Preliminary Inquiry Transcript Review

The court proceedings review forms (see Appendix A) were used to collect information from transcripts of preliminary inquiries for cases that had been processed by the criminal justice system. Data were obtained by reviewing transcripts or audio tapes of preliminary inquiries provided by Transcript Services in Regina.[1]

The preliminary inquiry transcript review provides information related to: the victim (e.g., age, gender); the inquiry (e.g., date, duration, charges being heard); preliminary applications (e.g., ban on publication, exclusion of witnesses, exclusion of public); physical and test evidence (e.g., blood samples, semen samples, psychological tests); videotaped evidence (i.e., its admissibility, its use); child victim testimony (e.g., length of time, degree of detail provided); competence of the child to testify (i.e., if competence was challenged and by whom); examination-in-chief of the victim (i.e., questions asked by the crown attorney, judge, and defence attorney); the child recanting; use of Bill C-15 provisions (i.e., screen, child testifying outside court); other witnesses; and disposition (i.e., discharged, committed to trial).

All of the available preliminary inquiry transcripts were reviewed: 105 in total.

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[1] Since there was no designated Victim Impact Statement Project operating in Saskatchewan, the presence of victim impact statements was not anticipated.

2.2.3 Trial Transcript Review

The trial transcript review was used to collect information on cases currently in the judicial system. Data were obtained by reviewing transcripts or audio tapes of trials provided by Transcript Services, Regina.

The trial transcript review provides identical information to that of the preliminary inquiry review with the exception of a change in disposition (i.e., acquitted or convicted) and the addition of sentencing (i.e., if a presentence report or psychological evaluation was requested, if a victim impact statement was submitted), circumstances of the accused (i.e., age, gender, marital status, use of violence, prior criminal record, relationship to the victim) and appeals (i.e., grounds for appeal, results of the appeal).

Thirty-five trial transcripts were completed.

2.2.4 Court Disposition

Court dispositions were obtained from police files and/or the Canadian Police Information Centre (CPIC). The court disposition form contained information relating to: charge, both old and new criminal codes and new offences for child sexual abuse; preliminary inquiry (e.g., outcome of hearing, stay, warrant); trial (e.g., type of trial, outcome/sentencing, disposition type, probation conditions, fine, incarceration); and appeal (e.g., type, outcome of the appeal).

Disposition data were obtained on 601 cases.

2.2.5 Court Observations

Court observations were conducted to provide an evaluation of the impact of the court experience on the child. The court observation schedule provides measures of: victim characteristics (e.g., age, gender); court type (e.g., Queen's Bench, Provincial Youth Court); proceeding type (e.g., preliminary hearing, trial); and courtroom environment (e.g., use of screen, closed-circuit television, adult support, accused and/or spectators present, use of aids during testimony).

Twenty-one cases were observed.

The last part of the court observation schedule consists of a court observation rating scale used to measure the child's behaviour: during oath or demonstration of ability to communicate; during examination-in-chief; during

cross-examination and re-examination; and during presentation of videotaped evidence.

Fifty-one observations of child victims were taken, 38 during preliminary hearing and 13 during trial. Ten were taken during the oath or demonstration of ability to communicate stage, 19 during examination-in-chief, 19 during cross-examination and three during the re-examination stage.

2.2.6 Termination of Court Proceedings Prior to Conclusion of Trial

In some cases, court proceedings are terminated prior to the conclusion of the trial. Termination data were obtained by reviewing transcripts or audio tapes of trials that were terminated prematurely; these were provided by Transcript Services, Regina.

The termination of court proceedings form measures: victim characteristics (e.g., gender, age); charges laid, under the old and new Criminal Code; how charges were terminated (e.g., stayed, withdrawn, guilty plea); stage of proceedings (i.e, when charges were terminated); reason for termination and by whom; issues of sentencing if terminated by guilty plea; and circumstances of the accused.

Data were obtained on 70 cases that were terminated prior to conclusion of the trial.

2.2.7 Key Informant Surveys

Questionnaires were mailed to a number of professionals directly involved with child sexual abuse cases. These included police, defence lawyers, crown prosecutors, and judges. The questionnaires were designed to collect information in three general areas: experience in processing cases of child sexual abuse; observed changes since the introduction of Bill C-15 in January 1988; and the impact of Bill C-15 on one's work.

The police questionnaire measures age, gender and experience of the police officers; opinions on the importance of a number of factors determining whether an alleged child sexual abuse case is substantiated; charges laid; charges cleared otherwise; the use of videotapes of victim's interviews made during the investigation; opinions of, and experience with, Criminal Code changes introduced by Bill C-15; the child's use of "props" during testimony; observed changes since Bill C-15 relating to the number of sexual abuse cases investigated, number of

children testifying, age of the children, use of oath, weighting of sworn versus unsworn evidence, rules of hearsay, requirements for corroboration, use of expert witnesses, proportion of guilty pleas and convictions; and impact of Bill C-15 on the police officer's work (i.e., policy changes introduced, special training required).

Twenty-four usable police questionnaires (86 percent) were returned (Table 2.1).

Judge, defence lawyer and crown prosecutor questionnaires are very similar except for profession-appropriate changes. The defence questionnaire measures age, gender and experience of the defence lawyers; opinions on the importance of a number of factors determining whether a guilty plea is recommended; opinions of the importance of factors in determining whether a child witness's competence to give evidence is challenged; issues raised during cross-examination; the importance of factors determining whether charges will be dismissed; whether or not he or she has defended cases under a number of sections (e.g., section 151, section 152) and which were problematic; whether the crown prosecutor requested the use of props (e.g., videotapes, screens, booster seat) in child's testimony, if he or she objected to it, and if it was allowed); observed changes since Bill C-15 relating to the number of sexual abuse cases investigated, number of children testifying, age of the children, use of oath, weighting of sworn versus unsworn evidence, rules of hearsay, requirements for corroboration, use of expert witnesses, proportion of guilty pleas and convictions; and impact of Bill C-15 on the defence lawyer's work (i.e., policy changes introduced, special training required).

Ten usable questionnaires (20 percent) were obtained from defence lawyers.

The crown prosecutor questionnaire measures age, gender and experience of the crown prosecutors; opinions on the importance of a number of factors determining whether charges should be laid; whether a case should be stayed and/or charges withdrawn where charges are laid and the accused pleads not guilty; frequency and purpose of meetings with a child victim/witness; meetings with parents/guardians; extent of court preparation for the child; whether child victims recanted after cross-examination; percentage of charges dismissed at preliminary hearing, at trial; importance of factors determining whether charges

Table 2.1 Return Rate of Child Sexual Abuse Questionnaires By Professionals in Regina and Saskatoon

	Judges	Crown	Defence	Police
Total Sent	78	27	51	28
Completed	22	17	10	24
Rate	28%	63%	20%	86%

will be dismissed; whether or not he or she has prosecuted cases under a number of sections (e.g., section 151, section 152) and which were problematic; whether he or she requested the use of props (e.g., videotapes, screens, booster seat) in child's testimony, if there were objections, and if they were allowed; observed changes since Bill C-15 relating to the number of sexual abuse cases investigated, number of children testifying, age of the children, use of oath, weighting of sworn versus unsworn evidence, rules of hearsay, requirements for corroboration, use of expert witnesses, proportion of guilty pleas and convictions; and impact of Bill C-15 on the crown prosecutor's work (i.e., policy changes introduced, special training required).

Seventeen usable questionnaires (63 percent) were obtained from crown prosecutors.

The judge questionnaire measures: experience of the judges on the bench, and with respect to child sexual abuse cases; opinions on the importance of a number of factors determining whether charges should be laid, whether the accused will be acquitted; whether a child should be permitted to take an oath; what factors are important in their decision to allow a child to give evidence, to grant a discharge after preliminary inquiry, to commit to trial following preliminary inquiry, in determining the sentence handed down; familiarity with changes in a number of sections of the Criminal Code since the introduction of Bill C-15; perceived problems with these changes; observed changes since Bill C-15 relating to the number of sexual abuse cases investigated,

number of children testifying, age of the children, use of oath, weighting of sworn versus unsworn evidence, rules of hearsay, requirements for corroboration, use of expert witnesses, proportion of guilty pleas and convictions; and impact of Bill C-15 on the judge's work (i.e., policy changes introduced, special training required).

Twenty-two usable questionnaires (28 percent) were obtained from judges dealing with child sexual abuse cases.

2.2.8 Parent/Guardian Interview Schedules

Interviews were conducted with parents of the victims after the court proceedings. The interview schedule measures: background information (e.g., gender, age, ethnicity, income, marital status); assistance provided by social services (workers); assistance provided by the police; the role of crown counsel (helpfulness); impact of the investigation on the parents and the victim; trial information (e.g., opportunity to be with the victim at the trial, length of time victim was on the stand); parents' feelings about the court process; their opinion about how the victim responded to various activities (e.g., questioning by the police, taking the oath, giving evidence, being cross-examined, having the accused present in court); evaluation of the overall court experience.

Only three parent interviews were obtained. No discussion of parent interviews appears in this report because of the small amount of data, which renders the results extremely unreliable.

2.3 Measures

To facilitate data analysis, scales measuring the level of intrusion of the sexual abuse, and child behaviour during the proceedings, developed by Hornick, et al., (1992), were utilized. As well, operational definitions of a number of concepts relating to the evaluation of the impact of Bill C-15 (e.g., reporting rate, unfounded rate, clearance rates, conviction rates) are presented.

Sexual Abuse: Level of Intrusion

The nature of the sexual abuse is typically measured, as it was in the present study, using a number of categorical variables to which the response is "Yes, the behaviour occurred", or "No, it did not occur" -- behaviours such as: the offender exposing his genitals to the victim; inviting the victim to touch his genitals; bathing/showering with the victim; grabbing/fondling the victim's breasts,

the genital area, the buttocks; inappropriately kissing the victim; undressing the victim; forcing the victim to masturbate, to perform oral sex on the offender; vaginal penetration with the fingers, with the penis; anal penetration with the fingers, with the penis. There were 46 such behaviours used in the present study to measure the nature of the sexual abuse. Generally, behaviours relating to exhibitionism by the perpetrator are considered the least intrusive, while behaviours relating to penetration and forced prostitution are considered the most intrusive. Least intrusive behaviours are thought to be the least damaging emotionally to the victim.

For purposes of analysis, it is useful to conceptualize abusive behaviour as a continuous variable (albeit ordinal). The "level of intrusion" scale (Table 2.2) is such an instrument. Scores range from 1 (exposure) to 13 (forced prostitution), indicating lowest to highest level of intrusion, or severity of the abusive behaviour. Level of intrusion scores represent progressively inclusive sexually abusive behaviour. Level of intrusion was used as a predictor variable in a number of the multivariate analyses.

Child Behaviour During Proceedings

The court observation rating scale contains 29 items related to child behaviour (e.g., laughs inappropriately, covers face, cries, stares blankly, swears, asks for water, facial tissue, or to go to the bathroom) that might be observed in a given setting. For purposes of data analyses, these behaviours must be reduced to a manageable number without losing any of the information contained therein. The statistical technique, factor analysis, allows this. Hornick et al. (1992) performed factor analysis on these items and identified three major dimensions of child behaviour in court situations: anxious-withdrawn, sad-cry, and able to communicate. These are shown in Table 2.3.

2.4 Data Analysis

Most of the analyses were descriptive in nature, involving univariate, bivariate, or trivariate frequency distributions. SPSSx was used for this purpose (SPSSx User's Guide, 1988). A small portion of the analyses involved identifying predictors of various outcomes (e.g., substantiated versus unfounded cases, cleared by charge versus otherwise cleared), where both independent and dependent variables are of either nominal or ordinal measures. The Knowledge Seeker software program was used for this purpose (FirstMark Technologies Ltd., 1990). It accommodates nominal and ordinal scale data as both independent and

Table 2.2 Child Sexual Abuse Intrusion Scale

Code	Intrusion	Categories from File Review Form	
1	Exposure	25:	Indecent Exposure
		31:	Took Nude Photos of Victim
		38:	Victim Took Nude Photos of Accused
		43:	Climbs into Bed with Victim
2	Invitation	5:	Undressing Victim
		22:	Introduced Victim to Pornography
		24:	Invitation to Sexual Touching
		32:	Bathed/Showered Together
		35:	Written/Verbal Sexual Suggestions
		41:	Dress Child in Adult Female Clothing
3	Masturbation	21:	Perform Sex Acts in Front of Victim
4	Inappropriate Kissing	4:	Unwanted/Inappropriate Kissing
		39:	Kissing Breasts
		46:	Force Victim to Suck Offender's Breasts
5	Nongenital Fondling	1:	Grab/Fondle Breasts
		3:	Grab/Fondle Buttocks
6	Genital Fondling	2:	Grab/Fondle Genital Area
7	Mutual Genital Fondling	7:	Force Victim to Fondle Offender
		8:	Force Victim to Masturbate
		19:	Force Victim to Perform Sex with Other Victim
		29:	Mutual Fondling
		30:	Mutual Genital Contact-Males
		37:	Biting Breasts or Buttocks
		42:	Use of Massager
		44:	Urinating on Victim
8	Simulated Intercourse	6:	Rubbing Genital Area Against Victim
		28:	Motions of Intercourse-No Penetration
		33:	Anal Touching with Penis
9	Digital Penetration	11:	Attempted/Failed Penile Penetration
		13:	Vaginal Penetration with Fingers
		14:	Vaginal Penetration with Foreign Objects
		16:	Anal Penetration with Fingers
		17:	Anal Penetration with Foreign Objects
		27:	Attempted Vaginal Penetration with Fingers
10	Oral Sex	9:	Force Victim to Perform Oral Sex on Offender
		10:	Oral Sex Performed on Victim
		36:	Mutual Oral Sex
		40:	Anilingus
11	Vaginal Penetration with Penis	12:	Vaginal Penetration with Penis
		18:	Force Victim to Perform Vaginal Penetration on Offender
12	Anal Penetration with Penis	15:	Anal Penetration with Penis
		23:	Bestiality
13	Forced Prostitution	34:	Forced Victim to Prostitute

dependent variables. Univariate frequency distributions for each of the data sets are contained in Appendix B.

2.5 Limitations

A major limitation of the present study is the lack of premeasures. An essential purpose is to evaluate the impact of Bill C-15 since its inception in January 1988. The implication is that there will be change from some previously existing state and that this change is related to Bill C-15. Although there is some information on what existed prior to Bill C-15, it is difficult to translate this into proxy premeasures. Not known, for example, are the levels of victim anxiety, embarrassment and/or anger that were exhibited in the courtroom prior to Bill C-15. Therefore, it is difficult to determine if there has been improvement (i.e., lessening of the trauma for child victims/witnesses) as a result of changes introduced by Bill C-15. All the study can legitimately do is report present levels of behaviour and let the informed reader make the inference.

The small number of cases in various comparison groups represents another limitation of the study. Statistical tests become less valid as the number of cases in comparison groups becomes smaller, and difference in numbers across groups becomes greater. As well, the external validity, or generalizability, of the findings becomes questionable with small numbers of cases in the sample. For example, in the decision model for sentencing offender to jail or not, sex of the victim is a statistically significant predictor, but there is only one case in one of the groups and seven cases in the other comparison group. How reliable are these findings? Do they generalize to the population of offenders as a group? It is difficult to know. With such small numbers one cannot have confidence in all aspects of the results.

Incomplete or missing data pose a perplexing problem, and only add to the "small numbers" problem. This is a perennial dilemma with questionnaire surveys and with archival research. The present study is no exception.

2.6 Summary

Data were gathered from police files, court transcripts, court observations, key informants, and local newspapers, using a number of instruments and procedures: direct observation of children in court; review of court transcripts; review of police files; surveys and interviews with key informants; parent/child interviews; and analysis of articles in newspapers. A child sexual abuse intrusion scaled was utilized; this measures forms of sexual abuse ranging from less

Table 2.3 Reliability of Subscales Developed for the Court Observation Rating Scale[1]

Subscale and Component Items	Reliability Coefficient[2]
Anxious - Withdrawn	.8190
Fidgets	
Anxious	
Withdrawn	
Worried	
Shy/Timid	
Appears Confused	
Sad - Cry	.6808
Sad	
Cries	
Embarrassed Easily	
Able to Communicate	.8115
Child's Speech - How Fluent?	
Child's Speech - How Audible?	
Detail Child Spontaneously Provided	
Degree of Confidence While Testifying	

[1] Factor analysis was used to develop subscales from the original items.

[2] Cronbach's Alpha.

(e.g., exposure) to more severe (e.g., vaginal and anal penetration with the penis, prostitution) forms of sexual abuse. Child behaviour during proceedings was monitored using factor-analytically derived scales, including anxious-withdrawn, sad-cry and ability to communicate. Data were analyzed using SPSSx and Knowledge Seeker software programs.

Limitations of the study included a lack of premeasures with which to compare present results, small numbers of observations in some of the comparison groups, and incomplete data and the incompatibility of data sets.

3.0 PROCESSING OF CHILD SEXUAL ABUSE CASES

This chapter focusses on the processing of child sexual abuse cases and the nature of the child victim/witness experience with the criminal justice system since the proclamation of Bill C-15. Data for Saskatoon and Regina are collapsed to represent Saskatchewan. No attempt is made to identify differences between them, other than that for computing reporting, unfounded, and clearance rates.

3.1 Protocols of the Criminal Justice System

Investigation

When a case of suspected child sexual abuse is reported to the police, the investigative process is initiated. The first decision of concern is whether the incident should be categorized as substantiated or unfounded, based on the available evidence. Even when cases are substantiated, or police believe the offence occurred, for various reasons the perpetrator may not always be charged and the case is classified as "cleared otherwise" or "not cleared". Factors such as the following are taken into account in deciding whether or not to proceed with a charge: the age of the victim (i.e., the child victim may be too young or have insufficient verbal skills to testify); the willingness of the parents/child to proceed (i.e., the child and/or parents may be unwilling to proceed through the court process); the availability of corroborating evidence (i.e., there may be a lack of physical and/or corroborating evidence when the child's testimony is weak); the credibility, or reliability of a child victim/witness; the availability/identity of the suspect (i.e., the identity of the suspect may be unknown, or the suspect cannot be located).

There is a difference in the way the Saskatoon and Regina police departments record reported incidents of suspected child sexual abuse when the initial investigation is concluded and no charge is laid. In Regina, this would be classified as "other", with no reference to sexual abuse, while in Saskatoon, this case would be classified as "unfounded" or "cleared otherwise" under the category of sexual abuse. This has the effect of increasing the number of "unfounded" and/or "cleared otherwise" cases in the files in Saskatoon compared with those in Regina. Indeed, 40.4 percent of the cases from Saskatoon were classified as cleared otherwise, while only 16.7 percent of the cases from Regina were so classified. And the proportion of cases classified as unfounded was 4.7 percent in Saskatoon, while it was 12.8 percent in Regina. There is no known rationale for these differences, other than differences in police record-keeping protocols.

Proceedings

If the investigation results in charges being laid, the accused has the opportunity to plead guilty or not guilty. If a guilty plea is entered, sentencing is conducted by a provincial court judge and the case is concluded. If the accused pleads not guilty and the charges are summary charges only, the accused will go to trial in Provincial Court. If the charges include indictable offences, the accused may choose either a provincial court judge or a queen's bench trial by judge or jury. If a queen's bench trial is selected, a preliminary inquiry is held in Provincial Court to determine whether the evidence is "sufficient for a reasonable jury to convict". If there is sufficient evidence, the case is committed to trial; if not, it is discharged. The crown prosecutor, in discussion with the police, must decide on the charges if the case is to proceed to trial, whether there will be plea bargaining or not, and what sentence should be recommended in the case of a guilty decision. Cases involving trial or preliminary inquiry usually require that the child victims testify at the proceedings.

3.1.1 Summary of Protocols of the Criminal Justice System

In cases of suspected child sexual abuse, it is the responsibility of the police to decide whether the case is substantiated or not. If substantiated, charges are laid and the accused has the opportunity to plead guilty or not guilty. If he or she pleads guilty, sentencing ensues and the case is concluded. If a "not guilty" plea is entered, the case proceeds to trial directly, or first to preliminary inquiry to determine if there is sufficient evidence to proceed to trial and if so, then to trial. Child victims usually must testify both at preliminary hearings and at trial proceedings.

- There is a difference in the way the Saskatoon and Regina police departments record reported incidents of suspected child sexual abuse when the initial investigation is concluded and no charge is laid.

- In Regina, such a case is classified as "other", with no reference to sexual abuse, while in Saskatoon, this type of case is classified as "unfounded" or "cleared otherwise" under the category of sexual abuse. As a consequence, there were differences between Regina and Saskatoon in reporting, unfounded and clearance rates of cases.

- Regina had lower levels of reporting, but higher levels of unfounded and clearance rates, compared with Saskatoon.

3.2 Processing of Cases in the Criminal Justice System

3.2.1 Criminal Justice System Case Flow

Figures 3.1, 3.2, 3.3, and 3.4 show how child sexual abuse cases reported to Saskatoon and Regina police services from January 1, 1988, to December 31, 1990, were processed through the criminal justice system.

Reporting Rate

Reporting rate is the total number of occurrences (both unfounded or substantiated) reported to police per 100,000 population. An occurrence is a report to the police of an incident of suspected sexual abuse. Table 3.1 shows the reporting rates of sexual abuse cases in Saskatoon and Regina by year the occurrence is reported and sex of the victim.[1] The overall rate of occurrence increased from 1988 to 1990: 1988, 65 per 100,000; 1989, 114 per 100,000; 1990, 124 per 100,000. As expected, the rate for male victims was considerably lower than that for females, although rates for both sexes increased significantly over the period. In 1990, the occurrence rate for males was 53 per 100,000, while that for females was 192 per 100,000.

Significantly different reporting rates, likely owing to differences in police procedures regarding sexual abuse cases, as mentioned above, were obtained for Saskatoon and Regina. The reporting rates for Regina were 39, 69.5, and 91.7 per 100,000, respectively, for 1988, 1989 and 1990; while the reporting rates for Saskatoon during this period were 90.5, 158.2, and 155.2 per 100,000, respectively.[2]

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[1] Population data were obtained from Saskatchewan Health Insurance Registration File (Information Systems Branch) for the years 1988, 1989 and 1990.

[2] Estimates of the population of Saskatoon were 183,487, 183,896 and 183,579 for the years 1988, 1989 and 1990, respectively; while those for Regina were 179,400, 178,348 and 178,792 for the years, 1988, 1989 and 1990, respectively. Population data were obtained from Saskatchewan Health Insurance Registration File (Information Systems Branch) for the years 1988, 1989 and 1990.

Table 3.1 Reporting Rate of Sexual Abuse Cases in Regina and Saskatoon by Year and Sex of the Victim[1]

Year	1988	1989	1990
Occurrences:			
Males	64	90	94
Females	172	322	354
Total	236	412	448
Population:			
Males	178,339	177,766	177,545
Females	184,548	184,478	184,826
Total	362,887	362,244	362,371
Rate Per 100,000			
Males	35.9	50.6	52.9
Females	93.2	174.5	191.5
Total	65.0	113.7	123.6

[1] Population data were obtained from Saskatchewan Health Insurance Registration File (Information Systems Branch) for the years 1988, 1989 and 1990.

Unfounded Rate

Unfounded incidents are the reports that are not believed to be true by the police as a result of their preliminary investigation. The proportion of unfounded cases to cases where the incident is believed to have happened (i.e., substantiated) is the unfounded rate. In this study, the number of unfounded cases and the number of substantiated cases were 83 and 1014, respectively; the unfounded rate, therefore, was 8.2 percent, while the proportion of unfounded cases was 7.5 percent (Figure 3.1). The most common reasons given for declaring the case unfounded were insufficient evidence (49 percent), and belief that the victim lied to police (35 percent).

The unfounded rate for Saskatoon was significantly lower than that for Regina: 5 percent, compared with 15 percent.

Clearance Rate

The clearance rate is the proportion of substantiated occurrences that are cleared by the police through the laying of charges. Cases not "cleared by charge" are either "cleared otherwise" (e.g., not enough evidence to proceed, offender cannot be identified) or are "not cleared". Cases not cleared consist of cases that were still under investigation and cases concluded but not cleared. Figure 3.1 shows that the clearance rate in this study was 51.3 percent; 35.2 percent were cleared otherwise, and 13.4 percent were not cleared.

The clearance rate was much lower for Saskatoon than Regina: 45.9 percent for the former, and 62.6 percent for the latter.

Distribution of Charges

Of the 1101 occurrences, 520 (51.3 percent) were cleared by charge, resulting in 796 charges (Figure 3.1). One charge was laid in 70.4 percent of the cases, two charges were laid in 24.9 percent, and three or more charges were laid in 4.8 percent of the cases. Approximately twice as many charges were processed via trial or preliminary inquiry (64.4 percent), as pleaded guilty (35.6 percent) (Figure 3.1). More than half (60 percent) of the data were missing, however, so that any conclusions must remain tentative. Insufficient data were available from police files to provide a complete distribution of charges (e.g., stays, warrants, charges withdrawn).

Preliminary Inquiry Outcome

Data were available on 239 charges processed through preliminary inquiry (Figure 3.2). Of these, 31 cases (12.9 percent) were discharged, 48 (20.1 percent) committed to trial, 110 (46.0 percent) were stayed, 41 (17.2 percent) had charges withdrawn, and nine (3.8 percent) were issued a warrant. In nine cases of discharge, the judge commented on the lack of corroborative evidence and lack of sexual contact as reasons for discharge.

Trial Outcome

Figure 3.3a shows the outcome of trial proceedings for 360 charges. Of these, the largest proportion were convicted, (64.2 percent); 18.2 percent entered a guilty plea, 11.9 percent were acquitted, and 5.3 percent had charges withdrawn. Data were available for the time at which the charges were withdrawn for 38 charges. Of these, most of the withdrawals took place before the trial (42.1 percent), followed by before the preliminary hearing (36.8 percent).

Figure 3.3b shows the outcome of trial proceedings broken down by type of court chosen. With this analysis, because of missing data, the number of available charges has been considerably reduced (n=130). Thus, comparisons with other findings, and drawing of conclusions, must be done with caution. However, data show that the majority of the charges were processed through Provincial Youth Court (55.4 percent), followed by Queen's Bench (25.4 percent) and Provincial Criminal Court (19.2 percent).

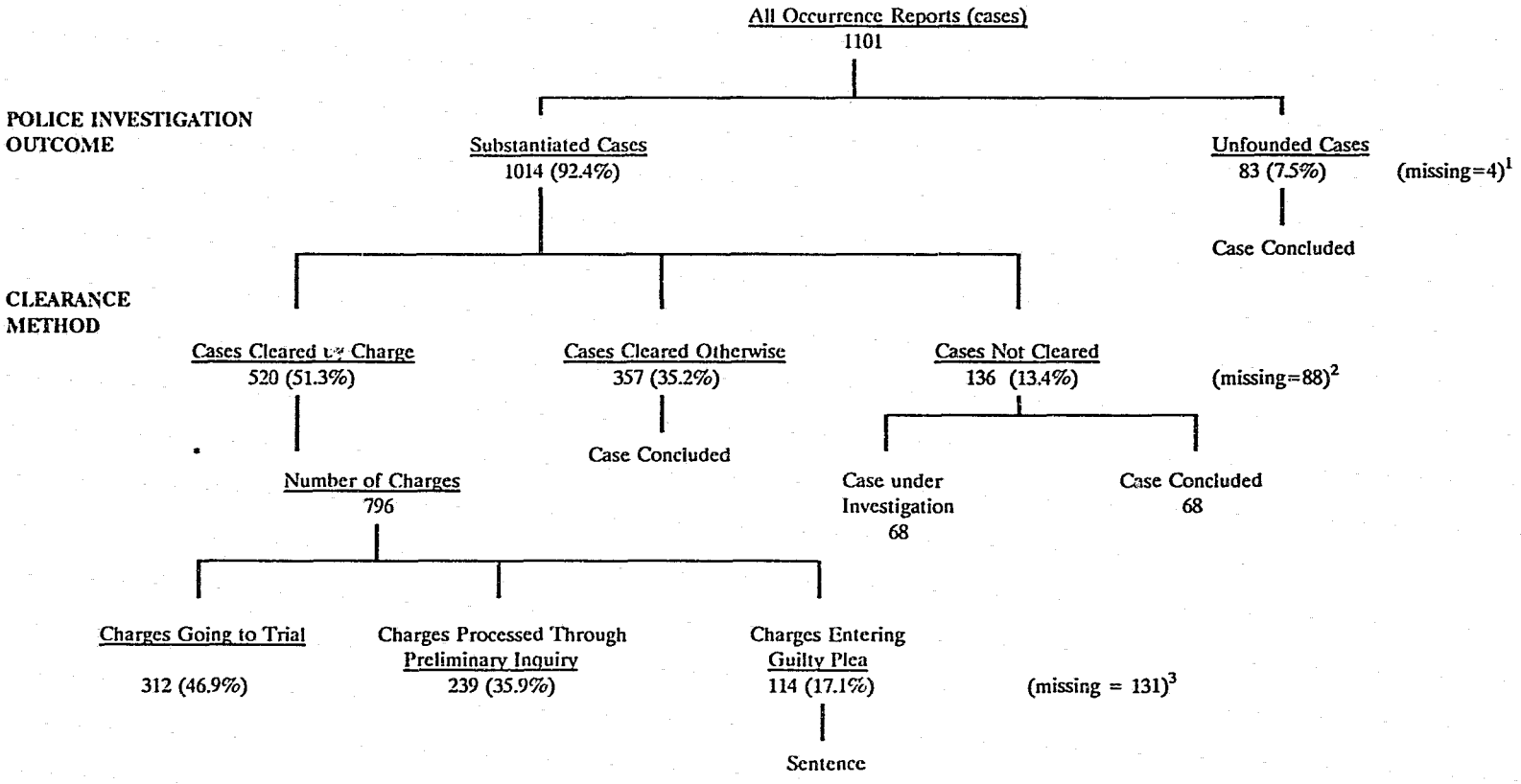
Overall, the majority of the offenders were convicted (64.2 percent), 18.6 percent entered a guilty plea, 11.9 percent were acquitted, and 5.3 percent had charges withdrawn.

The highest proportion of convictions were obtained by Provincial Youth Court (73.2 percent), while the highest proportion of guilty pleas was considered by Provincial Criminal Court (70.8 percent) (Figure 3.3b).

Disposition

Figure 3.4 contains disposition and appeal information. Sentencing information is available for 297 charges. The majority of the offenders were incarcerated without probation (34.5 percent), while 28.3 percent were incarcerated with probation, 20.9 percent were given unspecified probation, 8.1 percent were given a suspended sentence and probation, and the remaining 8.1 percent were given one of absolute discharge, conditional discharge with probation, a fine, a fine with probation, or intermittent jail sentence. Probation

Figure 3.1 Criminal Justice System Case Flow Model: Police Investigation and Clearance Method for Child Sexual Abuse Cases, January 1, 1988 - December 31, 1990, Regina and Saskatoon



Data Source: Police File Review of files from Saskatoon and Regina

Unit of Analysis: Case (Occurrence) for investigation and clearance

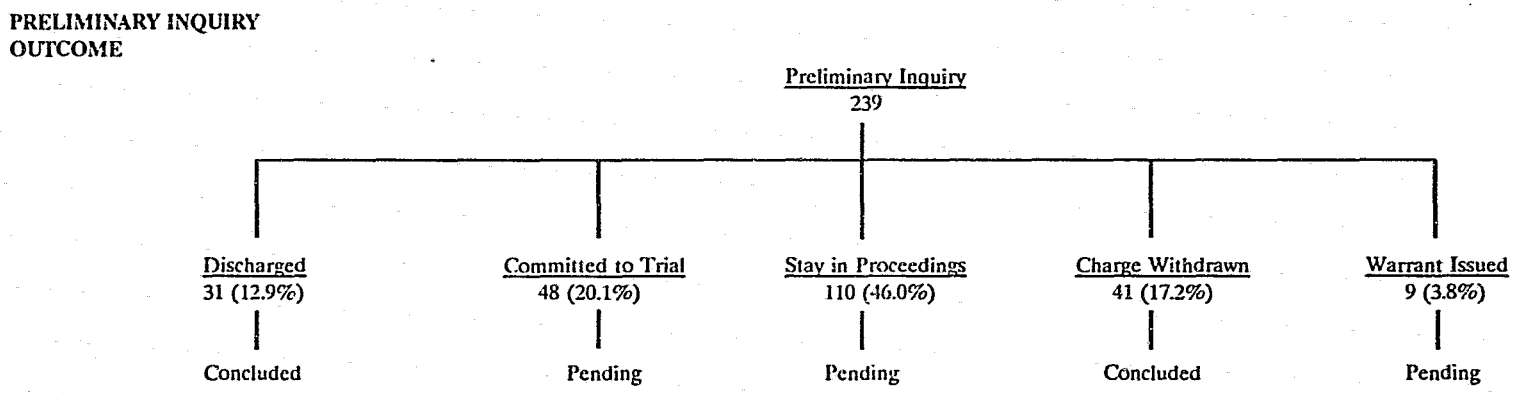
* Unit of analysis changes at this point from case to charge; 520 cases resulted in 796 charges; multiple charges were laid in 29.6% of the cases

[1] 4 cases were not classified as either founded or substantiated

[2] 88 cases were not classified as cleared by charge, cleared otherwise, or not cleared

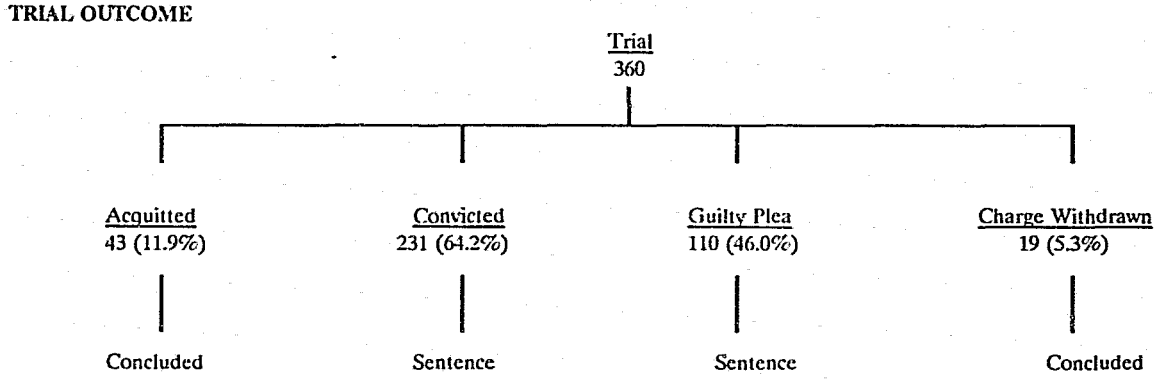
[3] 131 charges were not classified as being processed through trial, preliminary inquiry or whether there was a guilty plea entered

Figure 3.2 **Criminal Justice System Case Flow Model: Preliminary Inquiry Outcome for Child Sexual Abuse Cases, January 1, 1988 - December 31, 1990, Regina and Saskatoon**



Data Source: Court Disposition Review
Unit of Analysis: Charge
Number of charges having a preliminary inquiry outcome = 239

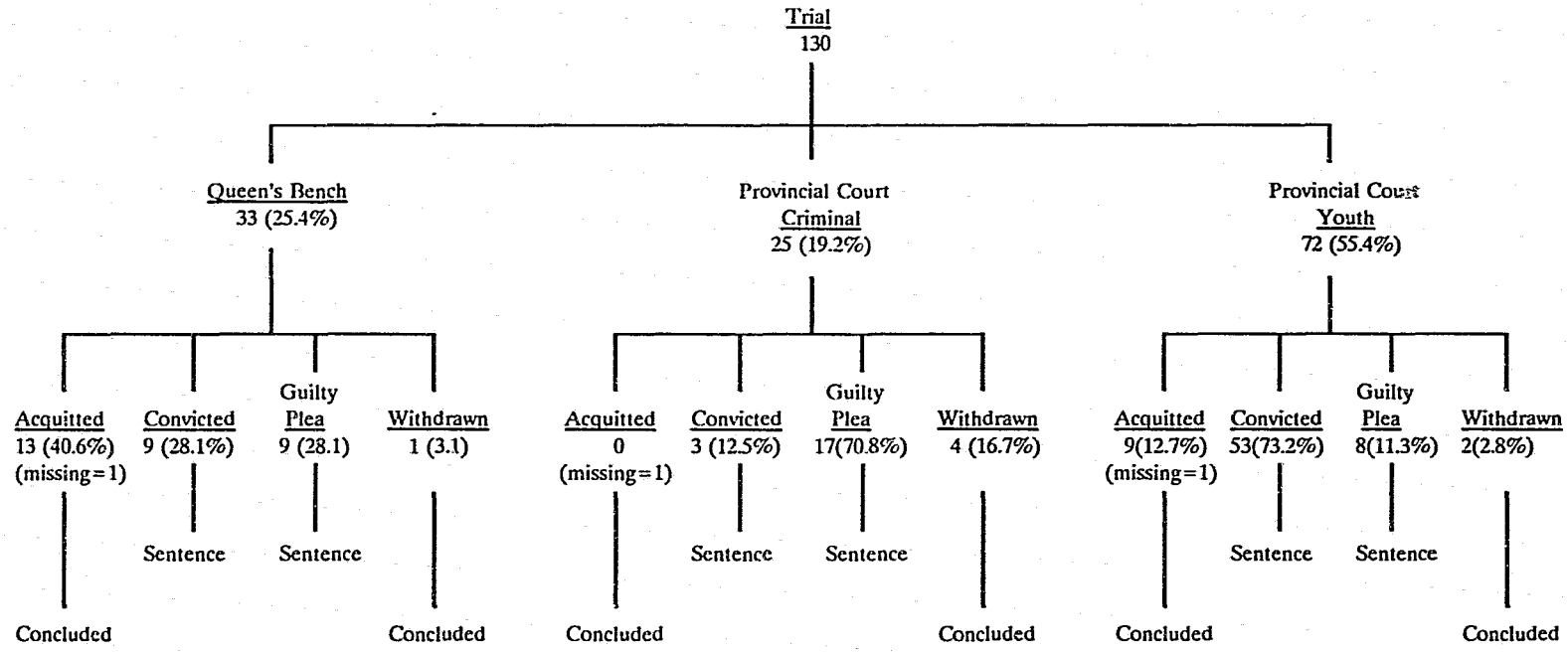
Figure 3.3a Criminal Justice System Case Flow Model: Trial Outcome for Child Sexual Abuse Cases, January 1, 1988 - December 31, 1990, Regina and Saskatoon



Data Source: Court Disposition Review
Unit of Analysis: Charge
Number of charges going to trial = 312 (Figure 3.2) + 48 (Figure 3.1)= 360
Conviction Rate = (guilty pleas + convictions)/(guilty pleas + convictions + acquittals + charge withdrawn) = 82.8%

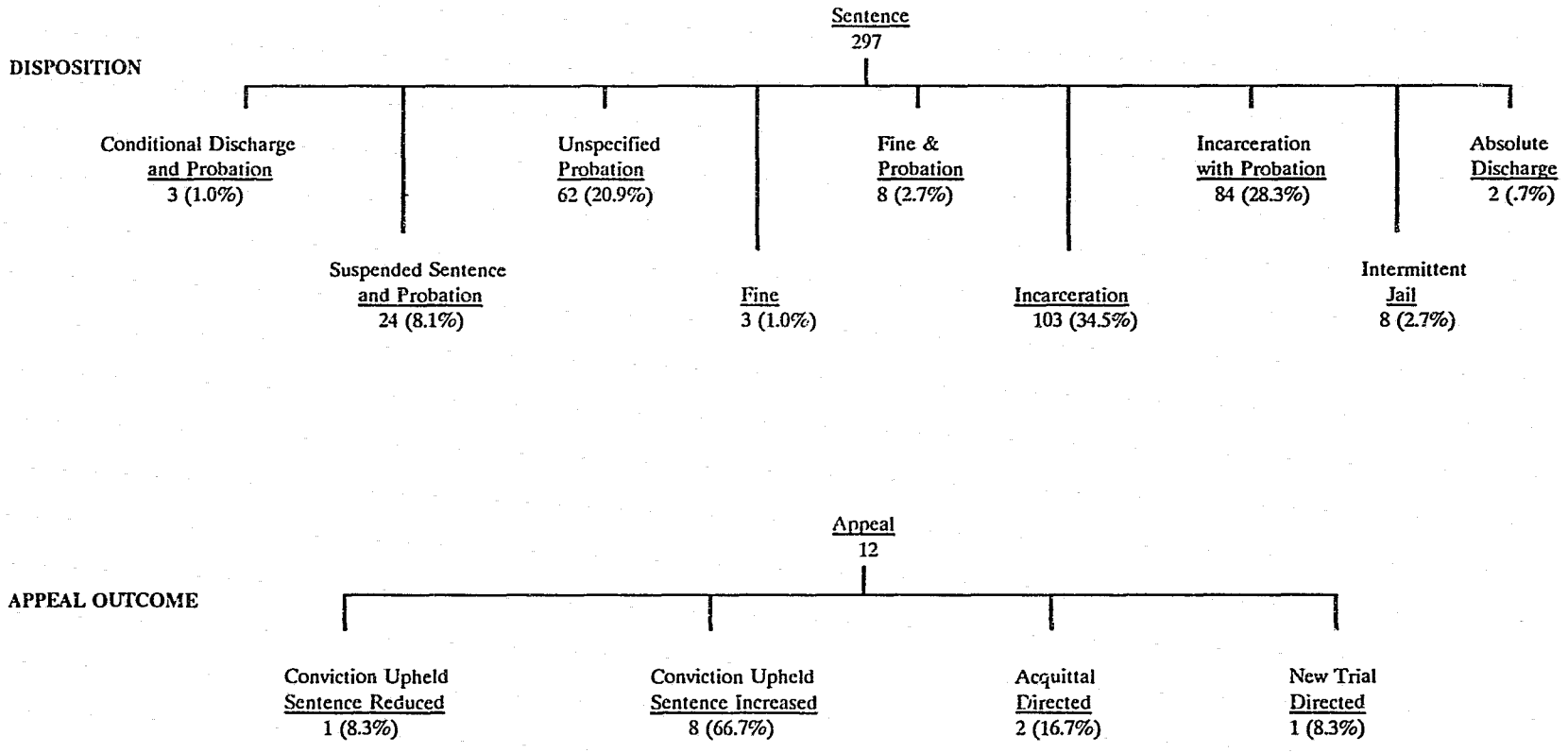
Figure 3.3b Criminal Justice System Case Flow Model: Trial Outcome by Type of Court for Child Sexual Abuse Cases, January 1, 1988 - December 31, 1990, Regina and Saskatoon

TRIAL BY COURT TYPE



Data Source: Court Disposition Review
Unit of Analysis: charge
Data were available on 130 charges broken down by type of court, i.e.,Queen's Bench, Provincial court, criminal, and provincial court, youth.

Figure 3.4 Criminal Justice System Case Flow Model: Disposition and Appeal Outcome for Child Sexual Abuse Cases, January 1, 1988 - December 31, 1990, Regina and Saskatoon



Data Source: Court Disposition Review
Unit of Analysis: charge
Number of charges for which there was a sentence outcome = 297
Number of charges for which there was an appeal outcome = 12

ranged from three to 48 months, with the typical sentence being 24 months. Probation involved community work in two cases, treatment counselling in five cases, and no contact with children in one case. Fines ranged from $100 to $1100, with the typical being $400 to $500. Length of incarceration varied from one to 60 months, the most frequent being 11-12 months. No information was available regarding the kind of discharge issued.

Appeal Outcome

Data were available on 12 appeals (Figure 3.4). The conviction was appealed in the majority of cases (n=10), the sentence in one case and the sentence and conviction in one case. Results of the appeals showed that the conviction was upheld and the sentence increased in eight cases, an acquittal was directed in two cases, the conviction was upheld and the sentence reduced in one case, and a new trial was directed in one case.

Conviction Rate

Conviction rate is defined as the ratio of the number of charges resulting in guilty pleas or convictions to the total number of guilty pleas, convictions, acquittals and discharges. Cases for which charges are withdrawn, pending, stayed (for whatever reason), or for which a warrant has been issued, are not considered when determining the conviction rate. Disposition data (n=601) showed that the numbers of guilty pleas and convictions were 67 and 231, respectively, while acquittals and discharges were 43 and 19, respectively (Figure 3.3a). Calculations from these data revealed a conviction rate of 82.8 percent.

3.2.2 Description of the Cases

Police file reviews were completed on 1101 cases investigated by the Saskatoon and Regina police during the period January 1, 1988, to December 31, 1990. Characteristics of the offenders, victims and occurrences are briefly outlined below (see Appendix B, police file review computer output, for further details).

Victims

Three quarters of the victims were female (77 percent); one quarter were male (23 percent). At the time the abuse began, two thirds of the victims (69 percent) were 11 years or younger: 17 percent of the victims were age 14-17 years, 14 percent were 12-13 years, 23 percent were 8-11 years, 24 percent were 5-7 years, and 22 percent were 4 years or younger. At the time the incident was

reported to police, just over half of the victims (60 percent) were 11 years or younger, 2 percent were 18 years or older (the oldest was 43 years), 22 percent were 14-19 years, 16 percent were 12-13 years, 23 percent were 8-11 years, 21 percent were 5-7 years, and 16 percent were 4 years or younger.

Most of the children were abused by only one offender (86 percent); 14 percent were victimized by more than one offender. Seven percent of the children were victimized by two offenders, 3 percent by three offenders, 2 percent by four offenders, 1 percent by five offenders, and less than 1 percent by five offenders. One child was victimized by 20 offenders.

Child victims most often disclosed to their mothers (33 percent), followed by disclosure to the police (12 percent), child welfare/social worker (12 percent), counsellors (10 percent), friends (6 percent), teachers (5 percent), and others (22 percent). Others included fathers, siblings, relatives and caregivers.

Data from police file reviews showed that 12 percent of the victims suffered physical injuries. Of these, 36 percent suffered multiple injuries. The most common injuries included bruises-scratches (33 percent), damaged hymen (21 percent), vaginal anomalies (20 percent), anal anomalies (10 percent), venereal disease (8 percent), bleeding (3 percent), pregnancy (3 percent), and other (2 percent). Twelve percent of the children were reported to have suffered emotional injury.

Offenders

Males were the offender in most cases (95 percent); females were the offender in 5 percent of the cases. Males offended most often against female children (79 percent), although they offended against male children in a significant proportion of the cases (21 percent). Female perpetrators offended equally often against male and female victims: 50 percent each. The majority of the offenders were extrafamilial (56.4 percent): they were friends (16.9 percent), strangers (16.2 percent), caregivers (8.9 percent), neighbours (5.3 percent) and teachers (1.3 percent). Intrafamilial offenders included fathers and stepfathers (13.7 percent), uncles (6.5 percent), male cousins (4.0 percent), brothers (3.1 percent), and grandfathers (2.4 percent).

The majority of offenders were 18 years of age or older (71.3 percent); 9 percent were 56 years and older; 10 percent, age 46-55; 15 percent, age 36-45; 23 percent, age 26-35; 14 percent, age 18-25; 7 percent, age 16-17; 19 percent, age

12-15; and 3 percent, age 11 or less.[3] Just less than two thirds of the accused were white (60 percent); one third were native Indian (33 percent), and a small proportion were classified as "other" (7 percent). "Other" included black, Oriental, Hispanic and East Indian. Slightly more than half of the offenders were single (57 percent), 24 percent were married, 4 percent divorced, 8 percent separated, and 8 percent living common-law.

A small proportion of the offenders (n=54, 3.9 percent) had prior unrelated convictions. Thirty-five had one prior unrelated conviction, three had two prior convictions, four had three prior convictions, and one had four prior unrelated convictions. A small number of offenders (n=83, 7.5 percent) had prior related convictions, most of them under sections 246.1 (n=15), 151 (n=18), and 271 (n=30). In the vast majority of cases, the offender did not admit guilt (80 percent).

Occurrences

There were 1101 occurrences (cases) in the present study; of these, 1016 (92.6 percent) were substantiated. Of the substantiated cases, 51.1 percent were cleared by charge, 13.6 percent were not yet cleared, and 35.3 percent were cleared otherwise. The majority of the cleared otherwise cases were cleared at the request of the police (87 percent), slightly more than 12 percent were cleared at the request of the victim or parents/guardians, while less than 1 percent were cleared at the request of someone else. The most frequent reasons given by police for clearing the case otherwise were lack of evidence, questionable credibility of the victim, offender undergoing counselling, offender too young to charge, offender's identity unknown. The most frequent reasons given by the parents or guardians for clearing the case were "wanted to get off with a caution", "didn't want to go to court", "the victim retracted the disclosure", or "would not talk", "preferred to forget".

More than half (59.9 percent) of disclosures were reported to the police within one month. Twenty-eight percent of cases were reported to police within 24 hours of disclosure; 14 percent within 1-7 days; 12 percent within 8 days - 1 month; 21 percent within 1-12 months; 15 percent after more than one year; and no date was recorded in 10 percent of the cases. Incidents were most often reported to the police by child welfare/social workers (31 percent), followed by mothers (22 percent), victims (14 percent), counsellors (6 percent), teachers (4 percent), others (23 percent). "Others" included fathers, siblings, relatives, friends, caregivers, police, alleged offender, and other victims.

[3] Alleged offenders aged 11 years or less were investigated but not charged.

Almost half of the occurrences involved one incident (45 percent). Seven percent involved multiple incidents and continued at some frequency for a period of 2-30 days; 11 percent continued for 31-90 days; 14 percent for 91 days to one year; and 14 percent of the occurrences continued for more than one year. For 9 percent of the occurrences, no duration was reported. The most common form of sexual abuse was genital fondling (45 percent), followed by vaginal penetration with the penis (20 percent), fondling of the breasts (19 percent), forcing the victim to perform oral sex on the offender (13 percent), rubbing genitals against the victim (10 percent), fondling the buttocks (10 percent), vaginal penetration with the fingers (10 percent), oral sex performed on the victim (10 percent), victim forced to fondle the offender (9 percent), unwanted/inappropriate kissing (7 percent), and anal penetration with the penis (6 percent).

Weapons, alcohol, drugs or the use of pornography were rarely factors in the sexual abuse incidents. A weapon was used in only 2 percent of the cases, drugs were used in 3 percent of the cases, and alcohol was present in 18 percent of the cases. Victims were introduced to pornography in 1.3 percent of the cases. Physical force was used to obtain compliance in 35.8 percent of the cases; verbal force was used in 4.4 percent of the cases; and no force was used in 55.9 percent of the cases. Witnesses were present in 24 percent of the cases, usually only one (72 percent), and expert witnesses were present in 13 percent of the cases.

The first incident most often took place in the home of the offender (25 percent), followed by the home of the offender and victim (24 percent), the home of the victim (19 percent), another private house (10 percent), park/woods/backyard (7 percent), and other (15 percent). "Other" included: street/alley/pathway, vehicle/train, commercial building, parking facility, sand-gravel pit, hotel/motel, school, daycare site, swimming pool/hot tub. The second incident usually took place in another private house (28 percent), followed by home of the offender (24 percent), vehicle/train (17 percent), home of the victim (9 percent), commercial building (7 percent), home of the victim and offender (4 percent), hotel/motel (4 percent), and other (7 percent). "Other" included street/alley/pathway, park/woods/backyard, and swimming pool/hot tub.

Investigative videotapes were made in one third (34 percent) of the cases, with the interviewer in all cases being the police. The most frequent reply to why videotapes were not made was "no reason" (40 percent), followed by "a written statement was taken" (24 percent). Victims identified the offender on the videotape in 81 percent of the cases and the victims disclosed the incident on the videotape in 86 percent of the cases. According to the records, little formal use was made of the tapes. Defence counsel viewed the tapes in only four cases. No one representing the police, the accused, crown prosecutors, social workers or therapists was documented as having viewed the tapes. Anecdotal evidence and

data from preliminary inquiries, discussed later, suggest that moderate use was made of videotapes by the professional groups.

3.2.3 Summary of Processing of Cases in Criminal Justice System

Of 1101 occurrences reported to the police in Saskatoon and Regina, 1014 were substantiated; of these, 520 were charged, some with more than one charge, leading to 796 charges. The majority of these went to trial (46.9 percent), with a significant proportion going to preliminary inquiry (35.9 percent), and a smaller proportion pleading guilty (17.1 percent).

- The reported rates of child sexual abuse in Saskatoon and Regina were 65, 114 and 124 cases per 100,000 population for the years 1988, 1989 and 1990, respectively. These rates are comparable with those from Edmonton (119, 111 and 114 cases per 100,000 for 1988, 1989 and 1990, respectively), although higher than those from Calgary (88, 89 and 90 cases per 100,000 for 1988, 1989 and 1990, respectively).

- The cases unfounded rate was 8.2 percent, which is comparable with that for Calgary (8 percent), and Edmonton (7 percent).

- The cleared rate was 51.3 percent. This is higher than that for Calgary (44 percent) and considerably higher than that for Edmonton (25 percent).

- The overall conviction rate was 82.8 percent, which is higher than that for Calgary (74 percent) and significantly higher than that for Edmonton (59 percent). This would seem to be because of the high proportion of guilty pleas and convictions in Saskatoon and Regina. Youth Provincial Court obtained the highest proportion of convictions, while Criminal Provincial Court received the highest proportion of guilty pleas.

- The two most common methods of disposition were incarceration, and incarceration with probation. The most frequent length of incarceration was 11-12 months.

- Three quarters (77.3 percent) of the victims were female.

- At the time the abuse began, two thirds (69 percent) of the victims were 11 years old or younger, with 22 percent being four years old or younger.

- Child victims most often disclosed the sexual abuse to their mothers (30.5 percent), although child welfare workers (31.2 percent) more often than mothers (21.3 percent) reported disclosures to the police.

- More than half of disclosures (59.9 percent) were reported to the police within one month.

- Most of the children were victimized by one offender (85.7 percent). Males were the offender in most cases (94.9 percent).

- Most of the offenders were extrafamilial (56.4 percent). These included strangers, friends, teachers, and neighbours.

- Intrafamilial perpetrators included fathers (or stepfathers), brothers, male cousins and grandfathers.

- A small percentage of the victims were reported to have suffered physical and/or emotional injuries (12 percent).

- The majority of offenders were 18 years of age or older (71.3 percent); 7 percent were age 16-17, 19 percent were age 12-15.

- Most of the offenders were white (60 percent); one third were native Indian (33 percent).

- A majority of the offenders were single (57 percent); 24 percent were married; and 8 percent were living common-law.

- A small proportion of the offenders (3.9 percent) had prior unrelated convictions.

- A small proportion of the offenders (7.5 percent) had prior related convictions.

- The vast majority of offenders did not admit guilt (80 percent).

- In almost half (45 percent) of the cases of sexual abuse, the assaults involved only one incident.

- The most common form of sexual abuse was genital fondling (45.1 percent) of the victim by the offender, followed by vaginal penetration with the penis (19.5 percent), fondling of the breasts (18.7 percent) and oral sex by the victim on the offender (12.6 percent).

- Weapons, alcohol, drugs or the use of pornography were rarely factors in sexual abuse incidents.

- Physical force was used to obtain compliance in 35.8 percent of the cases; verbal force was used in 4.4 percent of the cases; and no force was used in 55.9 percent of the cases.

- The first incident most often took place in the home of the offender (25.2 percent), or the home of the victim (23.5 percent).

- Investigative videotapes of the victim were made in one third (33.9 percent) of the cases by the police. Videotapes included disclosure by the victim in 86 percent of the cases, and identified the offender in 81 percent of the cases. Little recorded use of the videotapes was made.

3.3 Factors Related to Case Status

3.3.1 Predictors of Unfounded Case Status

The Knowledge Seeker program was used to identify predictors of unfounded case status. Interpretability and statistical significance were the criteria used in determining which of a number of possible models to accept. Figures 3.5a and 3.5b contain the decision model determined by this method. Overall, 92.3 percent of the cases were substantiated. Sex of the victim was the best single predictor of unfounded cases; a greater proportion of cases were unfounded when the victim was male (10.4 percent) than when the victim was female (6.7 percent). For males, the number of victims was a significant predictor of unfounded cases. There was a greater likelihood that a case would be judged as unfounded when there was one victim (15.5 percent) than when there were more than one victim (3.0 percent). No other variables significantly predicted unfounded cases for male victims.

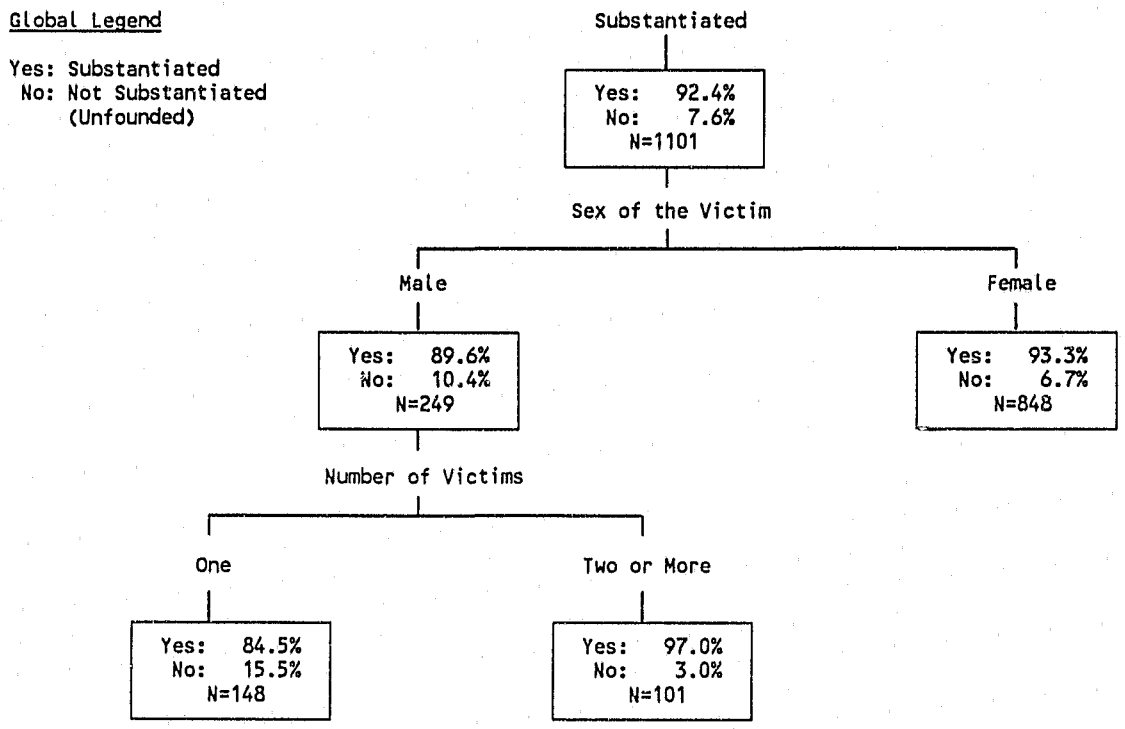
For female victims, the absence or presence of witnesses was a significant predictor of unfounded cases. There were four times the number of unfounded cases when there were no witnesses (8.3 percent) than when there were witnesses (1.9 percent). The use of physical and verbal force in combination reduced

Table 3.2 List of Variables for Knowledge Seeker Analysis for Figures 3.5 & 3.6

	Variables		
			Range
Independent Variables for Figures 3.5 and 3.6	1.	Person Child Disclosed To	1 - 12
	2.	Family Resistance	1 - 2
	3.	When Occurrence Was Reported	1 - 6
	4.	Who Reported	1 - 16
	5.	Number of Victims	1 - 2
	6.	Number of Offenders	1 - 2
	7.	Gender of Victim	1 - 2
	8.	Age of Victim When Reported	1 - 6
	9.	Duration of Abuse	1 - 6
	10.	Gender of Offender	1 - 2
	11.	Age When Abuse Began	1 - 6
	12.	Relationship of Offender to Victim	1 - 16
	13.	Level of Intrusion	1 - 13
	14.	Used Force	1 - 3
	15.	Use of Enticement	1 - 2
	16.	Use of Alcohol	1 - 2
	17.	Use of Drugs	1 - 2
	18.	Witness	1 - 2
	19.	Physical Injuries	1 - 2
	20.	Emotional Injury	1 - 2
	21.	Forensic Examination	1 - 2
	22.	First Agency Contact	1 - 6
	23.	Age of Offender	1 - 8
Dependent Variable for Figures 3.5a & 3.5b	Substantiated and Unfounded Cases		
Dependent Variable for Figures 3.6a & 3.6b	Charged and Other Cases[1]		

[1] Unfounded cases, cases where the offender is under 12 years of age and cannot be charged, and cases where the offender cannot be identified have been omitted from this analysis.

Figure 3.5a Decision Model for Substantiated and Unfounded Cases: Male Victims, January 1, 1988 - December 31, 1990, Regina and Saskatoon[1]



1 Significance Level .01
Data Source: Police File Review
Unit of Analysis: Case victim/Occurrence

Figure 3.5b Decision Model for Substantiated and Unfounded Cases: Female Victims, January 1, 1988 - December 31, 1990, Regina and Saskatoon

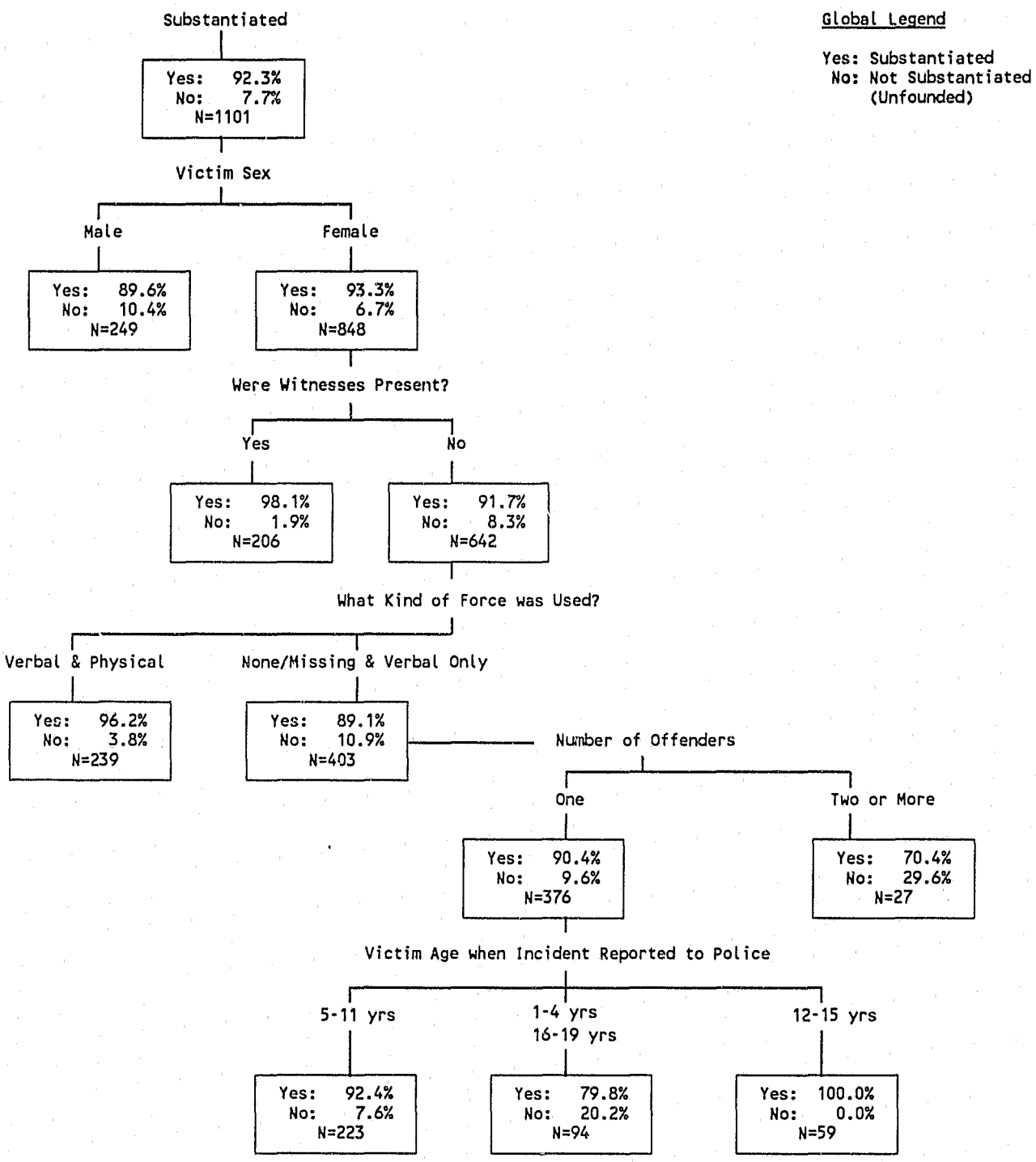


Figure 3.6a Decision Model for Cleared by Charge: Offender Age 12-25 Years and 35 Years+, January 1, 1988 - December 31, 1990

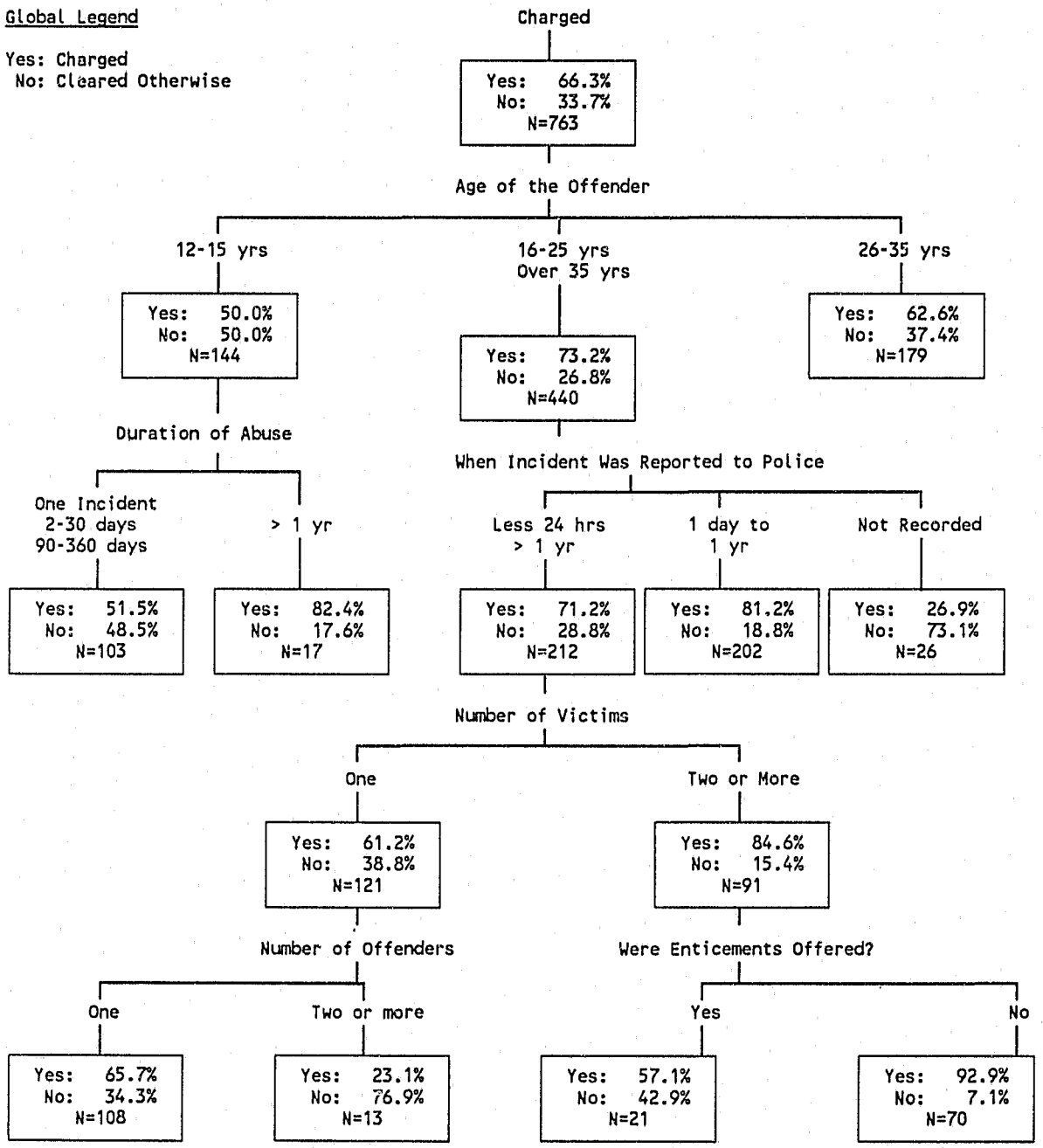
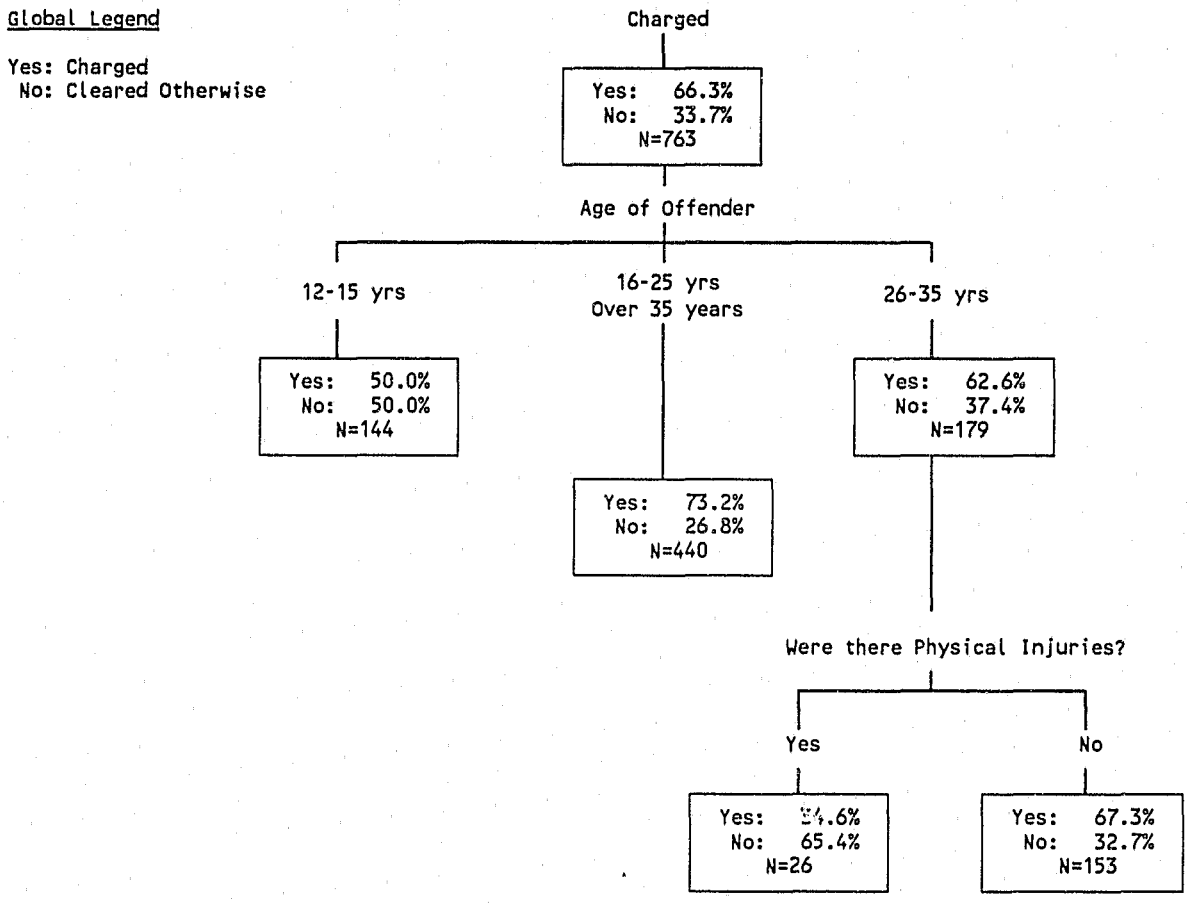


Figure 3.6b Decision Model for Cleared by Charge: Offender Age 26-35 Years, January 1, 1988 - December 31, 1990, Regina and Saskatoon[1]



[1] Significance Level .01
Data Source: Police File Review
Unit of Analysis: Case victim/Occurrence

the probability of a case being judged as unfounded for female victims for whom there were no witnesses present at the time of the incident; the unfounded rate for those cases in which physical and verbal force were used was 10.9 percent, whereas it was 3.8 percent when verbal force only was used (included in this category was a large number of missing cases). The number of offenders was an important predictor of whether a case was judged as unfounded for female victims for whom there were no witnesses present and for whom verbal force was used; the unfounded rate was considerably lower when there was one offender (9.6 percent) than when there was more than one offender (29.6 percent). Finally, the age of the victim when the incident was reported to the police was a significant predictor of whether a case was judged as unfounded for female victims for whom there was one offender; those victims in the age group 12-15 years had the lowest unfounded rate (0.0 percent); those in the 5-7 and 8-11 age groups had the next lowest unfounded rate (7.6 percent), while those in the youngest age group (1-4 years) along with those in the oldest age group (16-19 years) had the highest unfounded rate (20.2 percent). No other variables significantly predicted unfounded cases for females.

3.3.2 Predictors of Cases Cleared by Charge

Figures 3.6a and 3.6b contain the decision model for cases charged versus those cleared otherwise. Age of the offender was the best predictor of whether or not a charge is laid: 73.2 percent of offenders in the age categories 16-25 years and 36 years and older were charged, while 62.6 percent of offenders 26-35 years of age were charged, and 50 percent of offenders 12-15 years of age were charged. For those in the 12-15 age category, duration of abuse was the best predictor of their being charged: the greatest number of charges were laid in those cases for which the abuse was ongoing for more than one year (82.4 percent), followed by those cases for which there was just one occurrence, or where the abuse lasted 2-30 days, or the abuse lasted 91 days to one year (51.5 percent). No other variables predicted charges for the 12-to-15-year-old age group.

For those offenders in the 16-25 and the over 36 categories, the best predictor of whether or not charges were laid was the time lapsed between the last incident and the report to the police: the greatest number of offenders in these age groups were charged when the report occurred within the period one day to one year (81.2 percent), followed closely by those cases in which the report occurred either within the first 24 hours or after one year (71.2 percent). Those cases for which no date was recorded had the lowest charge rate for these age groups (26.9 percent).

The number of victims was a significant predictor of charges being laid for those offenders 16-25 years old and those 36 years and older, who were reported within the first 24 hours or after one year: cases in which there were two or more victims had a higher charge rate (84.6 percent) than those for which there was one victim (61.2 percent). For those cases involving one victim, number of offenders was an important predictor of charges being laid: more charges were laid when there was only one offender (65.7 percent) than when there was more than one offender (23.1 percent). In those cases involving more than one victim, enticement was a significant predictor: more offenders were charged when there was no enticement (92.9 percent) than when there was enticement (57.1 percent). No other variables were significant predictors of cleared by charge.

Whether or not there was physical injury to the victim was the sole predictor of being charged for the 26-to-35-year-old offenders: fewer charges were laid when physical injury was reported (34.6 percent) than when no injury was present (67.3 percent). As this seems counterintuitive, data and analysis were rechecked and no errors were found. Consistent with the above finding, the correlation between physical injury and charge for offenders aged 26-35 years was significant and negative ($r = -.23$, $p < .001$).

3.3.3 Summary of Predictors of Case Status

Predictors of unfounded case status:

- Sex of victim was the best predictor of whether or not a case would be classified as unfounded.
- For males, there was a greater chance of the case being classified as unfounded when there was only one victim than when there were more than one victim.
- For female victims, there was a much greater chance of the case being judged unfounded when there were no witnesses present than when witnesses were present.
- Use of physical force by the offender, number of offenders, and victim age when the incident was reported to the police were other significant variables predicting unfounded case status for reports involving female victims.

Predictors of being charged:

- Age of the offender was the best predictor of whether or not a charge is laid: 73.2 percent of offenders in the age categories 16-25 years and 36 years and older were charged, while 62.6 percent of offenders 26-35 years of age were charged and 50 percent of offenders 12-15 years of age were charged.

- Other variables significantly predicting "charge" included duration of the abuse, presence of physical injury, time lapsed between the last incident and the report to the police, number of victims, number of offenders, and whether the offender offered enticement to gain compliance from the victim.

3.4 Case Duration

Information relating to case duration was abstracted from: the time lapsed from first occurrence until the incident was reported to the police, the time lapsed from the most recent occurrence until the report to the police, duration of the preliminary inquiry, and duration of the trial. Data were obtained from police file reviews.

Results showed that, in the majority of cases, the incident was reported to the police within the first year from the most recent incident (65.8 percent), 14.1 percent were reported beyond the one-year period, and in 20.1 percent of the cases the amount of time lapse between the most recent incident and the report to the police was not documented. Similarly, in the majority of cases (57.7 percent), the incident was reported to the police within one year from the time of the first incident, 24.0 percent were reported after the first year, and in 18.3 percent of the cases the time lapse during the period of the first occurrence and the report to the police was missing.

Duration of the preliminary inquiry was most often one day or less (80 percent), and between one and two days in 20 percent of the cases. Duration of the trial was most often one day or less (56.3 percent); it was between one and two days in 18.8 percent of the cases, three days in 15.6 percent, and five days in 9.4 percent.

3.4.1 Summary of Case Duration

- Duration of the preliminary inquiry and of the trial was usually one day or less.

- The time lapse between the most recent incident and the report to the police was one year or less in two thirds (65.8 percent) of the cases.

3.5 The Child Victim/Witness in the Court Process

This section presents the results of the Court Observation Schedule (n=21) and Court Observation Rating Scales (n=51), which provide information about child/witness performance during court proceedings. Child victims were observed at various times and stages throughout the process so that multiple ratings were obtained on most of the children. The majority of the children were observed during preliminary hearing (75 percent); the remainder were observed during trial (25 percent). Child victims were also observed at each stage in the proceedings: 20 percent were observed during the "oath/communication" stage, 37 percent during "examination-in-chief", 37 percent during "cross-examination", and 6 percent were observed during "re-examination".

Results are taken from univariate and bivariate frequency distributions. No multivariate analyses were undertaken because of the small number of observations obtained with the Court Observation Schedule (n=21).

Court observation data (n=51), using raw scores, showed that child witnesses expressed little laughing inappropriately, covering the face, biting the fingernails, picking at oneself, thumb-sucking, crying, whining, confusion, clinging to an adult, anger, swearing, or looking at the accused; there was a moderate to high amount of withdrawing and worriedness; there was a moderate degree of self-confidence; and there was a high degree of cooperativeness, anxiety, shyness and embarrassment. In general, it is felt that this pattern of responses represents relatively positive, situation-appropriate behaviour, given the very difficult circumstances.

For summary purposes, scales were constructed through the use of factor analysis to measure child/witness behaviour during proceedings (see earlier discussion in Chapter 2). Three scales (dimensions) were produced: anxiety/ withdrawn, sad/cry, and ability to communicate. Anxiety/withdrawn scores consisted of average scores over the following items from the Court Observation Rating Scale: fidgets, anxious, withdrawn, worried, shy/timid and confused. An average score over the items sad, cries and embarrassed constituted the sad/cry

score, while an average score over the items fluent, audible, detail and degree of confidence formed the ability to communicate score.

Comparison of child/witness behaviour using these scales during the different stages of proceedings showed that there was a greater degree of anxiety/depression during re-examination than during any of the other stages (e.g., oath, examination-in-chief, cross-examination). As well, there was a greater ability to communicate during examination-in-chief than in any other stage. A major problem with this analysis, however, was the small number of observations in the re-examination group (n=3); this significantly reduces the reliability of the findings. A comparison was made, therefore, among the other three groups with the re-examination data eliminated. Results showed a significant difference among groups for ability to communicate only: ability to communicate was lowest during the oath/communication stage, highest during the examination-in-chief stage, and intermediate during cross-examination. Scores on the ability scale ranged from "a little" to "moderate" degree of ability to communicate during proceedings.

3.5.1 Summary of the Child Victim/Witness in the Court Process

- Court observation data showed that overall, child witnesses exhibited a relatively positive response to the experience of testifying in court, suggesting that they were coping reasonably well under very difficult and traumatic circumstances.

- Child witnesses' ability to communicate was lowest during the oath/communication stage, highest during examination-in-chief, and intermediate during the cross-examination stage.

4.0 IMPLEMENTATION AND IMPACT OF BILL C-15

A major purpose of this study is to determine the extent to which the goals and objectives of Bill C-15, An Act to Amend the Criminal Code and the Canada Evidence Act, have been achieved.

4.1 Objective # 1: To Broaden the Range of Conduct Captured by the Criminal Code

One intended outcome of the new law was to increase the range of sexual conduct captured by the Criminal Code. In this regard the new offences, section 151 (sexual interference), section 152 (invitation to sexual touching) and section 153 (sexual exploitation) were introduced to replace section 146(1) (sexual interference with a female under 14 years) and section 146(2) (sexual intercourse with a female between the age of 14-16 years). Sexual interference is a new offence and is designed to increase the protection for girls and boys against a wide range of sexual acts not covered under the old law. Touching for sexual purposes refers to the sexual arousal or gratification of the person initiating the action (Stewart and Bala, 1988).

Section 152 makes it an offence for a person to invite or encourage a child under the age of 14 years to touch him or her or any other person for sexual gratification. This protection was not afforded by the old law. It is common in child sexual abuse situations for offenders to invite children to touch them, but under the old law, unless the offender also touched the child, a sexual assault charge could not be laid. As this behaviour is particularly typical in the beginning of an ongoing sexual abuse relationship, the new provision allows for earlier legal intervention (Stewart and Bala, 1988).

Section 153 replaces the old law (section 146(1) (sexual intercourse with a female under 14 years), and section 146(2) (sexual intercourse with a female between 14-16 years), which protected females only. Section 153 extends protection to boys and girls between 14 and 17 years from sexual exploitation (broadened from sexual intercourse) by someone in a position of trust or authority over them. Under the old law, consent might have been a defence in such a situation. Under section 153, consent is not a defence (Stewart and Bala, 1988).

Question 1.1: Are the overall rates of charges under sections 151, 152 and 153 (new code) compared with sections 146(1)(2) (old code) increasing?

Table 4.1 shows an overall increase in the total number of charges from 1988 to 1990; there was a 127 percent increase during 1989, followed by a decrease of 22 percent during 1990, with an net increase of 105 percent from 1988 to 1990. The number of charges under the newly created section 151, section 152 and section 153 increased during the period 1988 to 1990.

Question 1.2: Are the new code's section 151, section 152, section 153 covering a broader range of conduct than simply sexual intercourse?

Table 4.2 shows that sexual intercourse (vaginal penetration with a penis) is only one of a wide range of sexual abuse behaviours associated with charges under sections 151 (sexual interference), 152 (invitation to sexual touching) and 153 (sexual exploitation). Moreover, sexual intercourse was not the most frequently reported behaviour for any of the offence codes, showing that many sexual behaviours in addition to sexual intercourse are being included in the new sections 151, 152 and 153.

The most frequently reported behaviours associated with charges under section 151 include, in descending order, genital fondling (59 percent), chest fondling (24 percent), buttocks fondling (18 percent), oral sex on the offender (16 percent), victim fondling the offender (14 percent), simulated intercourse (14 percent), and vaginal penetration with a penis (14 percent).

The most frequently reported behaviours associated with charges under section 152 are genital fondling (44 percent), victim fondling the offender (44 percent), invitation (33 percent), oral sex on the offender (28 percent), inappropriate kissing (17 percent), and exposure (17 percent). There were no instances of sexual intercourse recorded under this section.

Genital fondling (40 percent) was also the most frequently reported behaviour associated with charges under section 153. This was followed by chest fondling (27 percent), simulated intercourse (20 percent), oral sex on the victim (20 percent), oral sex on the offender (20 percent), victim fondling the offender (20 percent), offender showing the victim pornography (20 percent), buttocks fondling (13 percent), forced activity with others (13 percent), exposure (13 percent), and vaginal penetration with a penis -- sexual intercourse -- (13 percent).

Table 4.1 Number of Charges under Sections Relevant to Child Sexual Abuse and Assault For the Period, January 1, 1988 - December 31, 1990, Regina and Saskatoon[1]

Charge Section Number	1988		1989		1990	
	N	%	N	%	N	%
Old Code:	17	2.2				
Section 140	1	.1	4	.5	2	.3
Section 141	5	.6				
Section 146(1)(2)	3	.4	3	.3		
Section 149			6	.8	2	.3
Section 150			2	.3		
Section 151			2	.3	7	.9
Section 152					1	.1
Section 153			2	.3	3	.3
Section 156	4	.5			4	.5
Section 157	5	.6	6	.8		
Section 169						
Sexual Assault Old/New Code						
Section 195			4	.5		
Section 246(1)	110	14.0	90	11.5	12	1.5
Section 246(2)	3	.4	3	.4		
Section 247	4	.5				
Section 271	2	.3	134	17.1	69	8.8
Section 272			2	.3	1	.1
New Code:						
Section 151	1	.1	68	8.7	137	17.5
Section 152	1	.1	10	1.3	2	.2
Section 153			6	.8	10	1.3
Section 155			1	.1	4	.5
Section 159			2	.3	5	.6
Section 173(2)			2	.3	12	1.5
Section 212(2)(4)			7	.9		
Section 279					4	.5
TOTALS	156	19.9%	354	45.1%	275	35.0%
Percent Change Over Previous Year			+ 127%		- 22%	

[1] Data Source: Police File Review
Unit of Analysis: Charge
Missing=11

Table 4.2 Range of Conduct for Cases Having Charges under Sections 151, 152, 153, and 173(2) of the New Criminal Code ,January 1, 1988 - December 31, 1990, Regina and Saskatoon[1]

Section		Exposure	Invitation	Show Porno-graphy	Undress	Masturb-ation	Inappropriate Kissing	Chest Fondling	Buttocks Fondling	Genital Fondling	Victim Fondled Offender
s.151	N	8	5	2	10	6	17	44	34	110	27
	%	4.3	2.7	1.1	5.3	3.2	9.1	24.0	18.0	59.0	14.0
s.152	N	3	6	1	0	1	3	1	0	8	8
	%	17.0	33.0	5.6	-	5.6	17.0	5.6	-	44.0	44.0
s.153	N	2	1	3	0	0	1	4	2	6	3
	%	13.6	6.7	20.0	-	-	6.7	27.0	13.0	40.0	20.0
s.173(2)[2]	N	15	0	0	0	0	0	0	0	0	0
	%	100.0	-	-	-	-	-	-	-	-	-

[1] Data Source: Police File Review
Unit of Analysis: Case (victim/Occurrence)

[2] For section 173(2), only those cases where the victim was 14 years of age or younger when the abuse began were included. For the remaining sections, all cases are included regardless of age. Sexual conduct charged under section 173(2) is discussed in a later part of this chapter.

Table 4.2 (continued)[3]

Section		Forced Activity w/Others	Simulated Inter-Course	Vaginal Penetra-tion w/Finger	Attempted Vaginal Penetrat-ion	Anal Penetrat-ion w/Finger	Oral Sex on Offender	Oral Sex on Victim	Vaginal Penetration w/Penis	Anal Penetration w/Penis	Forced Prostitu-tion	Total Cases
s.151	N	4	26	25	18	4	29	21	27	5	0	187
	%	2.1	14.0	13.0	9.6	2.1	16.0	11.0	14.0	2.7	-	
s.152	N	2	2	1	1	0	5	1	0	1	0	18
	%	11.0	11.0	5.6	5.6	-	28.0	5.6	-	5.6	-	
s.153	N	2	3	1	1	1	3	3	2	0	0	15
	%	13.0	20.0	6.7	6.7	6.7	20.0	20.0	13.0	-	-	
s.173(2)[4]	N	0	0	0	0	0	0	0	0	0	0	15
	%	-	-	-	-	-	-	-	-	-	-	

[3] Data Source: Police File Review
Unit of Analysis: Case (victim/Occurrence)

[4] For section 173(2), only those cases where the victim was 14 years of age or younger when the abuse began were included. For the remaining sections, all cases are included regardless of age.

Question 1.3: What are the conviction rates associated with sections 151, 152 and 153?

The conviction rates associated with sections 151, 152 and 153 are high. Tables 4.3, 4.4 and 4.5 show that the conviction rates for section 151 (sexual interference), section 152 (invitation to sexual touching) and section 153 (sexual exploitation) were 88.7 percent, 62.5 percent and 100 percent, respectively. The last conviction rate must be interpreted with caution, because it is based on only five cases.

Question 1.4: What factors are associated with charges being laid, guilty pleas, and convictions, with regard to section 151?[1]

The dependent variable, laying of charges, was dichotomized into those cases for which charges were laid under section 151 and those cases in which charges were laid under other sections. Similarly, the dependent variables, guilty pleas versus other, jail sentence versus other disposition, and conviction versus acquittal were dichotomized and multivariate analyses performed. The independent variables included information about the victims, offenders, the incident, witnesses, and agencies (Table 4.6). Multivariate analysis, using the program Knowledge Seeker, produced significant predictors for laying of charges/ other, jail/other (results are discussed in a later section) and guilty plea/other, but not for acquittal/conviction.

Figure 4.1 shows that the time lapsed from the last assault to when the incident was reported to the police was the only significant predictor of whether or not to lay charges under section 151. The relationship was curvilinear: more charges were laid if the report was made during the period 1-7 days (36.1 percent), than if the report was made within the first 24 hours, or more than a year, or no date recorded (5.6 percent), or than if the report was made within the period eight days to 12 months (17.9 percent). No other variables significantly predicted laying of charges under section 151.

Figure 4.2 shows that age of the offender at the time of the offence was the lone significant predictor of guilty plea/other, under section 151. All of those aged 12-17 years pleaded guilty under section 151, whereas 44.8 percent of those aged 18-45 years or 56 years and older pleaded guilty under section 151. No other variables significantly predicted guilty plea under section 151.

[1] Factors associated with charges laid, guilty pleas and convictions for sections 152 and 153 were not investigated since the frequencies in these cells were not sufficient to warrant statistical analysis.

Table 4.3 Trial Outcome for Charges under Section 151 of the New Criminal Code, January 1, 1988 - December 31, 1990, Regina and Saskatoon[1]

	N	% Subtotal	% Total
Trial Outcome:			
Acquitted/Discharged	8	26.7	7.8
Convicted	47	73.3	46.1
Subtotal	55	100.0	
Otherwise Dealt With:			
Guilty Plea	15	31.9	14.7
Charge Withdrawn	5	10.6	4.9
Other (Stays, Warrants)	27	57.4	26.5
Subtotal	47	100.0	
Trial Pending	-		
Total Number of Cases with One or More Charges under s. 151	102		100.0
Conviction Rate		88.7%	

[1] Data Source: Court Disposition Review
Unit of Analysis: Case (victim/occurrence)
Conviction Rate = (guilty pleas + convictions)/(guilty pleas + convictions + acquittals + charge withdrawn)

Table 4.4 Trial Outcome for Charges under Section 152 of the New Criminal Code, December 31, 1988 - January 31, 1990, Regina and Saskatoon[1]

	N	% Subtotal	% Total
Trial Outcome:			
Acquitted/Discharged	3	42.9	30.0
Convicted	4	57.1	40.0
Subtotal	7	100.0	
Otherwise Dealt With:			
Guilty Plea	1	33.3	10.0
Charge Withdrawn	-	-	-
Other (Stays, Warrants)	2	66.7	20.0
Subtotal	3	100.0	
Trial Pending	-		
Total Number of Cases with One or More Charges under S. 152	10		100.0
Conviction Rate		62.5%	

[1] Court Disposition Review
Unit of Analysis: Case (victim/occurrence)
Conviction Rate = (guilty pleas + convictions)/(guilty pleas + convictions + acquittals + charge withdrawn)

Table 4.5 Trial Outcome for Charges under Section 153 of the New Criminal Code, December 31, 1988 - January 31, 1990, Regina and Saskatoon[1]

	N	% Subtotal	% Total
Trial Outcome:			
Acquitted/Discharged	-	-	
Convicted	3	100.0	42.8
Subtotal	3	100.0	
Otherwise Dealt With:			
Guilty Plea	2	50.0	28.6
Charge Withdrawn	-	-	
Other (Stays, Warrants)	2	50.0	28.6
Subtotal	4	100.0	
Trial Pending	-		
Total Number of Cases with One or More Charges under S. 153	7		100.0
Conviction Rate		100.0%	

[1] Court Disposition Review
Unit of Analysis: Case (victim/occurrence)
Conviction Rate = (guilty pleas + convictions)/(guilty pleas + convictions + acquittals + charge withdrawn).
The conviction rate of 100% for charges under section 153 needs to be interpreted with caution as it is based on only five cases.

Table 4.6 List of Variables of Knowledge Seeker Analysis for Figures 4.1 to 4.3

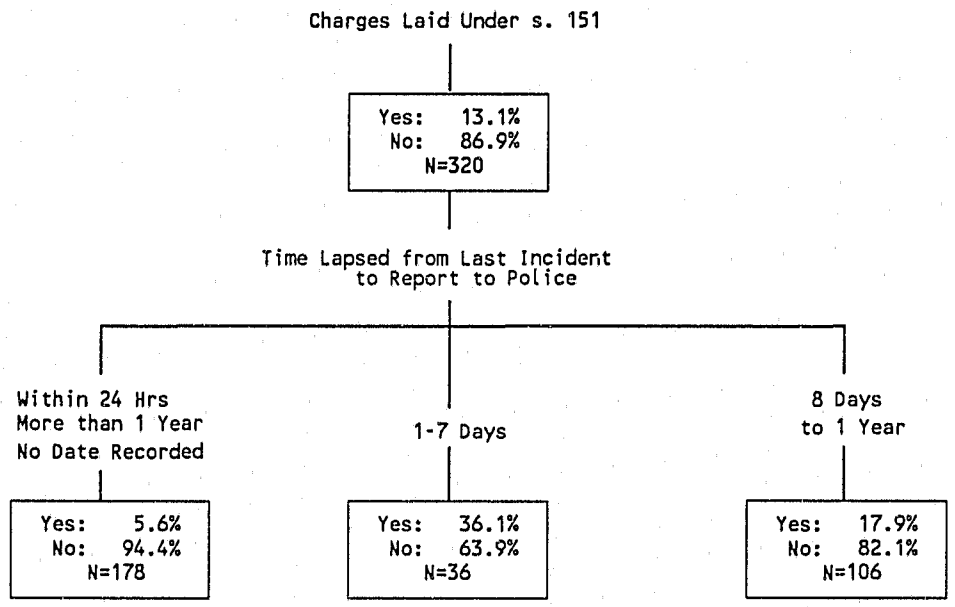
Location			
			Range
Independent Variables for Figures 4.1 through 4.4	1.	Person Child Disclosed To	1 - 12
	2.	Use of a Weapon	1 - 2
	3.	When Occurrence Was Reported	1 - 6
	4.	Who Reported	1 - 16
	5.	Number of Victims	1 - 2
	6.	Number of Offenders	1 - 2
	7.	Gender of Victim	1 - 2
	8.	Age of Victim When Reported	1 - 6
	9.	Duration of Abuse	1 - 6
	10.	Gender of Offender	1 - 2
	11.	Number of Expert Witnesses	1 - 2
	12.	Relationship of Offender to Victim	1 - 16
	13.	Level of Intrusion	1 - 13
	14.	Used Force	1 - 3
	15.	Use of Enticement	1 - 2
	16.	Use of Alcohol	1 - 2
	17.	Use of Drugs	1 - 2
	18.	Number of Witnesses	1 - 2
	19.	Physical Injury	1 - 2
	20.	Emotional Injury	1 - 2
	21.	Forensic Examination	1 - 2
	22.	First Agency Contacted	1 - 6
	23.	Age of Offender	1 - 8
Dependent Variable for Figure 4.1	Charges Laid under s. 151 v. Charges Laid under Other Sections		
Dependent Variable For Figure 4.2	Guilty Plea v. Other for Charges under s. 151		
Dependent Variable[1]	Conviction v. Acquittal for Charges under s. 151		
Dependent Variable For Figure 4.3	Jail Sentence v. Other Sentence for Charges under s. 151		

[1] No variables significantly predicted conviction v. acquittal under section 151.

Figure 4.1 Decision Model for Laying Charges under Section 151, December 31, 1988 - January 31, 1990, Regina and Saskatoon[1]

Global Legend

Yes: Charges Laid
No: Charges Not Laid
Under s. 151

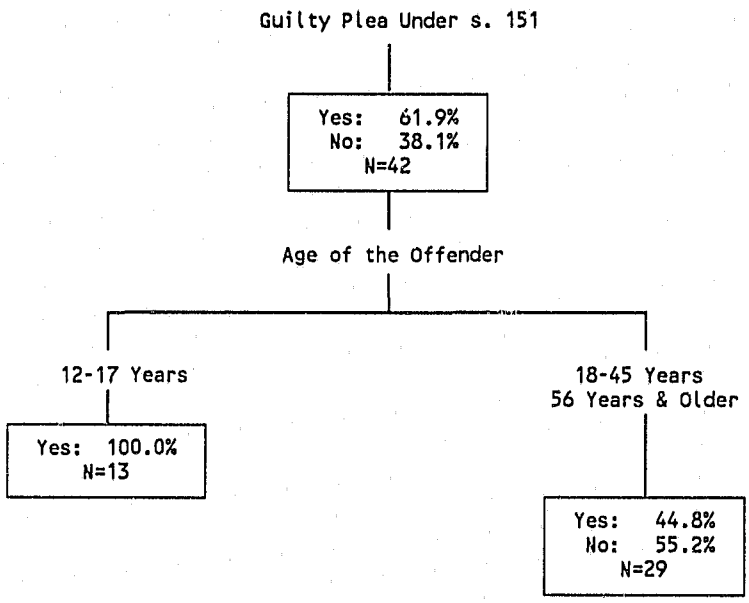


[1] Significance level .01
Data Source = Police File Review
Unit of Analysis: Case victim/occurrence

Figure 4.2 Decision Model for Guilty Plea v. Other for Charges under Section 151, December 31, 1988 - January 31, 1990, Regina and Saskatoon[1]

Global Legend

Yes: Guilty Plea
No: Not Guilty Plea
Under s. 151



[1] Significance level .05
Data Source: Police File Review
Unit of Analysis: Case victim/occurrence

4.1.1 Summary: Objective # 1

- The number of charges under sections 151 (sexual interference), 152 (invitation to sexual touching), and 153 (sexual exploitation) is increasing. There was a net increase of 105 percent in sexual abuse charges during the period January 1, 1988, to December 31, 1990. The increases were owing mainly to an increase in charges laid under section 271 (sexual assault) and section 151.

- The new sections 151, 152 and 153 are covering a broad range of sexual conduct. Sexual intercourse (vaginal penetration with a penis) is only one of a wide variety of sexually abusive behaviours charged under these sections.

  The most frequent sexual behaviour charged under all three sections was genital fondling. This was followed by chest fondling for sections 151 and 153, and victim fondling the offender for section 152.

- Conviction rates under the new sections 151, 152 and 153 are high in Saskatoon and Regina: 88.5 percent, 62.5 percent and 100 percent, respectively. Caution must be taken when interpreting the last, as it is based on only seven charges. These rates are higher than those reported in Calgary (52, 100 and zero percent for sections 151, 152 and 153, respectively), and Edmonton (62, 85 and 50 percent, for sections 151, 152 and 153, respectively).

- The amount of time lapsed from the last assault until the incident was reported to the police was the only significant predictor of "laying charges under section 151".

- Age of the offender at the time of the offence was the lone predictor of guilty plea under section 152.

- No significant predictors emerged for convictions under section 153.

4.2 Objective # 2: To Provide Greater Protection for Young Victims

Another objective of Bill C-15 was to provide greater protection for young victims of sexual abuse. A number of new sections relate to this objective: section 212(2) (living on the avails of a prostitute under 18 years), section 212(4) (obtaining a person under 18 years for sexual purpose) and section 173(2) (indecent exposure to a child under 14 years). The first two new sections make

pimps and customers responsible for contributing to juvenile prostitution, whereas under the old law there was no provision for such behaviour. Section 212(2) states that every person who lives on the avails of prostitution of another person who is under the age of 18 years is guilty of an indictable offence. Section 212(4) states that every person who, in any place, obtains or attempts to obtain, for consideration, the sexual services of a person who is under the age of 18 years is guilty of an indictable offence.

Question 2.1: Are charges being laid under section 212(2) and section 212(4)?

Question 2.2: Are convictions obtained for charges under section 212(2) and section 212(4)?

Very few charges were laid under these sections. Table 4.1 shows that no charges were laid in 1988 or in 1990, while seven of 354 charges (0.9 percent) were laid under these sections in 1989. We have no disposition data on charges under these sections. As Hornick et al. (1992) point out, the tendency not to use these sections may be owing to difficulties in enforcement: enforcement, for example, requires the prostitute to testify against his or her pimp in the case of section 212(2) and for the "john to be caught in the act", in the case of section 212(4).

Question 2.3: Are charges being laid under section 173(2) (indecent exposure to a child under 14 years)?

Question 2.4: What conduct is being associated with charges under section 173(2)?

Question 2.5: What is the conviction rate for section 173(2)?

The Badgley report (1984) notes that the most common form of sexual abuse is indecent exposure, usually a man exposing his genitals to a young girl, and that this is frequently followed by an actual sexual assault (Stewart, 1988). Prior to Bill C-15, a conviction for indecent exposure (section 173(2)), which took place in private, required proof of the intent to insult or offend. Bill C-15 creates a new offence (section 173(2)), which makes it a crime to expose one's genitals to a child under the age of 14 years. Section 173(2) states that every person who, in any place, for a sexual purpose, exposes his or her genital organs to a person who is under the age of 14 years is guilty of an offence.

Data show that the number of charges laid under section 173(2) from 1988 to 1990 increased. Table 4.1 shows that no charges were laid under this section in

1988, while two of 354 charges (0.3 percent) were laid in 1989, and 12 of 275 charges (1.5 percent) were laid under this section in 1990. The conviction rate for charges under section 173(2) was 100 percent (Table 4.7). Disposition data were available on only three cases, however, making these results extremely unreliable.

Table 4.2 shows that "exposure" was the only sexual behaviour associated with charges under subsection 173(2).

Question 2.6: Has consent been accepted by the courts as a defence (section 150.1)?

Bill C-15 provides that for sections 151 (sexual interference), 152 (invitation to sexual touching), and 173(2) (indecent act), children (less than 14 years of age) are unable to give consent to sexual acts and therefore "consent" cannot be used as a defence by the accused in a court of law (section 150.1). To avoid criminalizing peer consensual sexual activities of children over the age of 12 (i.e., the complainant must be either 12 or 13 years old), the accused must (section 150.1(2)),

i) not be in a position of trust or authority (e.g., baby-sitter),
ii) be between 12-15 years of age, and
iii) be less than two years older than the complainant.

It cannot be determined from this study's data whether or not the courts accepted consent as a defence. The data do show, however, that defence counsel raised consent as an issue during the preliminary inquiry in 16 of 105 cases (15.2 percent) and during cross-examination at the trial in six of 35 cases (17 percent).

Question 2.7: Has mistaken age been accepted by the courts as a defence?

The new act also states that the accused cannot claim that he or she believed that the victim was 14 years of age or more (for other offences the age is 18 years) at the time the offence is alleged to have been committed unless the accused took all reasonable steps to ascertain the age of the victim.

It cannot be determined from the study's data whether or not mistaken age was accepted by the court. It was found, however, that the issue of mistaken age was raised by defence counsel during preliminary inquiry in five of 105 cases (4.8 percent). The issue of mistaken age was not raised by defence during the trial.

Table 4.7 Trial Outcome for Charges under Section 173(2) of the New Criminal Code, December 31, 1988 - January 31, 1990, Regina and Saskatoon[1]

	N	% Subtotal	% Total
Trial Outcome:			
Acquitted/Discharged	-	-	-
Convicted	3	100.0	
Subtotal	3	100.0	
Otherwise Dealt With:			
Guilty Plea			
Charge Withdrawn			
Subtotal			
Trial Pending	-		
Total Number of Cases with One or More Charges under S. 173(2)	3		100.0
Conviction Rate		100.0%	

[1] The table only includes children who were under 14 years of age when the abuse began.
Other includes stays, warrants and incomplete.
Data Source: Police File Review
Unit of Analysis: Case (victim/occurrence)
Conviction Rate = (guilty pleas + convictions)/(guilty pleas + convictions + acquittals + charge withdrawn)

Question 2.8: How does the age difference between the victim and the offender relate to sections 151, 152, 173(2) (exposure to child under 14), and 271 (sexual assault)?

In cases where the complainant is 12 or 13 years of age, an accused who i) is not in a position of trust or authority, ii) is 12-15 years of age, and iii) is less than two years older than the complainant may use consent as a defence in a court of law.

In this study, 14 cases met the criteria of minimum age and age difference between the complainant and offender. Of these, one accused was charged under section 246.1, two offenders were charged under sections 151, 152 and 173(2), and the remaining 11 cases were cleared otherwise. There is no information on the disposition of these cases, or on whether the accused was in a position of trust or authority over the victim.

4.2.1 Summary: Objective # 2

- Little use was made of section 212(2) (living on the avails of a prostitute under 18 years), or section 212(4) (obtaining a person under 18 years for sexual purpose).

- No charges were laid under these sections in 1988 and 1990, while seven charges were laid under these sections in 1989. This may be owing to difficulties in police enforcement of these sections, requiring prostitutes to testify against their pimps under section 212(2), for example, and the "john to be caught in the act" in the case of section 212(4).

- Increasing use was made of section 173(2) (indecent exposure to a child under 14 years): although no charges were laid in 1988, two were laid in 1989 and 12 were laid in 1990. Insufficient data were available to reliably determine a conviction rate. "Exposure" was the sexual behaviour associated with charges under this subsection.

- Both consent and mistaken age (section 150.1) were raised as issues by defence counsel during preliminary inquiry and trial. Consent was invoked as a defence during preliminary inquiry in 15.2 percent (16 of 105) of the cases, and during cross-examination at trial in 17 percent (six of 35) of the cases. Relatively small numbers are involved here, particularly with regard to trial, so that caution must be exercised in their interpretation.

- Mistaken age was raised by defence counsel during preliminary inquiry in 4.8 percent of the cases (five of 105).

- Fourteen cases met the age difference criteria for the use of consent as a defence under section 150.1(2). Of these, three were charged and 11 cleared otherwise. No disposition information was available on these cases.

4.3 Objective # 3: To Eliminate Gender Bias Regarding Victims and Offenders

One purpose of the new legislation was to make gender-specific offences nonsexist so that both boys and girls would be protected. Sections 151 (sexual interference), 152 (invitation to sexual touching) and 153 (sexual exploitation) are new sections directed toward protecting both boys and girls against sexual offences from which they had no protection under the old law. Sections 151 and 152 provide protection for boys and girls under the age of 14 years from a wide variety of sexual behaviours not previously covered. Section 153 protects boys and girls age 14-17 years from sexual exploitation from someone in a position of trust or authority over them, or with whom they are in a dependency relationship.

Question 3.1: Are charges being laid in cases involving male victims under sections 151, 152 and 153?

Question 3.2: Are charges involving male victims under sections 151, 152 and 153 resulting in convictions?

Disposition data were available for 14 charges laid under section 151 for male victims (Table 4.8). Of these, seven were convicted, three were acquitted/discharged, and four were dealt with otherwise. Of the last four cases, two pleaded guilty, one had the charge withdrawn, and one was dealt with by stay in proceedings. The conviction rate was 81.8 percent. No charges were laid under section 152 for male victims (Table 4.9). One charge was laid for male victims under section 153 (Table 4.10). This was dealt with by a stay in proceedings.

Question 3.3: Are charges being laid involving female offenders under sections 151, 152 and 153?

Question 3.4: Are these charges resulting in guilty pleas/convictions?

Overall, charges were laid against female offenders in 55 cases (5 percent) (police file review). Disposition data were available on only five cases charged under sections 151, 152 and 153, all of which were charged under section 151. Of

these, two of the female offenders were convicted, two were discharged and one was stayed.

4.3.1 Summary: Objective # 3

- Fourteen charges were laid under section 151 (sexual interference) against offenders of male victims. Of these, seven of the accused were convicted, two acquitted/discharged, and five were dealt with otherwise. Two of the latter pleaded guilty.

- No charges were laid against offenders of male victims under section 152 (invitation to sexual touching).

- One charge was laid under section 153 (sexual exploitation) against an offender of a male victim. This was dealt with by a stay in proceedings.

- Overall, charges were laid against female offenders in 55 (5 percent) of cases. Disposition data were available for only five cases, all of which were charged under section 151 (sexual interference). Of these, two of the female offenders were convicted, two were discharged and one was stayed.

4.4 Objective # 4: To Provide Protection for Children in Cases Where Disclosure is Delayed

In the past, courts allowed evidence of statements made by a victim of a sexual assault to a third party provided that the statement was made at the "first reasonable opportunity" after the attack. If no complaint was received within a reasonable time period, then the court would infer a lack of credibility of the victim. The rule was based on the erroneous belief that "genuine" victims of sexual assaults would complain at the first opportunity, whereas, in reality, this does not typically happen. Shame, guilt, fear, and threats all preclude early disclosure (Stewart and Bala, 1988). Thus, section 275, abrogating the rules of recent complaint in sexual offences, was extended to Bill C-15 offences.[2] In addition, section 141, which provided for a one-year limitation period for certain sexual offences, was repealed.

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[2] Section 275 (Rules respecting complaint abrogated) was originally enacted in August 4, 1982 (Bill C-127), but was repeated and expanded to cover the new sections in the provisions established by Bill C-15.

Table 4.8 Trial Outcomes for Cases Having Charges under Section 151 of the New Criminal Code by Gender of the Victim, December 31, 1988 - January 31, 1990, Regina and Saskatoon

	n	%		
Section 151				
Gender of Victim				
Male	14	15.9		
Female	74	84.1		
Total	88	100.0		
Trial Outcome	Males		Females	
	n	%	n	%
Acquittal/Discharge	3	21.5	10	13.6
Convicted	7	50.0	28	37.8
Subtotal	10	71.5	38	51.4
Otherwise Dealt With	Males		Females	
	n	%	n	%
Guilty Plea	2	14.3	8	10.8
Charge Withdrawn	1	7.1	4	5.4
Other[1]	1	7.1	15	20.3
Subtotal	4	28.5	27	36.5
Trial Pending	-		9	12.0
Total Number of Cases with One or More Charge under S. 151	14	100.0	74	100.0
Conviction Rate	81.8%		78.3%	

[1] Other includes stays, warrants and incomplete.
Data Sources: Disposition Form, Police File Review
Unit of Analysis: Case (victim/occurrence)
Results in Tables 4.3 and 4.8 do not correspond because of missing cases in the latter analysis.
Conviction Rate = (guilty pleas + convictions)/(guilty pleas + convictions + acquittals + charge withdrawn)

Table 4.9 Trial Outcomes for Cases Having Charges under Section 152 of the New Criminal Code by Gender of the Victim, December 31, 1988 - January 31, 1990, Regina and Saskatoon

	n	%		
Section 152				
Gender of Victim				
Male	-	-		
Female	7	100.0		
Total	7	100.0		
Trial Outcome	Males		Females	
	n	%	n	%
Acquittal/Discharge	-	-	2	28.6
Convicted	-	-	1	14.3
Subtotal	-	-	2	42.9
Otherwise Dealt With	Males		Females	
	n	%	n	%
Guilty Plea	-	-	1	14.3
Charge Withdrawn	-	-	1	14.3
Other[1]	-	-	1	14.3
Subtotal	-	-	3	42.9
Trial Pending	-		1	14.2
Total Number of Cases with One or More Charge under S. 152			7	100.0
Conviction Rate	-		50.0%	

[1] Other includes stays, warrants and incomplete.
Data Sources: Disposition Form, Police File Review
Unit of Analysis: Case (victim/occurrence)
Results in Tables 4.4 and 4.9 do not correspond because of missing cases in the latter analysis.
Conviction Rate = (guilty pleas + convictions)/(guilty pleas + convictions + acquittals + charge withdrawn)

Table 4.10 Trial Outcomes for Cases Having Charges under Section 153 of the New Criminal Code by Gender of the Victim, December 31, 1988 - January 31, 1990, Regina and Saskatoon

	n	%		
Section 153				
Gender of Victim				
Male	1	33.3		
Female	2	66.7		
Total	3	100.0		
Trial Outcome	Males		Females	
	n	%	n	%
Acquittal/Discharge	-	-	-	-
Convicted	-	-	-	-
Subtotal	-	-	-	-
Otherwise Dealt With	Males		Females	
	n	%	n	%
Guilty Plea	-	-	-	-
Charge Withdrawn	-	-	2	100.0
Other[1]	1	100.0	-	-
Subtotal	-	-	2	100.0
Trial Pending	-		-	
Total Number of Cases with One or More Charge under S. 153	1	100.0	2	100.0
Conviction Rate	-		-	

[1] Other includes stays, warrants and incomplete.
Data Sources: Disposition Form, Police File Review
Unit of Analysis: Case (victim/occurrence)
Results in Tables 4.5 and 4.10 do not correspond because of missing cases in the latter analysis.
Conviction Rate = (guilty pleas + convictions)/(guilty pleas + convictions + acquittals + charge withdrawn)

Table 4.11 Trial Outcome for Charges Reported to Police More Than One Year Following Last Incident, December 31, 1988 - January 31, 1990, Regina and Saskatoon

	N	% Subtotal	% Total
Trial Outcome:			
Acquitted/Discharged	12	48.1	14.8
Convicted	26	51.9	32.1
Subtotal	38	100.0	
Otherwise Dealt With:			
Guilty Plea	14	45.2	17.3
Charge Withdrawn	8	29.9	9.9
Other[1]	18	25.8	22.2
Subtotal	40	100.0	
Trial Pending	3		3.7
Total Number of Cases in which Charges were Filed > 1 Yr Following Last Incident	81		100.0
Conviction Rate		76.9%	

[1] Other includes stays, warrants and incomplete.
Data Sources: Disposition Form, Police File Review
Unit of Analysis: Case (victim/occurrence)
Conviction Rate = (guilty pleas + convictions)/(guilty pleas + convictions + acquittals + charge withdrawn)

There is no agreed-upon duration for "reasonable amount of time". The courts are allowed to make "individualized and flexible interpretations". For purposes of the present analysis, it is assumed that one year is a reasonable amount of time.

Question 4.1: Are charges being laid in cases where reporting to police is more than one year after the incident occurred (i.e., section 275)?

Question 4.2: Are these charges resulting in convictions?

Data from the police file reviews showed that, although in the majority of cases the incident was reported to the police within the first year of the most recent incident (65.8 percent), a significant number (n=155, 14.1 percent) were reported after the one-year period. Of these, 93 (60.0 percent) were charged; almost half (47.3 percent) of them under the old code, section 246.1 (sexual assault), with next highest proportion (9.7 percent) charged under section 151 (sexual interference). Table 4.11 shows the disposition of 81 of those cases: 14.8 percent were acquitted/discharged, 32.1 percent were convicted, 17.3 percent entered guilty pleas, 9.9 percent had charges withdrawn, and 2.2 percent were stayed (n=17) or issued a warrant (n=1). The conviction rate for this group was 76.9 percent.

4.4.1 Summary: Objective # 4

- 14.1 percent of the cases in Regina and Saskatoon were relevant to section 275 (recent complaint abrogated).
- The conviction rate for these cases was 76.9 percent.

4.5 Objective # 5: To Review the Problem of Child Sexual Abuse Victims Giving Evidence

Section 715.1 of Bill C-15 states that in any proceedings relating to sexual abuse offences in which the complainant is under the age of 18 years at the time the offence is alleged to have been committed, a videotape made within a reasonable time after the alleged offence, in which the complainant describes the acts complained of, is admissible in evidence if the complainant adopts the contents of the videotape while testifying.

Question 5.1: Are videotapes being used in evidence?

Police file data showed that videotapes were made in 34 percent of the cases. Victims disclosed the sexual abuse on the videotape in 86 percent of the cases, and identified the offender on the videotape in 81 percent of the cases. Videotapes were used in evidence during the preliminary inquiry pursuant to section 715.1 in 10 percent of the cases (n=10). In six cases, a reason was given for requesting the videotape. These were: reflection of the interview (two cases), the videotape contradicted the statement given at the hearing (three cases), and the child refused to disclose during the hearing (one case).

Question 5.2: Are child victims/witnesses under 14 years of age being sworn?

Question 5.3: Are younger victims/witnesses giving testimony under the new "promise to tell the truth" provisions of section 16(3)?

Question 5.4: What type of questions were asked by the judge?

Section 16(1) of the Canada Evidence Act states that where a proposed witness is under 14 years of age, or a person whose mental capacity is challenged, the court shall, before permitting the person to give evidence, conduct an inquiry to determine whether the person understands the nature of an oath or a solemn affirmation, and whether the person is able to communicate the evidence. Section 16(2) states that a person referred to in section 16(1) who understands the nature of an oath or a solemn affirmation and is able to communicate the evidence shall testify under oath or solemn affirmation. A person who does not understand the nature of an oath or a solemn affirmation, but is able to communicate the evidence, may testify on promising to tell the truth (section 16(3)).

A child (less than 14 years old) giving unsworn evidence under section 16(3) must promise to tell the truth. This requires some understanding of the concepts of "promise" and "telling the truth", which can be determined though direct questioning by the judge about whether the child understands the difference between the truth and a lie, knows that it is wrong to lie, understands the necessity to tell the truth, and promises to do so (Stewart and Bala, 1988).

Young child victims are being sworn, and are testifying, under a promise to tell the truth. Child victims/witnesses are being questioned by the judge during preliminary inquiry and trial about their competence to give evidence, their understanding of the nature of the oath, and their ability to communicate under the promise to tell the truth.

Preliminary inquiry data showed that 68 percent (68/101) of the victims/witnesses were under the age of 14 years; and that all but five of these (63/101) were questioned by the judge about their competence to give evidence. They were reminded of the responsibility of telling the truth (11 percent), the seriousness of the occasion (5 percent), and their moral obligation to tell the truth (7 percent). They were questioned about their age (49 percent), grade (46 percent), religious training (42 percent), their promise to tell the truth (7 percent), ability to communicate the evidence (18 percent), the meaning of the oath (40 percent) and their belief in God (4 percent). Defence challenged the right of the victim to testify in two cases, citing that the child was unsworn and did not understand the oath, or that he or she did not understand the moral obligation to tell the truth. Judges' rulings were available on 62 cases; of these, 54.8 percent were sworn/affirmed, 37.1 percent testified under a promise to tell the truth, and 8.1 percent (n=5) did not testify. In the last five cases, the judges ruled that the victim/witness did not understand the oath.

Trial data also provided evidence that victims/witnesses were questioned by the judge about their competence to give evidence. Seventy percent (23/33) of the victims/witnesses going to trial were less than 14 years of age. Judges reminded them of the responsibility of telling the truth (11 percent), and their moral obligation to tell the truth (6 percent). They were questioned about their age (43 percent), grade (34 percent), religious training (31 percent), the meaning of the oath (31 percent), their promise to tell the truth (11 percent), their ability to communicate (14 percent), belief in God (3 percent) and other (14 percent). "Other" included school and previous experience with the court system. The child's competence to give evidence was challenged in 70 percent of the cases during the trial. Defence challenged the child's competence to give evidence in 6 percent of the cases, noting that they were not sworn. Judges ruled in favour of competence to testify in all cases, being satisfied that the child victims could be sworn/affirmed (11/23) or that if they remained unsworn they would tell the truth (11/23). No data were available for one case.

Question 5.5: What factors are associated with the use/nonuse of the provisions under section 16(1)?

There was an insufficient number of cases in the comparison groups for this multivariate analysis to be valid.

Question 5.6: Is unsworn testimony weighed differently by the courts?

Of concern is the possibility that unsworn testimony may be given less weight than sworn evidence in a court of law (Stewart and Bala, 1988).

Crown questionnaire data (n=17) showed that nine crown prosecutors (53 percent) reported changes in the weighting of sworn versus unsworn evidence given by a child, and eight (47 percent) of them said that this was owing to Bill C-15. Comments suggested that the change was in the direction of greater weight given to unsworn testimony since the introduction of Bill C-15, so that sworn and unsworn testimony are considered equal in importance.

Similarly, judge questionnaire data (n=22) showed that seven judges (34 percent) felt that there were changes in the weighting of sworn versus unsworn evidence given by a child, and seven of them said that this was owing to the introduction of Bill C-15. Again, the change was in the direction of greater weight given to unsworn testimony so that it is now considered of equal importance to sworn testimony.

4.5.1 Summary: Objective # 5

- Relevant to section 715.1, videotapes are being used in evidence during the preliminary inquiry, although only in a small proportion of the cases (10 percent). They were requested for a number of reasons: as a reflection of the initial interview, because there was a contradiction with the statement provided during the initial interview, and because the child refused to disclose during the hearing, but had done so during the initial interview.

- Pursuant to section 16(1) and 16(3) of the Canada Evidence Act, child victims/witnesses (age 14 years or less) were questioned during preliminary inquiry and trial about their competence to give evidence, their understanding of the nature of the oath, and their ability to communicate under the promise to tell the truth; and were sworn/affirmed and/or gave testimony under the promise to tell the truth.

- The concern regarding the possibility of less weight being given to unsworn compared with sworn testimony of child victims/witnesses in a court of law appears to be unfounded. Half of crown prosecutors and one third of judges responding to questionnaires felt that equal weight was given to unsworn and sworn testimony.

4.6 Objective # 6: To Protect the Credibility of the Child Victim/Witness in Cases of Child Sexual Abuse

Prior to Bill C-15, corroboration was an essential aspect in cases involving the testimony of an unsworn child. It was very difficult to convict someone unless the crown prosecutor provided "independent evidence implicating the accused". These statutory provisions were based on the stereotypical views about the unreliability of children and women as victim witnesses in sexual offence cases. With the proclamation of Bill C-15, the unsworn evidence of children no longer requires corroboration.

Question 6.1: Is corroboration still important in decisions to commit to trial and/or convict at trial? (See section 274: corroboration not required.)

Data concerning why judges refused to commit cases to trial were available on 184 charges processed through preliminary inquiry. Of these, judges commented in 19 instances (10.3 percent) on the lack of corroboration of victim testimony as a reason. This is roughly equivalent to the proportion of cases discharged (12.9 percent) during preliminary hearing (see Figure 3.2), suggesting that corroboration may be important in decisions to commit to trial. No similar information was available from trial data.

Crown prosecutor questionnaire data support these findings. Crown prosecutors (n=17) rated it as 4.0, indicating that they believed that "lack of corroboration" is quite important in determining whether charges will be dismissed.

Multivariate analysis of police file data identifying predictors of being classified as unfounded also supports the preliminary inquiry findings: results showed that for females, presence of witnesses was a significant predictor of whether or not a case was classified as substantiated or unfounded. There were four times as many unfounded cases when there were no witnesses compared with when witnesses were present, suggesting that the presence of someone who can act as a corroborative witness is important at the very beginning of the judicial process: at the investigative stage when it is determined whether cases are substantiated or not.

Judges' and defence lawyers' questionnaire data, however, are at variance with these findings. Judges (n=22) rated "lack of corroboration" as 1.8 on a 5-point scale ranging from "not at all important" to "very important", indicating that, in their experience, it is not important in determining whether the accused will be acquitted. Similarly, defence lawyers (n=10) rated "lack of corroboration"

as 2.9, indicating that lack of corroboration is not very important in determining whether charges will be dismissed.

Question 6.2: Are there areas of alleged behaviour and/or types of cases where credibility of the victim is problematic?

Very little information concerning credibility of the victim/witness was available from the data. Judges commented on the credibility of the victim in two of 35 cases (5.7 percent) during trial. These were two female victims, age 13 and 17 years, in which the perpetrator was charged under section 246.1 (sexual assault).

Question 6.3: Are expert witnesses used and what types of evidence are they giving?

Expert witnesses, unlike other witnesses, are allowed to give opinion evidence rather than being restricted to testifying about facts (i.e., what they observed or heard). Typically, these have been persons such as medical doctors, psychologists and social workers, because of their academic qualifications, training and specialized experience. Recently, the court has allowed experts (other than those mentioned above) who have interviewed the child and conducted an assessment of that child to testify that in their opinion the child has been sexually abused. Although this practice remains controversial, it was hoped that crown attorneys would make more use of such expertise in the prosecution of sexual abuse cases (Stewart and Bala, 1988).

Police file data show that expert witnesses were used in 13 percent of the cases (n=124). There was no indication from these data as to the type of evidence provided by the witnesses. None of the expert witnesses was observed testifying during observation of court proceedings.

Question 6.4: Is "sexual activity" and/or "reputation" evidence being raised at preliminary inquiry and/or trial? (Section 276(1) (no evidence concerning sexual activity) and section 277 (reputation evidence).)

Bill C-15 provides that only under certain limited circumstances is it permitted to ask a complainant about prior sexual activity and, as a general rule, evidence of prior sexual activity with a person other than the accused will not be admissible in any sexual offence case (Stewart and Bala, 1988). As well, section 246.7 provides that evidence of sexual reputation is not admissible for the purpose of challenging or supporting the credibility of the complainant.

Preliminary inquiry data showed that past sexual conduct of the victim was raised as an issue by the defence in nine of 105 cases (8.6 percent) (Table 4.12), while reputation of the victim was raised in three cases (2.9 percent). Trial data show that defence raised the issue of past sexual conduct of the victim in four of 31 cases (11.4 percent) during cross-examination, while the issue of reputation of the victim was raised in three of 35 cases (8.6 percent) by defence counsel during cross-examination (Table 4.12).

4.6.1 Summary: Objective # 6

- There is some evidence to suggest that corroboration is important in the decision to commit to trial (section 274). For female victims, the presence of witnesses was a significant predictor of whether the accused was charged. In a high proportion of cases that were discharged during preliminary inquiry, the judge commented on the lack of corroboration as a factor in the decision.

- Expert witnesses were used, although in only a small proportion of cases (13 percent).

- Issues of past sexual conduct (section 276(1)) and reputation (section 277) were raised at both preliminary inquiry and trial in only a small proportion of cases (10 percent).

4.7 Objective # 7: To Avoid Repetitious Interviews with the Child Victim/Witness

Section 715.1 states that in any proceedings relating to a sexual abuse offence in which the complainant was under the age of 18 years at the time the offence is alleged to have been committed, a videotape made within a reasonable time after the alleged offence, in which the complainant describes the acts complained of, is admissible in evidence if the complainant adopts the contents of the videotape while testifying.

Question 7.1: Are videotapes being made at the initial investigative stage?

Question 7.2: Who is present at the videotape interview?

Question 7.3: How many times are victims/witnesses made to repeat their disclosures?

Table 4.12 Issues Raised as Defence in Cross-examination during Preliminary Trials, December 31, 1988 - January 31, 1990, Regina and Saskatoon

Issues Raised[1]	During Preliminary Hearing n	%	During Trial n	%
Identity of accused	21	20.0	5	14.3
Nature of contact	27	25.7	8	22.9
Consent to acts	16	15.2	6	17.1
No threats or force	25	23.8	7	20.0
No relationship of authority	4	3.8	0	-
Honest belief re: age	5	4.8	0	-
Use of drugs/alcohol - Accused	11	10.5	9	25.7
Use of drugs/alcohol - Victim	13	12.4	4	11.4
Provocation by victim	5	4.8	3	8.6
Past sexual conduct of victim	9	8.6	4	11.4
Reputation of victim	3	2.9	3	8.6
Fabrication of allegation	24	22.9	20	57.1
Inconsistent with prior testimony	7	6.7	16	45.7
Inconsistent with videotape	1	1.0	2	5.7
Validity of the videotape	1	1.0	0	-
Circumstances of disclosure	23	21.9	9	25.7
Reasons for disclosure	18	17.1	13	37.1
Why not disclose sooner?	-	-	10	28.6
Why not call for help?	-	-	1	2.9

[1] Data Source: Preliminary Inquiry Transcript Review (n=105); Trial Transcript Review (n=35)
Unit of Analysis: Case (victim/occurrence)

Question 7.4: Does the use of the videotape reduce the number of times a child must tell the story?

Data from police file reviews showed that videotapes were made in 34 percent of the cases (n=374). "No reason" (40 percent), followed by "written statement available" (24 percent), were the two most frequently mentioned reasons for not making a videotape. In all cases the police conducted the interview, usually in the presence of a social worker (65 percent); others were involved in three cases. Victims identified the offender on the videotape in 81 percent of the cases and disclosed the abuse on the videotape in 86 percent of the cases. Little formal use of the tapes was recorded on the police files. Defense counsel viewed the tape in only four cases. No one from the police, the accused, crown prosecutors, social workers, or therapists is documented as viewing the tape. As noted, it seems likely that these records are not a true indication of the value of the videotapes.

Videotapes helped the police understand and assess the child and family in one case. They helped prepare the child for court in one case and helped examine the child/witness in one case. Videotapes helped the police lay charges in six cases. Videotapes did not assist in the investigation by the defence, crown attorney, or social workers, nor did they assist in the treatment of the child by the police or social workers.

Information was not available to determine the number of times victims were required to repeat their disclosures, or whether the use of videotape reduced the number of times a child must tell his or her story.

4.7.1 Summary: Objective # 7

- Relevant to section 715.1, videotapes were made during the investigative stage in 34 percent of the cases. The videotapes included disclosure in 86 percent of the cases. It appears that limited use was made of the videotapes in a court setting; less than 10 cases were involved.

- Videotapes are reported to have helped the police lay charges, to understand the child and his or her family, and to prepare the child for court appearance.

4.8 Objective # 8: To Provide Support and Assistance to the Child Victim/Witness While Giving Testimony

With the introduction of the new legislation it is important to prepare young child witnesses for the court experience: to prepare them for the trauma of again facing their abuser, for the prospect of not being believed by the court (or at least not having a conviction obtained), for questioning by the judge, for cross-examination by the defence counsel, as well as to ready them for how to make personal requests such as a recess to use the bathroom.

Question 8.1: Have any innovative programs or procedures been implemented, such as victim assistance programs, crown preparing witness, or other?

To date, there are no formal child/witness preparation procedures or child assistance programs operating in Saskatoon or Regina.

Question 8.2: Were videotapes used to refresh memory?

Of six cases in which videotapes were used during the preliminary inquiry and for which information was available, videotapes were used in two cases as a means of reflecting on the interview, in three cases the videotapes were used because there was a contradiction with the statement given at the hearing, and in one case the child refused to disclose during the hearing.

Question 8.3: Have screens and/or closed-circuit televisions been used in the court?

Bill C-15 provides certain protection for child victims/witnesses. Section 486(2.1) allows a child abuse victim under the age of 18 to testify from behind a protective screen, or through the use of closed-circuit television, if the judge is satisfied that this is "necessary to obtain a full and candid account of the acts complained of".

Court observation data (n=21) showed that victims testified through closed-circuit television in five cases (24 percent) from behind a screen. Screens were used along with closed-circuit television. Since a demonstration project funded by the Department of Justice Canada in 1989-1990, showing the effectiveness and preference for the use of a combination of closed circuit TV and

screen in the courtroom, this procedure has been available, on request, throughout Saskatchewan (see Ell, 1990).[3]

Question 8.4: Have supporting adults accompanied the child witness to court? Who are these adults? Do supporting adults accompany the child to the stand?

Observation of the courtroom environment during the child's testimony showed that adults accompanied the child to the witness stand in one of 21 instances (4.8 percent) (Table 4.13), and that a supporting adult stayed in the courtroom in eight of 21 instances (38.1 percent).

Data obtained during the preliminary inquiry (n=105) showed that support was provided to the child in the form of adults holding the victim on their knee (two cases), adults accompanying the victim to the witness stand (two cases), a supporting adult in court (seven cases), victims testifying with the use of a prop (10 cases), and victims using an amplifier (three cases) (Table 4.13).

Similarly, trial data (n=35) showed that efforts are being made to provide support to child victims: a booster seat was provided in one case, adult support was provided in two cases, toys were allowed in court in one case, and props to aid testimony were permitted in two cases (Table 4.13).

Question 8.5: What was the effect of these procedural and evidentiary changes on the child witness?

Although it is impossible to determine the effect of change when there is no baseline or premeasure with which to compare the present data, this study does reveal child/witness behaviours during court. Court observation data (n=51) showed that child witnesses expressed little inappropriate laughing, covering the face, biting the fingernails, picking at oneself, thumb-sucking, crying, whining, confusion, clinging to an adult, anger, swearing and looking at the accused; there was a moderate to high amount of withdrawing, worriedness; there was a moderate degree of self-confidence; and there was a high degree of cooperativeness, anxiety, shyness and embarrassment -- in general, a rather

[3] A solid screen is placed to block the witness's view of the accused in the courtroom. A video camera is set up to focus on the witness in the witness box, with a monitor placed directly in front of the accused. This configuration allows for direct contact and communication with the child by the judge, defence, and crown, and viewing of the proceedings by the accused.

Table 4.13 Courtroom Environment During the Child's Testimony, December 31, 1988 - January 31, 1990, Regina and Saskatoon[1]

Courtroom Environment	During Court Observations		During Preliminary Inquiry		During Trial	
	n	%	n	%	n	%
Child testifies behind screen[2]	5	23.8	6	88.9	4	15.4
Child testifies via closed-circuit television	5	23.8	-	-	-	-
Child given booster seat	-	-	-	-	1	2.9
Adult holds child on knee	-	-	2	2.9	-	-
Adult accompanies child to stand	1	4.8	2	2.9	-	-
Support adult stays in courtroom	8	38.1	7	6.8	2	5.7
Witnesses cleared during child's testimony	13	61.9	-	-	-	-
Accused cleared from court	-	-	-	-	-	-
Spectators cleared from court	-	-	-	-	-	-
Child allowed to turn from accused	4	19.0	-	-	-	-
Offender seated in back of court	5	23.8	-	-	-	-
Expert testifies re: child's testimony	-	-	-	-	-	-
Child allowed to bring blanket, toy, etc.	-	-	-	-	1	2.9
Child allowed to testify with props	-	-	10	9.5	-	-
Other innovative procedures used	5	23.8	3	2.9	2	5.7

[1] Data Source: Court Observation Schedule (n=21); Preliminary Trial Transcript Review (n=105); Trial Transcript Review (n=35). Unit of Analysis: Cases

[2] Testifying via closed-circuit television was conducted behind a screen in Saskatoon.

positive overall picture (with situation-appropriate affect, moderate level of self-esteem and high degree of cooperativeness) under the very difficult circumstances.

Question 8.6: Has section 486(1) been used to exclude the public?

Another provision of the Criminal Code that may be used to protect a child witness is section 486(1). This section provides that a judge may make an order excluding all or any members of the public from the courtroom where this is necessary for the "proper administration of justice". Friends or relatives of the accused sitting in the courtroom may be making threatening facial expressions at the child. Or, the child may be intimidated by the presence of members of the family of the accused, or the public (Bala, 1988).

Trial data showed that there was a request for an order to exclude the public under section 486(1) in two of 32 cases (6.3 percent). Crown counsel made the request in both cases. No one objected, and the judge excluded the public in both cases.

During the preliminary inquiry, crown prosecutors requested exclusion of the public under section 486(1) in four of 105 cases (3.8 percent). Reasons given included embarrassment and discomfort to the victim, and age of the victim. In one case the judge objected to the request and in one case the defence lawyer objected to the request. The judge objected because he did not believe it was necessary at this time but agreed to reconsider at the time of the child's testimony. The defence objection related to a desire that the child's therapist be allowed to be present. The judge ruled to exclude the public in three cases, and against such action in one case: the child's therapist was allowed to stay.

4.8.1 Summary: Objective # 8

- There are no formal child/witness preparation procedures or child assistance programs operating in Saskatoon or Regina.
- Child victims testified from behind a screen using closed-circuit television in five of 21 cases (24 percent) observed in Saskatoon. The combination of screen and closed-circuit TV in the courtroom is available, on request, throughout Saskatchewan.
- Videotapes were used to refresh memory in six cases during preliminary inquiry.

- Observation of courtroom environment (n=21) showed that an adult accompanied the child to the witness stand in one case, supporting adult remained in the courtroom in eight cases (38.1 percent), and witnesses were cleared from the courtroom during the child's testimony in 13 cases (61.9 percent).

- The effect on the child witness of the many procedural and evidentiary changes brought in by Bill C-15 appears to be positive. Court observation data show that child witnesses express situation-appropriate affect, a moderate amount of self-confidence, and a high degree of cooperativeness.

- Section 486(1) (exclusion of the public) was used in less than 10 percent of the cases in Saskatoon and Regina.

4.9 Objective # 9: To Provide Protection for Child Victims/Witnesses Regarding Identity and the Circumstances of the Occurrence

Section 486(3) allows for the protection of the identity of victims and witnesses in sexual offence cases by prohibiting the publication of information that might identify them. This is not an automatic ban; it must be requested either by the crown attorney or by the judge. Normally, the crown attorney will make the request on behalf of the child (Stewart and Bala, 1988).

Question 9.1: Has section 486(3) been used to ban publication of identifying information?

During trial, a request was made for a ban on the publication of identity of victim and information that might identify the victim (section 486(3)) in 26 of 33 cases (78.8 percent). The crown most often made the request (20 of 24 cases), followed by the judge (two of 24 cases) and the defence (two of 24 cases). The reason cited most often for the ban was the young age of the victim: in nine cases (25 percent). No one objected to the ban. The judge ordered the ban in 24 cases (92.3 percent of the acquitted cases).

Similarly, during the preliminary inquiry a ban on the publication of the identity of the victim was made under section 486(3) in 84 of 105 cases (80.0 percent). Crown attorneys most often made the request (91.7 percent), followed by judges (7.1 percent) and defence lawyers (1.2 percent). The reason for the request was the young age of the victim in 15.2 percent of the cases; no other reasons were listed. No one objected to the ban. The judge ordered the ban on the publication of the identity of the victim in 100 percent of cases requested (n=84). There was a request for a ban of the publication of evidence

at the preliminary inquiry in 95 percent of the cases (n=100). Defence most often made the request (85 percent), followed by judges (11 percent) and crown (4 percent). There was no objection to the ban in 99 percent of the cases. The judge ordered the ban on the publication of evidence in all cases.

4.9.1 Summary: Objective # 9

- Section 486(3) (publication ban) was extensively utilized, limiting publication of evidence and identity of the victim.
- During trial, a request for a ban on publication of identity of the victim was made in 26 of 33 cases (78.8 percent). The judge granted the ban in 24 cases (92.3 percent).
- During preliminary inquiry, a ban on the publication of the identity of the victim was requested and ordered in 84 of 105 cases (80.0 percent). And a request for a ban on the publication of evidence was granted in 100 percent of the cases.

4.10 Objective # 10: To Provide for a Range of Sentence Responses to a Broad Range of Severity of Abuse

A judge has considerable discretion in sentencing an abuser; only rarely is the maximum penalty imposed. Although in sexual abuse cases a jail term is often given, judges are concerned that offenders receive appropriate treatment and in some situations will impose a period of probation instead of jail, with the provision that the abuser undergo treatment. Other factors also influence whether the offender is given a jail sentence. A severe sentence is more likely if the case involved a breach of trust (e.g., abuse by a teacher, parent or guardian), violence or threats of violence, multiple victims, a repeat offender, abuse continuing over a long period of time, or more serious abuse (e.g., intercourse as opposed to fondling through clothes). Willingness of the abuser to take treatment and an expression of remorse tend to lead to a less severe sentence (Stewart and Bala, 1988).

Question 10.1: Does the type of sentence relate to characteristics of the offence, the victim and/or the offender?

In this study's analysis, sentence was dichotomized into those who received a jail sentence and those who did not, and then multivariate analysis (using Knowledge Seeker program) was conducted separately for section 151 (sexual

interference) and section 271 (sexual assault) to determine predictors of incarceration. The independent variables were the same as those used in earlier analyses and contained in Table 3.2. The final model was determined using statistical and interpretability criteria. Results of the multivariate analyses showed that no variables significantly predicted incarceration under section 271. Figure 4.3 shows the predictors of incarceration for charges under section 151.

The use of force or intimidation was the best predictor of whether or not offenders were sentenced to a jail term: for all cases in which physical and verbal intimidation were used together, the offender was sentenced to jail, while just over half (55 percent) of those offenders in cases in which verbal force only was used, were sentenced to jail. No other variables predicted sentencing for those offenders who used both physical and verbal force.

Age of the accused predicted a jail sentence for those who used verbal intimidation: 80 percent of the offenders age 26 years and older were given a jail sentence, while 36 percent of those age 16-25 years went to jail, and none of the offenders age 12-15 years was sentenced to jail. No other variables predicted sentencing for those offenders age 12-15 years, or 26 years and older.

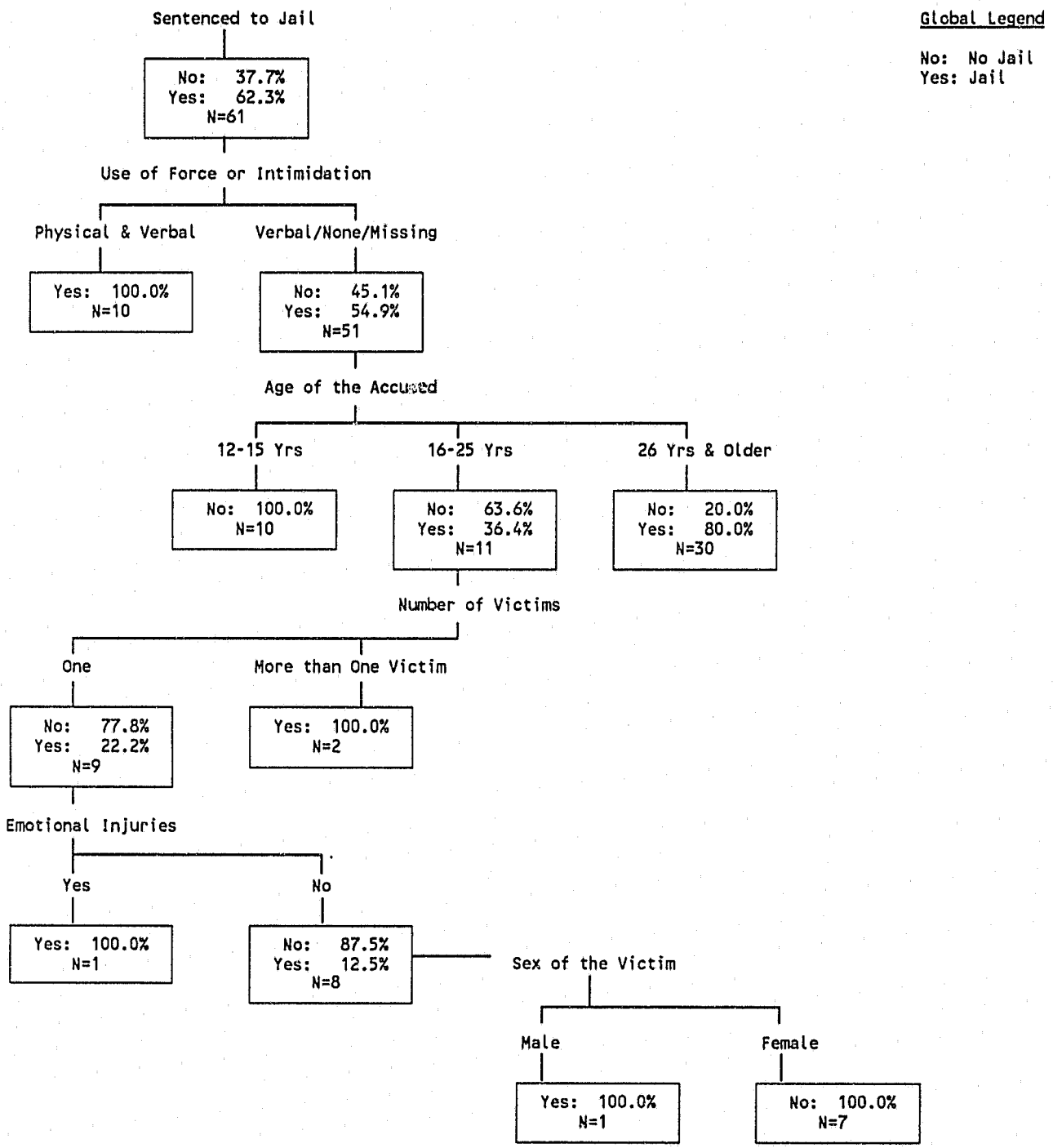
Number of victims predicted jail sentence for those offenders age 16-25 years: all of those persons (n=2) who offended against more than one victim were sentenced to a jail term, while 22 percent of those who offended against only one victim were given a jail sentence. No other variables predicted jail sentencing for those offenders who violated more than one victim.

The extent of emotional injury to the victim predicted sentencing to jail for those persons who offended against one victim: all of those offenders (n=1) in which the victim purportedly suffered emotional injury were sentenced to jail, while 13 percent of those in which no emotional injury was recorded were sentenced to a jail term. No other variables significantly predicted sentencing of the offender for cases in which the victim suffered emotional injury.

Sex of the victim predicted jail sentencing of the offender for those cases in which the victim did not suffer emotional injury: all of those offenders (n=1) for whom the victim was male were sentenced to jail, while none of the offenders for whom the victim was female was sentenced to a jail term.

Caution must be exercised in the interpretation of the last three variables in view of the small number of cases in at least one of the comparison groups.

Figure 4.3 Decision Model for Sentencing to Jail for Charges under Section 151, December 31, 1988 - January 31, 1990, Regina and Saskatoon



4.10.1 Summary: Objective # 10

- Major variables predicting sentencing under section 151: a jail term (the most severe sentence) was more likely in cases where physical force or intimidation was used; where offenders were older (e.g., 26 years or more); and where there was more than one victim.

5.0 PERCEPTIONS OF THE IMPACT OF BILL C-15

The focus of this chapter is on the problems, changes, and effects of the provisions of Bill C-15 as perceived by key personnel: police officers (n=24), crown prosecutors (n=17), defence counsel (n=10), and judges (n=22). What follows is a summary of responses to open-ended questions contained in a self-report survey mailed to each of the above-mentioned professional groups, as well as from interviews conducted with key judges, crown prosecutors, defence lawyers, and police officers. Return rates for the questionnaires are presented in Table 2.1, Chapter 2. At the end of this chapter is a short section on media reporting of sexual abuse cases. In view of the small number of respondents in each category, results must be interpreted with caution.

5.1 Perceived Problems With Substantive Sections of Bill C-15

Comments from key personnel relating to the substantive sections of the Criminal Code relevant to Bill C-15 are presented below.

Section 151: Sexual Interference

One crown prosecutor commented that the Court of Queen's Bench in his jurisdiction often required corroboration for young child witnesses. The following observations were made by three judges: if the offence is alleged to have occurred years before, time becomes a problem; often the victim is a small child and it is difficult to get the child to testify; the overriding feeling among many, inside and outside the system, is that the child is somehow at fault.

Two defence lawyers were concerned that children are bombarded with information on sexual abuse and that no one explains to them that touching is not always "bad" touching. Another lawyer commented that charges under this section were difficult to defend because the time lapsed before the complaint was made seemed to have an inordinate amount of influence on the outcome.

One police officer noted that disclosure was a problem with very young children.

Section 152: Sexual Invitation

One officer felt that the police often have reasonable grounds to investigate, but unless there is a confession there is no conviction. A defence lawyer was concerned with the issue of whether or not the intent was sexual.

Section 153: Sexual Exploitation

A crown prosecutor reported that the definition of "person in authority" or "position of trust" is not clear enough. A judge commented on the difficulty of relying on a child's memory of details about an incident that may have occurred years ago. One police officer commented that without corroboration from another victim there was no case.

Section 155: Incest

Two police officers commented that cooperation from other family members was a problem. Another officer was concerned that this section offered no protection for adopted children. An officer and a judge felt that this section was problematic for the victim because of the pressure from within the family, as well as the trauma of being assaulted by a parent. Other judges commented on the difficulty of obtaining evidence, and were concerned for the safety of other family members, particularly a wife or mother.

Section 159: Anal Intercourse

One crown prosecutor felt that this section was unnecessary because it is simply a sexual assault.

Section 160: Bestiality

A police officer reported that offences under this section were difficult to prove.

Section 170: Parent/Guardian Procuring Sexual Activity of Child

A police officer noted that the power of the parent over the child is a problem.

Section 171: Householder Permitting Child to Engage in Sexual Acts

One police officer commented on the difficulty of establishing knowledge of the accused under this section.

Section 173: Indecent Exposure to Child Under 14

It is believed by an officer that because police cannot photograph the accused, very few photos are available to show to victims after an incident.

Section 212(2): Living on the Avails of Prostitution

Two police officers mentioned that it was difficult to get the victim to testify and therefore this section was difficult to prove. Another officer felt this was an "everyday" problem for society.

Section 271: Sexual Assault

A defence lawyer noted that the difficulty with this section was in determining whether or not the behaviour in question was intended to be sexual. Another lawyer complained of the difficulty in preparing a defence against a charge where the criterion appeared to be length of time lapsed before the complaint was made. One police officer commented on the difficulty of dealing with a case in which the young child victim was not able to testify. A crown prosecutor suggested that the Court of Queen's Bench still seems to require corroboration for young child witnesses. A judge noted that, in his view, there are problems dealing with cases in which the victim is very young (age three). Another judge felt that there was a problem in assessing credibility of child witnesses, and that courts and prosecutors seem to use section 271 (sexual assault) and section 151 (sexual interference) interchangeably, even though they are distinct offences.

Section 273: Aggravated Sexual Assault

The following two comments were made by police: physical abuse is particularly devastating to the victim, and the identity of the accused is difficult to determine in cases of aggravated sexual assault.

Additional Comments

A defence lawyer felt that strict rules need to be established when police are interviewing child victims to ensure that the questions asked are not leading the witness. Another lawyer commented that (he or she) has never objected to the use of the videotaped interview, but did have two cases where the crown prosecutor did not want to use the tape because it detracted from -- or, at the very least, did not enhance -- the prosecutor's case. In addition, this lawyer made the following statement:

> Two areas of concern I have. (I'll) deal first with the blocking of the view of the accused by allowing the victim to testify from behind a protective screen. First, the view of all third parties should also then be blocked.

> The second concern I have, is that all (of) these measures presume the child is telling the truth, or at least is not mistaken, and you want to make the experience as painless as possible. What is overlooked is that these measures also help a child who is not telling the truth, or is mistaken, to maintain their story.
>
> My final concern is with the large number of professional witnesses who apparently at a glance can tell if a witness is telling the truth or not.

Three judges noted that there appears to be no problem with the new offences, except for sexual assault, which they felt covered too wide a range of activity, so that minor sexual assaults are not distinguishable from major ones to the media and the public. A police officer felt that if the victim is under five years of age the courts will not view his or her evidence as credible. He felt that "each child should be dealt with as an individual".

5.1.1 Summary: Perceived Problems with Substantive Sections of Bill C-15

In view of the small number of respondents to the questions in this section, extreme caution must be exercised in generalizing the findings.

- With regard to section 151 (sexual interference), three judges reported that they feel that there is a view among some professionals in the justice system that small children are somehow at fault for the sexual abuse perpetrated upon them.

- Three judges had no difficulty with the new offences introduced by Bill C-15, with the exception of section 271 (sexual assault), which they feared covered such a broad spectrum of activity, ranging from relatively minor to rather serious infractions, that the press and public would not receive an accurate picture of the seriousness of the crime.

5.2 Procedural Changes Introduced by Bill C-15

Tables 5.1a, 5.1b, and 5.1c show the percentage of requests of various items (e.g., screens, closed-circuit television, booster seats, accompanying adult) to provide support for child victims while giving testimony in court. Data were obtained from crown, defence and judge questionnaires.

In general, requests were frequently made by the crown prosecutor to have a supporting adult in the courtroom, witnesses and spectators cleared from the court before the child's testimony, a ban on publication of identifying victim information, and to a lesser extent, to have videotapes of the child's testimony and screens to block the child's view of the accused. Such requests were often objected to by defence, particularly requests to allow the child to sit on the knee of an adult while testifying (100 percent, Table 5.1a), and that an expert be allowed to testify about the significance of the child's testimony (100 percent) (Table 5.1b). Judges overruled the objections and allowed requests by the crown prosecutor in a large proportion of cases, with a low of 50 percent for the request to have a supporting adult in the courtroom (Table 5.1b) and a high of 100 percent for the request to allow the child to testify while turned away from the accused (Table 5.1a); allowed permission for the use of props during child testimony, and for the child to bring toys, blankets, etc., into the courtroom (Table 5.1b); allowed use of videotapes of the child's testimony, use of screens to block the child's view of the accused, use of closed-circuit television to allow children to testify outside the courtroom, use of a microphone to amplify the child's voice, requests for allowing the child to sit on the knee of an adult while testifying, requests for an adult to accompany the child to the stand, for an expert as the child's interpreter, and an expert to testify about the significance of the child's testimony (Table 5.1c).

For the most part, the data provided by crown prosecutors, defence counsel and judges are remarkably consistent, although there were some inconsistencies. Judges, for example, tend to perceive themselves as allowing more of the requests made by crown prosecutors than is perceived by either crown or defence. Defence counsel reported that judges allowed the request that a supporting adult be permitted to stay in the courtroom in only 50 percent of the cases, while judges reported that this was allowed in 94.1 percent of the cases. Similarly, defence counsel reported that judges granted the request to have witnesses cleared from the court before the child's testimony in 75 percent of the cases, while judges reported that they granted this request in 94.7 percent of the cases. And crown prosecutors reported that judges allowed the request for the child to be held on the knee of an adult during testimony in 60 percent of the cases, while judges reported that this request was granted in 100 percent of the cases. There are differences in the number of cases for the items in the different samples, which may account for some of the inconsistency.

Table 5.1a Experience with Procedural Component of Bill C-15 by the Crown, December 31, 1988 - January 31, 1990, Regina and Saskatoon[1]

Item Requested	Crown (n=17)					
	Crown Requested		Defence Objected		Judge Allowed	
	n	%	n	%	n	%
Videotape	7	41.2	-	-	-	-
Screens	10	58.8	-	-	-	-
Booster Seat	2	11.8	-	-	-	-
Child Bring Toy	1	5.9	-	-	-	-
Child Sit on Knee	5	29.4	5	100.0	3	60.0
Adult Accompanied to Stand	13	76.5	7	53.9	12	92.3
Supporting Adult in Court	14	82.4	7	50.0	13	92.9
Witnesses Cleared	11	64.7	7	63.6	9	81.8
Spectators Cleared	11	64.7	7	63.6	9	81.8
Ban on Publication	7	100.0	2	28.6	5	71.4
Child Testifies Turned Away	5	29.4	2	40.0	5	100.0
Microphone	10	58.8	-	-	-	-
Props	10	58.8	-	-	-	-
Expert as Interpreter	-	-	-	-	-	-
Expert Testified re: Child's Testimony	4	23.5	-	-	-	-

[1] Crown prosecutors were asked the questions, 'Did you ever request to use the listed item?' 'If a request was made and the item was available, did the defence object?' 'Was it allowed in court?'

Data Source: Key Informant Survey: Crown

Unit of Analysis: Respondent

Table 5.1b Experience with Procedural Component of Bill C-15 by Defence, December 31, 1988 - January 31, 1990, Regina and Saskatoon[1]

Item Requested	Defence (n=10)					
	Crown Requested		Defence Objected		Judge Allowed	
	n	%	n	%	n	%
Videotape	6	60.0	3	50.0	5	83.3
Screens	6	60.0	-	-	-	-
Closed-circuit TV	-	-	-	-	-	-
Microphone	2	20.0	-	-	-	-
Booster Seat	1	10.0	-	-	-	-
Props	3	30.0	1	33.3	3	100.0
Child Bring Toy	1	10.0	1	100.0	1	100.0
Child Sit on Knee	1	20.0	-	-	-	-
Adult Accompanied to Stand	1	10.0	-	-	-	-
Supporting Adult in Court	8	80.0	1	2.5	4	50.0
Witnesses Cleared	7	70.0	1	14.3	4	57.1
Spectators Cleared	4	40.0	1	25.0	3	75.0
Ban on Publication	-	-	-	-	-	-
Child Testifies Turned Away	3	30.0	-	-	-	-
Expert as Interpreter	1	10.0	1	100.0	-	-
Expert Testified re: Child's Testimony	5	50.0	5	100.0	3	60.0

[1] Defence was asked the questions, 'Did the Crown request to use the listed item?' 'If a request was made and the item was available, did you object to its use?' 'Was it allowed in court?'
Data Source: Key Informant Survey: Defence
Unit of Analysis: Respondent

Table 5.1c Experience with Procedural Component of Bill C-15 by Judges, December 31, 1988 - January 31, 1990, Regina and Saskatoon[1]

Item Requested	Judges (n=22)					
	Either Counsel Requested		Opposing Counsel Objected		Judge Allowed	
	n	%	n	%	n	%
Videotape	3	13.6	1	33.3	3	100.0
Screens	12	54.5	3	25.0	12	100.0
Closed-circuit TV	1	4.5	-	-	1	100.0
Microphone	10	45.5	1	10.0	10	100.0
Booster Seat	6	27.3	1	16.7	5	83.3
Child Bring Toy	8	36.4	-	-	8	100.0
Child Sit on Knee	2	9.1	1	50.0	2	100.0
Adult Accompanied to Stand	10	45.5	6	60.0	10	100.0
Supporting Adult in Court	17	77.3	5	29.4	16	94.1
Witnesses Cleared	19	86.4	6	31.6	18	94.7
Spectators Cleared	17	77.3	7	41.2	13	76.5
Ban on Publication	20	90.9	-	-	17	89.5
Child Testifies Turned Away	9	40.9	2	22.2	9	100.0
Expert as Interpreter	1	4.5	1	100.0	1	100.0
Expert Testified re: Child's Testimony	1	4.5	-	-	1	100.0

[1] Judges were asked the questions, 'Was a request or application made by either counsel to use the listed item?' 'If a request was made, was the item available?' 'If the item was available, did the opposing counsel object to its use?' 'If a request was made and if the item was available, have you allowed its use?'

Data Source: Key Informant Survey: Judge

Unit of Analysis: Respondent

5.2.1 Summary: Procedural Changes Introduced by Bill C-15

- In general, requests were frequently made by crown prosecutors to have a supporting adult in the courtroom, witnesses and spectators cleared from the court before the child's testimony, a ban on publication of identifying victim information; and, to a lesser extent, to have videotapes of the child's testimony, and screens to block the child's view of the accused.

- Requests most often objected to by defence included allowing the child to sit on the knee of an adult while testifying, allowing an expert to testify about the significance of the child's testimony or act as an interpreter, and allowing the child to bring a toy to the courtroom.

- Judges frequently overruled objections and granted requests for allowing the child to turn away from the accused while testifying; supporting adults in court, and adults to accompany the child to the stand; the child to testify with the aid of props; the child to bring a toy, blanket, etc., to the courtroom; the use of videotape, screens, microphones, closed-circuit TV; the use of experts as interpreters, and to testify regarding the child's testimony; and the child to be held on the knee of an adult while testifying.

5.3 Perceived Changes Related to Bill C-15

Table 5.2 shows that two thirds of the police and more than half (59 percent) of crown prosecutors felt that the number of cases had increased as a result of the introduction of Bill C-15; fewer defence lawyers (20 percent) and judges (14 percent) felt this way. A small proportion of persons in most of the professional groups felt that the number of children giving evidence had increased; a larger proportion of crown prosecutors (59 percent) and judges (50 percent) felt that this was true. Similarly, over half of the crown prosecutors (58.8 percent) and half of the defence lawyers (50.0 percent) felt that a greater number of younger children were testifying than was the case prior to the passing of Bill C-15; and almost half the crown prosecutors (47.1 percent) and exactly half the defence counsel (50.0 percent) felt that harsher sentences were being given to perpetrators. Only one quarter of the judges (27.3 percent) and police (25.0 percent) felt this way. Thirty-seven percent of the police respondents, 29.4 percent of crown respondents, 20 percent of defence respondents and 27.3 percent of judge respondents felt that there was less requirement for corroboration. Slightly less than half the number of crown prosecutors (41.2 percent) and defence counsel (4[illegible].0 percent) felt that judges had a better understanding of the plight of child victims/witnesses now than prior to the

Table 5.2 Perceived Changes Due to Bill C-15, by Professionals, December 31, 1988 - January 31, 1990, Regina and Saskatoon[1]

Changes	Police (n=24)		Crown (n=17)		Defence (n=10)		Judges (n=22)	
	n	%	n	%	n	%	n	%
Number of Cases Increased	16	66.7	10	58.8	2	20.0	3	13.6
Number of Children Giving Evidence Increased	6	25.0	10	58.8	1	10.0	11	50.0
Children's Ages-Testifying Younger	6	25.0	10	58.8	5	50.0	7	31.8
Use of Oath								
Younger children taking oath	-	-	1	5.9	-	-	-	-
Promise to tell the truth	4	16.7	6	35.3	-	-	-	-
Children's Ages Who Are Sworn								
Younger	-	-	5	29.4	-	-	2	9.1
Older	-	-	-	-	1	10.0	-	-
Weighting Sworn v. Unsworn Evidence								
More weight to unsworn	-	-	3	17.7	1	10.0	-	-
More credibility - child	-	-	-	-	-	-	1	4.6
Rules on Hearsay Use								
More hearsay allowed	2	8.3	2	11.8	1	10.0	-	-
Relax who can give evidence	-	-	-	-	-	-	1	4.6

[1] Data Source: Key Informant Survey
Unit of Analysis: Respondent

Table 5.2 (continued)

Changes	Police (n=24)		Crown (n=17)		Defence (n=10)		Judges (n=22)	
	n	%	n	%	n	%	n	%
Out of Court Statements Used More Allowed	1	4.2	1	5.9	1	10.0	1	4.6
Corroboration Requirements None Required	9	37.5	5	29.4	2	20.0	6	27.3
Expert Witnesses Used More Often	1	4.2	4	23.5	4	40.0	3	13.6
Guilty Plea Proportion-Prior to Preliminary Increased	5	20.8	4	23.5	-	-	-	-
Guilty Plea Proportion-After Preliminary Increased	3	12.5	3	17.7	-	-	1	4.6
Conviction Proportion								
Increased	1	4.2	5	29.4	2	20.0	2	9.1
Decreased	-	-	-	-	1	10.0	-	-
Sentencing								
Lesser sentences	1	4.2	-	-	-	-	-	-
Harsher sentences	6	25.0	8	47.1	5	50.0	6	27.3
Other	1	4.2	-	-	-	-	-	-
Judges Dealing With Child Witnesses								
Better Understanding	5	20.8	7	41.2	4	40.0	6	27.3
Skeptical/Poor Understanding	1	4.2	-	-	-	-	-	-
Appeals								
Decreased	-	-	1	5.9	-	-	-	-
Increased	-	-	-	-	1	10.0	-	-
Total Possible Respondents	24		17		10		22	

introduction of Bill C-15; 27.3 percent of judges and 20.8 percent of police reported this to be the case.

5.3.1 Summary: Perceived Changes Related to Bill C-15

- There was some agreement among police, crown prosecutors, defence counsel and judges that since the introduction of Bill C-15, the number of child sexual abuse cases had increased, the number of children giving evidence had increased, the average age of child victims/witnesses called to testify had decreased, there was lessened requirement for corroboration of evidence given by child victims, there was greater use of expert witnesses, sentences given to offenders were more harsh, and judges had a better understanding of how to deal more appropriately with child victims/ witnesses.

5.4 Impact Of Testifying On The Child

Table 5.3 contains the responses to the open-ended question: "In your experience, what is the overall impact of the justice system on children who are required to testify in sexual assault cases?" More than half the police (58.3 percent) and crown prosecutors (52.9 percent) felt that giving testimony in court was a traumatic and cruel experience for the children; 40.0 percent of defence counsel and 18.2 percent of the judges felt this way. Unexpectedly, there was a small percentage of police (12.5 percent), crown prosecutors (5.9 percent) and judges (13.6 percent), who felt that the ordeal was a positive experience for the children, and a small proportion of crown prosecutors (5.9 percent), defence counsel (10.0 percent), and judges (4.6 percent), who felt that the experience of testifying had minimal impact on child victims/witnesses. Those in the former group point to a sense of accomplishment (particularly if the accused is convicted), and support of the court gained by the victims.

5.4.1 Summary: Impact of Testifying on the Child

- There was general agreement among professionals that the court experience was traumatic and cruel for child victims/witnesses, although there was a small group of police, crown prosecutors and judges who perceived the experience as a positive one in that it provided an opportunity for a sense of accomplishment on the part of the victim.

Table 5.3 Impact of Testifying on Child Witness by Professionals, December 31, 1988 - January 31, 1990, Regina and Saskatoon[1]

Impact	Police (n=24)		Crown (n=17)		Defence (n=10)		Judges (n=22)	
	n	%	n	%	n	%	n	%
Traumatic	14	58.3	9	52.9	4	40.0	4	18.2
Positive Effect	3	12.5	1	5.9	-	-	3	13.6
Does Not Understand Technicalities	1	4.2	2	11.8	-	-	-	-
Depends On How Child Was Treated By Those Involved	3	12.5	3	17.7	1	10.0	3	13.6
Minimal Impact	-	-	1	5.9	1	10.0	1	4.6
Don't Know	-	-	-	-	4	40.0	3	13.6
Total Possible Respondents	24		17		10		22	

[1] Data Source: Key Informant Survey
Unit of Analysis: Respondent

5.5 Effect of Bill C-15 on the Professionals

Effect on the Job

Almost one third of the police (29.2 percent), one fifth of the judges (22.7 percent) and defence counsel (20 percent), and slightly less than half (41.1 percent) of the crown prosecutors felt that the workload had increased since the introduction of Bill C-15 (Table 5.4). One third of the crown prosecutors (35.3 percent) noted that cases were easier to prosecute, while almost two thirds of defence council (60 percent) reported that cases were more difficult to prepare in defence as a result of Bill C-15. More than half (58.8 percent) of crown prosecutors reported that there was only limited access to screens.

Policies and Protocols

More than half the police (75 percent) and crown prosecutors (53 percent) reported that special protocols relating to Bill C-15 had been developed for professionals (Table 5.5).

Special Training

Less than one third of the professional groups -- the police (21 percent), crown prosecutors (24 percent), defence counsel (20 percent), or judges (32 percent) -- reported that special training relating to Bill C-15 was available, and, for most groups, less than one quarter of them received training in this regard: police (20.8 percent), crown prosecutors (11.8 percent), judges (27.3 percent) (Table 5.6).

For most of the professional groups, less than one quarter reported that special training relating to child sexual abuse was available: police (17 percent), crown prosecutors (12 percent), defence counsel (10 percent), judges (27 percent) (Table 5.7). And less than 15 percent reported having received training in this respect.

5.5.1 Summary: Effect of Bill C-15 on the Professionals

- Less than half of the police and crown prosecutors, and less than one quarter of the defence counsel and judges, said that there was increased workload as a result of bringing in Bill C-15.

Table 5.4 Perceived Effects on the Job by Professionals, December 31, 1988 - January 31, 1990, Regina and Saskatoon[1]

Effect	Police		Crown		Defence		Judges	
	n	%	n	%	n	%	n	%
Increased Workload	7	29.2	7	41.1	2	20.0	5	22.7
More Cases Going To Court	-	-	-	-	-	-	-	-
No Difference	-	-	-	-	1	10.0	4	18.2
Not Sure/Unknown	2	8.3	-	-	-	-	-	-
Investigate Differently For Court Purposes	5	20.1	-	-	-	-	-	-
Trials Longer/More Complicated	-	-	-	-	-	-	1	4.6
Easier/Charges More General	2	8.3	-	-	-	-	-	-
Easier For Child To Testify	1	4.2	2	11.8	-	-	-	-
Easier to Prosecute Cases	-	-	6	35.3	-	-	-	-
Limited Access To Screens	-	-	10	58.8	-	-	-	-
More Difficult To Prepare Defence	-	-	-	-	6	60.0	-	-
Total Possible Respondents	24		17		10		22	

[1] Data Source: Key Informant Survey
Unit of Analysis: Respondent

Table 5.5 Special Policies and Protocols Specific to Bill C-15 that Have Been Developed at the Workplace for Professionals, December 31, 1988 - January 31, 1990, Regina and Saskatoon[1]

Policy	Police		Crown		Defence		Judges	
	n	%	n	%	n	%	n	%
YES	18	75.0	9	52.9	-	-	2	9.1
NO	6	25.0	8	47.1	10	100.0	20	90.9
TOTAL	24	100.0	17	100.0	10	100.0	22	100.0

[1] Data Source: Key Informant Survey
Unit of Analysis: Respondent

Table 5.6 Special Training Available and Received Regarding Bill C-15 by Professionals, December 31, 1988 - January 31, 1990, Regina and Saskatoon[1]

Training Re: Bill C-15	Police		Crown		Defence		Judges	
	n	%	n	%	n	%	n	%
Bill C-15 Training Available								
YES	5	20.8	4	23.5	2	20.0	7	31.8
NO	19	79.2	13	76.5	8	80.0	15	68.2
Bill C-15 Training Received								
YES	5	20.8	2	11.8	-	-	6	27.3
NO	19	79.2	15	88.2	-	-	16	72.7
TOTAL	24	100.0	17	100.0	10	100.0	22	100.0

[1] Data Source: Key Informant Survey
Unit of Analysis: Respondent

Table 5.7 Special Training Available and Received for Dealing with Child Sexual Abuse Cases in General, by Professionals, December 31, 1988 - January 31, 1990, Regina and Saskatoon[1]

Training Re: Child Sexual Abuse	Police		Crown		Defence		Judges	
	n	%	n	%	n	%	n	%
General Training Available								
YES	4	16.7	2	11.8	1	10.0	6	27.3
NO	20	83.3	15	88.2	9	90.0	16	72.7
General Training Received								
YES	3	12.5	2	11.8	-	-	3	13.6
NO	21	87.5	15	88.2	-	-	19	86.4
TOTAL	24	100.0	17	100.0	10	100.0	22	100.0

[1] Data Source: Key Informant Survey
Unit of Analysis: Respondent

- Crown prosecutors (35.3 percent) noted that sexual abuse cases were easier to prosecute, while defence counsel (60 percent) said that it was more difficult to prepare a defence for a case.

- Crown prosecutors raised the point of limited access to screens in 58.8 percent of the cases. This would seem to be easily rectified.

- The greatest use of special policies and protocols regarding child sexual abuse was by the police (75 percent), and crown prosecutors (52.9 percent).

- Special training regarding Bill C-15 was available to and taken by less than one third of all of the professional groups. With the exception of training regarding child sexual abuse for judges (27.3 percent), that available to and received by all of the groups was less than 15 percent. There is a need to make more training available in this respect to the professionals who must deal with child sexual abuse.

5.6 Media Reaction to Bill C-15

A review of the media's reaction to Bill C-15 from January 1, 1988, to December 30, 1990, yielded 99 articles from the Saskatoon Star-Phoenix.[1] The majority of the articles (69.7 percent) reported on local cases of sexual abuse as they progressed through the judicial system; 5 percent of the articles discussed specific issues relating to Bill C-15, while 21 percent discussed the social problem of sexual abuse. Of the latter articles, 3 percent dealt specifically with native issues. Four other articles dealt with national cases of sexual abuse. There were five articles dealing with Bill C-15: a 12-year-old victim giving evidence without taking an oath, a Saskatoon defence lawyer questioning the value of child testimony, the province receiving $100,000 to develop and test courtroom procedures for child testimony in sexual abuse cases, a debate on the use of videotape in the courtroom, and a description of the videotaping facilities at the Saskatoon police station (i.e., the soft room).

5.6.1 Summary: Media Reaction to Bill C-15

- Bill C-15 has been given very little exposure by the local newspaper in Saskatoon in the past three years.

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[1] No computerized database was available for search of the Regina Leader Post. Other major national publications were reviewed in the Alberta report (Hornick et al., 1992).

6.0 CONCLUSIONS

There were two general purposes to this study:

- To examine the nature of the child victim/witness experience in the criminal justice system since the proclamation of Bill C-15.

- To identify the degree to which the goals and objectives of Bill C-15 have been achieved.

Following are conclusions regarding the study purposes. Conclusions are based on the findings presented in chapters 3.0, 4.0, and 5.0 of this report.

6.1 The Nature of the Child Victim/Witness Experience in the Criminal Justice System

Protocols

There is a difference in the way the Saskatoon and Regina police departments record reported incidents of suspected child sexual abuse when the initial investigation is concluded and no charge is laid. In Regina, such a case is classified as "other", with no reference to sexual abuse, while in Saskatoon this type of case is classified as "unfounded" or "cleared otherwise" under the category of sexual abuse. As a consequence, there were differences between Regina and Saskatoon in reporting, unfounded and clearance rates of cases. Regina had lower levels of reporting, but higher levels of unfounded and clearance rates compared with Saskatoon.

Processing of Cases

Of 1101 occurrences reported to the police in Saskatoon and Regina, 1014 were substantiated; of these, 520 were charged, some with more than one charge, leading to 796 charges. The majority of these went to trial (46.9 percent), with a significant proportion going to preliminary inquiry (35.9 percent), and a smaller proportion pleading guilty (17.1 percent).

- The reported rates of child sexual abuse in Saskatoon and Regina were 65, 114 and 124 cases per 100,000 population for the years 1988, 1989 and 1990, respectively. These rates are comparable with those in Edmonton (119, 111 and 114 cases per 100,000 for 1988, 1989 and 1990, respectively), although higher than those in Calgary (88, 89 and 90 cases per 100,000 for 1988, 1989 and 1990, respectively).

- The cases unfounded rate was 8.2 percent, which is comparable with that for Calgary (8 percent), and Edmonton (7 percent).

- The cleared rate was 51.3 percent. This is higher than that for Calgary (44 percent) and considerably higher than that for Edmonton (25 percent).

- The overall conviction rate was 82.8 percent, which is higher than that for Calgary (74 percent) and significantly higher than that for Edmonton (59 percent). This would seem to be owing to the high proportion of guilty pleas and convictions in Saskatoon and Regina. Youth Provincial Court obtained the highest proportion of convictions, while Criminal Provincial Court received the highest proportion of guilty pleas.

- The two most common methods of disposition were incarceration, and incarceration with probation. The most frequent length of incarceration was 11-12 months.

- Three quarters (77.3 percent) of the victims were female.

- At the time the abuse began, two thirds (69 percent) of the victims were 11 years old or younger, with 22 percent being four years old or younger.

- Child victims most often disclosed the sexual abuse to their mothers (30.5 percent), although child welfare workers (31.2 percent) more often than mothers (21.3 percent) reported disclosures to the police.

More than half of disclosures (59.9 percent) were reported to the police within one month.

- Most of the children were victimized by one offender (85.7 percent). Males were the offender in most cases (94.9 percent).

- Most of the offenders were extrafamilial: unrelated to the victim (56.4 percent). These included strangers, friends, teachers and neighbours.

- Intrafamilial perpetrators included fathers (or stepfathers), brothers, male cousins and grandfathers.

- A small percentage of the victims were reported to have suffered physical and/or emotional injuries (12 percent).

- The majority of offenders were 18 years of age or older (71.3 percent); 7 percent were age 16-17, 19 percent were age 12-15.

- Most of the offenders were white (60 percent); one third were native Indian (33 percent).

- A majority of the offenders were single (57 percent); 24 percent were married, and 8 percent were living common-law.

- A large proportion (81 percent) of the offenders had one prior unrelated conviction.

- The vast majority of offenders did not admit guilt (80 percent).

- In almost half (45 percent) of the cases of sexual abuse, the assaults involved only one incident.

- The most common form of sexual abuse was genital fondling of the victim by the offender (45.1 percent), followed by vaginal penetration with the penis (19.5 percent), fondling of the breasts (18.7 percent) and oral sex by the victim on the offender (12.6 percent).

- Weapons, alcohol, drugs or the use of pornography were rarely factors in sexual abuse incidents.

- Physical force was used to obtain compliance in 35.8 percent of the cases; verbal force was used in 4.4 percent of the cases; and no force was used in 55.9 percent of the cases.

- The first incident most often took place in the home of the offender (25.2 percent), or the home of the victim (23.5 percent).

- Investigative videotapes of the victim were made by the police in one third (33.9 percent) of the cases. Videotapes included disclosure by the victim in 86 percent of the cases and identified the offender in 81 percent of the cases. Little recorded use of the videotapes was made.

6.2 Impact of Bill C-15

The conclusions below relate to the impact of selected sections of Bill C-15.

Section 150.1: Consent No Defence

Both consent and mistaken age (section 150.1) are being raised as issues by defence counsel during preliminary inquiry and trial. Consent was invoked as a defence during preliminary inquiry in 15.2 percent (16 of 105) of the cases, and during cross-examination at trial in 17 percent (six of 35) of the cases. Relatively small numbers are involved here, particularly with regard to trial, so that caution must be exercised in their interpretation. Mistaken age was raised by defence counsel during preliminary inquiry in 4.8 percent of the cases (five of 105).

Subsection 150.1(2): Consent and Age Difference

Relatively few cases were relevant to section 150.1(2): 14 of 1101, or 1.3 percent. Of the 14 cases meeting the age difference criteria for the use of consent as a defence, three were charged and 11 cleared otherwise. No disposition information was available on these cases.

Section 151: Sexual Interference

The number of charges laid under section 151 (sexual interference) is increasing. Indeed, the number of charges laid under this section is about equal to the number laid under section 271 (sexual assault). The scope of sexual behaviour covered by this section has broadened, ranging from sexual intercourse through fondling, masturbating, anal intercourse, oral sex, to forced prostitution, with genital and chest fondling as the most frequent behaviours charged.

The conviction rate for charges under section 151 was high (88.5 percent) in Saskatoon and Regina. This is higher than those reported for Edmonton (62 percent) and Calgary (52 percent) (Hornick et al., 1992). This would seem to be owing primarily to a higher proportion of convictions, and a lower ratio of acquittals/discharges in Saskatoon and Regina, compared with Edmonton and Calgary. There also was a relatively high degree of guilty pleas in Saskatoon and Regina, which would increase the conviction rate, but more importantly, obviate the need for children to testify.

Section 152: Sexual Invitation

Compared with those laid under section 151 (invitation to sexual touching), relatively few charges were laid under section 152 during the period 1988 to 1990. However, as with section 151, a fairly wide range of sexual conduct was included, involving invitation to sexual touching, inappropriate kissing, genital fondling, and the victim performing oral sex on the offender, with genital fondling as the most frequently reported behaviour.

The conviction rate for charges under section 152 was 62.5 percent, lower than those reported in Edmonton (84.6 percent) and Calgary (100 percent). Again, the proportion of convictions and guilty pleas was relatively high for Saskatoon and Regina, compared with Edmonton and Calgary. Small numbers were involved in Saskatoon and Regina (n=10), as they were in Calgary (n=10), and Edmonton (n=20), so that results must be interpreted with caution.

Section 153: Sexual Exploitation

A small number of charges were also laid under section 153 (sexual exploitation), although these too covered a range of sexual conduct, including invitation, showing pornography, fondling, and oral sex, with genital and chest fondling as the most frequently reported behaviour.

The conviction rate for charges under this section was 100 percent. Again, results are owing to a high proportion of convictions and guilty pleas in Saskatoon and Regina. These results are based on only five completed cases, however, and must be interpreted with extreme caution. By comparison, Calgary had a zero percent conviction rate for charges under this section (15 completed cases), while Edmonton reported a 50 percent conviction rate (four completed cases).

Section 155: Incest; Section 159: Anal Intercourse; Section 160: Bestiality; Section 170: Parent/Guardian Procuring; Section 171: Householder Permitting Sexual Activity; Section 172: Corrupting Children

An insufficient number of charges was available under these sections to provide any significant conclusions.

Subsection 173(2): Exposure to Children Under 14 Years of Age

Increasing use was made of section 173(2) (indecent exposure to a child under 14 years); although no charges were laid in 1988, two were laid in 1989 and 12 were laid in 1990. Insufficient data were available to reliably determine a

conviction rate. "Exposure" was the sexual behaviour associated with charges under this subsection.

Subsection 212(2) and 212(4): Living off the Avails and Obtaining for Sexual Purpose Persons Under 18 Years Old

Little use was made of section 212(2) (living on the avails of a prostitute under 18 years), or section 212(4) (obtaining a person under 18 years for sexual purpose). No charges were laid in 1988 and 1990, while seven charges were laid under these sections in 1989. This may be because of difficulties in police enforcement of these sections, requiring prostitutes to testify against their pimps under section 212(2), for example, and for the "john to be caught in the act" in the case of section 212(4). No disposition data were available on these charges.

Section 271: Sexual Assault

The use of section 271 (sexual assault) declined dramatically as the use of section 151 (sexual interference) increased from 1989 to 1990; there were twice the number of charges laid under section 271 as under section 151 in 1989, whereas in 1990 this ratio was almost exactly reversed. This suggests that section 151 (and perhaps to some extent section 153, whose use is also increasing) is being effectively used to deal with cases of child sexual assault in Saskatoon and Regina.

Section 274: Corroboration not Required

Contrary to the intent of section 274, there is a suggestion that corroboration of the victim's testimony is important in the decision to commit the accused to trial. During preliminary inquiry, judges commented on the lack of corroboration as a factor in the decision to discharge in a high proportion of cases. Moreover, multivariate analyses of predictors of clearance by charge from police file data showed that, for female victims, the presence of witnesses was a significant variable in this regard. Similarly, questionnaire data obtained from crown prosecutors showed that they felt that corroboration was an important determiner of whether or not charges would be dismissed. Questionnaire data from police, judges and defence counsel, however, provided contrary information: they felt that there was less of a requirement for corroboration of child victim/witness testimony following Bill C-15. In total, results suggest that corroboration of victim testimony is important in decisions to commit to trial or convict at trial.

Section 275: Recent Complaint Abrogated

Data show that 14.1 percent of the cases in Regina and Saskatoon were relevant to section 275 (recent complaint abrogated); that is, charges were laid one year or more after disclosure to the police. This is considerably higher than such cases in Edmonton (2 percent), and Calgary (6 percent) (Hornick et al., 1992).

The conviction rate for these cases was 76.9 percent in Saskatoon and Regina, which is slightly higher than that in Calgary (60 percent). No similar information was available for Edmonton. This section therefore would seem to be operative.

Section 276(1): Past Sexual Activities

Issues of past sexual conduct (section 276(1)) were raised at both preliminary inquiry and trial in only a small proportion of cases: defence raised the matter of past sexual conduct of the victim in 8.6 percent of the cases during preliminary inquiry, and in 11.4 percent of the cases during cross-examination at trial. This section would seem to be functioning as intended.

Section 277: Reputation Evidence

Reputation evidence (section 277) also was raised at preliminary inquiry and trial in only a small proportion of cases: the issue of reputation of the victim was raised by defence during preliminary hearing in 2.9 percent of the cases, while it was raised during trial in 8.6 percent of the cases. This section also seems to have had the intended effect.

Subsection 486(2.1): Testimony Outside the Courtroom

Pursuant to subsection 486(2.1), child victims/witnesses testified from behind a screen using closed circuit television in the courtroom in five of 21 cases (24 percent) observed in Saskatoon. The combination of screen and closed-circuit TV in the courtroom is an innovative procedure developed during a demonstration study (Ell, 1990) and is now available throughout Saskatchewan. It involves placing a solid screen to block the witness's view of the accused in the courtroom. A video camera is then set up to focus on the witness in the witness box, with a monitor placed directly in front of the accused. This configuration allows for direct contact and communication with the child by the judge, defence counsel and crown prosecutor, and viewing of the proceedings by the accused.

Subsection 486(3): Order Restricting Publication

Section 486(3) (publication ban) was extensively utilized, limiting publication of evidence and identity of the victim. During trial, a request for a ban on publication of identity of the victim was made in 26 of 33 cases (78.8 percent). The judge granted the ban in 24 cases (92.3 percent). During preliminary inquiry, a ban on the publication of the identity of the victim was requested and ordered in 84 of 105 cases (80.0 percent). And a request for a ban on the publication of evidence was granted in 100 percent of the cases.

Section 715.1: Videotaped Evidence

Relevant to section 715.1, videotapes were made during the investigative stage in 34 percent of the cases. The videotapes included disclosure in 86 percent of the cases. It appears that limited use was made of the videotapes in a court setting: less than 10 cases were involved. Videotapes are reported to have helped the police lay charges, to understand the child and his or her family, and to prepare the child for court appearance. However, very few videotapes were used in evidence: in 10 cases during preliminary inquiry.

Subsection 16(3) Canada Evidence Act: Oath

There is no direct evidence of the numbers of child victims/witnesses that are being sworn, or testifying under the promise to tell the truth. There is evidence, however, that they were questioned during preliminary inquiry and trial about their competence to give evidence, their understanding of the nature of the oath, and their ability to communicate under the promise to tell the truth. Judges questioned child victims/witnesses about their competence to give evidence in 60 percent of the cases during preliminary inquiry, and in 65.7 percent during trial. Questions were asked about their understanding of the meaning of the oath, their religious training, their age, and their previous experience with the justice system. Defence challenged the competence of child victims/witnesses in a very small number of cases: two each at preliminary inquiry and at trial. Judges overruled defence objections in 46 percent of the cases.

Pursuant to section 16(3) of the Canada Evidence Act, it appears that young children are being sworn and permitted to give evidence under promise to tell the truth.

Perceived Impact of Bill C-15 by Professionals

Perceptions of the impact of Bill C-15 were obtained through questionnaires from police (n=24), crown prosecutors (n=17), defence counsel

(n=11), and judges (n=21). In view of the small numbers of respondents, it is difficult to generalize the findings. However, a few summary comments can be offered. There appear to be few substantive problems with Bill C-15. There are requests for, and judges are allowing, evidentiary procedures such as the child witness turning away from the accused while testifying; supporting adults in the courtroom; adults accompanying the child to the witness stand and holding him or her on their knee during testimony; the use of props, toys in the courtroom; the use of screens, microphones, closed-circuit TV. There is general agreement that the court experience is traumatic for the child victim/witness, that there are increased numbers of child sexual abuse cases, that younger children are testifying, and that corroboration is no longer important. Finally, there appears to be a need for more training relating to Bill C-15 for professionals.

GLOSSARY

Clearance

Clearance of cases refers to handling a case by laying a charge (for substantiated cases only).

Clearance Rate

Clearance rate is the proportion of substantiated cases that are charged. Those not charged may be still under investigation, or concluded and not charged.

Conviction Rate

Conviction rate is the proportion of charges resulting in a guilty plea or conviction to the total number of charges, including guilty pleas, convictions, acquittals and discharges.

Occurrences

An occurrence is a report to the police of an incident of suspected sexual abuse.

Reporting Rate

The reporting rate is the total number of occurrences (both founded and unfounded) reported to police per 100,000 population.

Unfounded Incidents

An unfounded incident is a report that is not believed to be true by the investigating officers.

Unfounded Rate

The unfounded rate is the proportion of cases not believed to be true to those thought to be true.

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