Department of Justice Canada
Research Section

Ministère de la Justice Canada
Section de la recherche

IS BILL C-15 WORKING?

AN OVERVIEW OF THE RESEARCH ON THE EFFECTS OF THE 1988 CHILD SEXUAL ABUSE AMENDMENTS

Canada

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Preface

This report summarizes a number of studies on child sexual abuse that were undertaken under the direction of the Department of Justice Canada. Their purpose is to provide an accurate and impartial description of how the criminal justice system and, to some extent, the social services system deal with child sexual abuse. The nature of scientific and legal research requires that the accounts stress numbers, rates and procedures. But behind the dispassionate presentation of data and words is the unhappy reality of children's lives that have been sadly marked by the experience of sexual abuse.

We must all take responsibility for ensuring that the criminal justice system serves these children well and that the experience of being part of a police investigation and the court process is at the least neutral, and at best a positive encounter on the path from being a victim to living in peace as a survivor.

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Introduction

In response to widespread concern about protecting Canadian children from sexual abuse and exploitation, the federal government[1] established the Committee on Sexual Offences Against Children and Youth in 1981. The Badgley Committee, as it came to be known, investigated the incidence and prevalence of sexual offences against children and youths. During its three-year mandate, it conducted extensive research, listened to witnesses from across the country and read hundreds of letters and briefs.

In its report in 1984, the Committee made 52 recommendations for social and legal reforms directed at changing what it termed "an intolerable situation ... which must not be allowed to continue."[2] The report also stated:

> *Child sexual abuse is a largely hidden yet pervasive tragedy that has damaged the lives of tens of thousands of Canadian children and youths. For most of them, their needs remain unexpressed and unmet . .*[3]

Following on the Committee's work, the Minister of Health and Welfare Canada was given the lead role to coordinate federal government efforts; to work effectively with the provinces and territories (which have primary responsibility for service delivery in the areas of health, social services and criminal justice); to promote public and professional awareness and education; and to support research and demonstration projects.[4]

In 1987, the Minister appointed the Special Advisor on Child Sexual Abuse to assist him with these tasks. The Special Advisor presented his report, "Reaching

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1 The Minister of Justice and Attorney General of Canada and the Minister of Health and Welfare Canada established the Committee. Robin F. Badgley was the chairman.

2 Report of the Committee on Sexual Offences Against Children and Youth, Sexual Offences Against Children, Volume 1, 1984, Supply and Services Canada, Ottawa, p. 29.

3 ibid.

4 Guide to the Federal Government's Response to the Reports on Sexual Abuse of Children, Pornography and Prostitution, Government of Canada, Ottawa, June 1986, p. 18.

for Solutions", in June 1990.[5] As a result of one of its recommendations, there is now a permanent Children's Bureau at Health and Welfare Canada.

The Department of Justice Canada is responsible for matters relating to the criminal law and its application. In 1986, the Minister of Justice introduced Bill C-15, a proposal to amend the Criminal Code and the Canada Evidence Act.[6] The Bill created three new offences relating to the sexual abuse of children: sexual interference, sexual exploitation, and invitation to sexual touching. It also changed rules of evidence and procedure with respect to sexual offences and the testimony of young people under the age of 18.

The proposed law had four main goals:

- To provide better protection to child sexual abuse victims and witnesses
- To increase the successful prosecution of child sexual abuse cases
- To improve the experience of child victims and witnesses
- To bring sentencing in line with the severity of the offence[7]

As the legislative amendments were proceeding through Parliament, the federal government was also developing a number of other programs and activities designed to address the problem of child sexual abuse. The strategies sought to emphasize the social dimensions of the problem.

As well, for the last 10 years, the Department of Justice Canada has been conducting research on a number of matters relating to crime and its victims.

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5 The Report of Special Advisor, Reaching for Solutions, National Clearinghouse on Family Violence, Ministry of Supply and Services, 1990.

6 The Minister of Justice and Attorney General of Canada introduced the measures in Parliament on June 10, 1986. Bill C-15 was tabled on October 15, 1986.

7 Hornick, J. and F. Bolitho, A Review of the Implementation of the Child Sexual Abuse Legislation in Selected Sites, Department of Justice Canada, 1992, p. 8. See also: Government Introduces Measures Against Sexual Abuse of Children, Government of Canada News Release, Ottawa, June 10, 1986.

After the proclamation of the child sexual abuse amendments on January 1, 1988, several research studies relating to child sexual abuse were undertaken in order to provide the government with information vital to the review of the law required by the child sexual abuse legislation. The findings of these research studies are the basis for this report.

Chapter One -

The implementation of Bill C-15

While the provinces and territories are responsible for the administration of justice, the federal government is responsible for the criminal law and for matters concerning the health and welfare of all Canadians. As part of the federal government's program to respond to the problem of child sexual abuse, Health and Welfare Canada funded almost 300 projects across the country which sought to prevent child sexual abuse from occurring, to assist children and adults who have been sexually abused, to treat offenders, and to train medical practitioners, social workers and others. The initial focus was on education and skill development for service providers.

When the child sexual abuse amendments to the Criminal Code and the Canada Evidence Act (Bill C-15) came into force on January 1, 1988, the Department of Justice Canada had already begun its efforts to assist with the implementation of the legislation. By working with provincial and territorial governments, police forces, lawyers' associations, social service agencies, victims' organizations and public legal education associations, among others, the Department hoped to inform people about the new law and to support its full application.

The Department supported the implementation of the legislation with five main types of activities.

Legal information for legal professionals: Departmental representatives provided legal information about the legislative amendments in response to requests from provincial and territorial government officials, lawyers and interest groups. Departmental lawyers prepared a manual on the new legislation and distributed it to all provincial and territorial ministries of the Attorney General. They also

spoke at several conferences to various audiences, including judges, defence lawyers, chiefs of police and crown attorneys.

Project funds: Special funds were available for projects that supported the implementation of Bill C-15. Project proposals were received from across the country, from provincial governments, nonprofit agencies and community organizations, among others. Most of those funded were for innovative projects or training and public legal education and information activities.

Some projects were linked to the Department's research activities, providing funding so that a pilot project could be run and evaluated. (See Appendix 3 for a complete list of funded projects.)

Legal information for the public: The Department developed a wide range of information materials on the new law for distribution across the country. The materials included a storybook for children (*The Secret of the Silver Horse*), a pamphlet for teenagers and adults (*What to do if a child tells you of sexual abuse . . . Understanding the Law*) and a guide to the law for social workers and others (*Canada's Law on Child Sexual Abuse: A Handbook*). More than four million copies of these materials have been distributed. The Department also supported the production of magazine articles and radio and television shows about child sexual abuse.

Under the Access to Legal Information Fund, the Department provides core funding to nonprofit public legal education and information (PLEI) associations in each province and territory. These associations organize law information activities and develop materials for their local audiences. On child sexual abuse matters, the PLEI organizations held information sessions, undertook various projects, and distributed the Department's law information publications. (Appendix 4 lists the Department's information projects that supported the implementation of the new legislation.)

Communications: The Department undertook a communications campaign to alert media and the public to the changes brought about by the new legislation. Activities included preparing a detailed media package on the law when it was introduced in Parliament, arranging information sessions with journalists, and answering requests from the media and the public for information.

Research: An assessment of the impact of the legislation was a key element of the Bill C-15 implementation strategy. Researchers studied the effect of the new law on the processing of child sexual abuse cases by the criminal justice system. At the study sites, the research and evaluation work gave service providers information that could immediately be put to use. With the publication of the research reports, the information can be used more widely to determine the impact of the new law and the need for further action.

All these federal efforts to assist with the implementation of Bill C-15 cannot be viewed in isolation. Across the country, conferences, training sessions and information meetings were organized by provincial and territorial government departments,[1] social service agencies, police trainers, nongovernmental organizations, advocacy groups and others.

The media closely covered the passage of the legislation through Parliament. There was a generally positive response when the law came into effect, although some negative comments were made about the perceived lack of a clear definition of child sexual abuse and the provisions for videotaping of evidence. Some reports suggested that innocent people might be found guilty of a crime because of the new evidentiary rule allowing a young person to testify upon promising to tell the truth.[2]

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1 There were no special budget allocations to provide the provincial and territorial governments with funds for the implementation of Bill C-15.

2 Monthly Media Review, January 1988. Communication and Public Affairs Directorate, Corporate Management Branch, Department of Justice Canada.

The media have continued to report on new disclosures of child sexual abuse[3] and to follow cases of local or national interest.

Although judges can begin to apply a new law as soon as it is brought into force, it takes longer for the full impact of the changes to be felt and for new criminal justice and social services system procedures to be put in place. The research studies shed some light on the success of the strategies to bring Bill C-15 into full effect.

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3 No detailed analysis of media coverage of child sexual abuse matters has been undertaken by the Department, but the media have reported extensively on child sexual abuse issues.

Chapter Two -

The scope of the research

Trying to get a clear picture of the effect of the child sexual abuse legislation is an extremely difficult task.[1]

The problems in assessing the impact of the law fall into two principal categories. To begin with, the law does not operate in a vacuum. Many factors influence its application. These factors include:

- the changes in public awareness that accompanied the debate about the proposed child sexual abuse amendments;
- the influence of public statements by community leaders speaking out against the sexual abuse of children;
- the impact of the efforts of community groups advocating different police, medical and social service responses to child sexual abuse situations;
- the effect of teaching children in school that they can say "No" to sexual touching;
- the availability of new support services in the community;
- the response to media news stories about sexual abuse; and
- the reaction to movies and other dramatizations of the situation of people coming to terms with an abuse experience.

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1 See, for example, Hornick, J.P., and C. Giliberti, "Evaluation of Child Sexual Abuse Legislation: Research Issues and Strategies", a paper prepared for New Family Structures and Family Law, Conference of Family Law Section, Canadian Association of Law Teachers, April 13 - 16, 1989, Quebec City.

Clearly, all these things make a difference. The challenge is how to distinguish the operation of the law from these other factors so that some assessment of the law itself can be made.

In the past, lawyers have assessed the effect of a law by looking at how judges have interpreted and applied it in cases coming before them. A case law review provides insights into the kinds of arguments raised by lawyers and the decisions made by judges, but it cannot answer broader questions about the impact of the law. To do this, researchers have to apply social science methodology to examine changes in the legal process.

Undertaking socio-legal research to assess the effect of legislation is new. The second category of problems facing research into the effectiveness of a law is the unprecedented nature of the work. The scientific literature does not offer models to apply[2] and there are no established methods for going about the task. Researchers are in uncharted territory.

In undertaking research on the effect of Bill C-15, the Department of Justice Canada looked to some of the methods used in traditional program evaluation for guidance. In program evaluation research, the researcher establishes the intent of the program (the law), and then you conduct research to identify the program's (the law's) intended and unintended effects.

Thus, the first challenge the Department's researchers faced was to identify the law's objectives. What did Parliament intend the law to do? Researchers looked to records of the debates in Parliament, recorded in Hansard, for the answer.[3] They then developed measurement criteria and methodologies to test whether these objectives had been met. Decisions had to be made on what to study and how to study it.

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2 Ibid., p. 4.

3 The Introduction to this report lists the four main objectives identified for research purposes.

All research is limited by the resources available for it and the time frame in which it must be completed. Research into Bill C-15 was no exception. The Department had to complete the research within four years, with limited resources.

The cooperation and commitment of provincial and territorial governments and their ministries and agencies were essential to ensure that information about the application of the law could be gathered at its source.

Unique ethical issues presented another challenge to researchers. Bill C-15 crimes are crimes committed against children. Researchers had to ask parents or guardians for consent to interview children. When possible, they asked the children for consent as well. Great care had to be taken to make sure that the research process did not victimize the child again. As well, the identity of the child had to be protected.

Confidentiality requirements presented other problems too. In some jurisdictions, certain files are strictly confidential and not available for research analysis. For example, all files concerning young offenders are sealed. This limited the type of information that was available for study.

There were also many methodological issues to resolve. First, there is a general lack of information about how the criminal justice system handled child sexual abuse situations *before* Bill C-15 was passed. This makes it difficult to measure the changes brought about by the law, because there are no data to compare the current situation with the situation prior to the changes.

Second, even where data about the application of the law before Bill C-15 are available, comparisons are still difficult. The new law created new offences that are different in scope and cannot be compared with the offences before 1988.

Third, across the country, police and social services are run by band, municipal, provincial and territorial governments. Each operates differently, with different

structures, different priorities, different budgets and different record-keeping practices. For this reason, it is impossible to generalize, to use findings in one place to draw conclusions about the situation in another.

Fourth, every province and territory has its own provincial or territorial laws concerning the safety and protection of children. These laws generally require social service agencies to take action if they believe that a child is in need of protection. There are significant differences in the ways that social service agencies in different parts of the country and in different parts of a province or territory will respond in cases of suspected sexual abuse that come to their attention first. While police in some jurisdictions will be called in immediately, in other jurisdictions police may be called in only if the abuse was perpetrated by a stranger or someone outside the family. In some other jurisdictions, police must immediately contact the social service agency if a case involving intrafamilial sexual abuse comes to their attention.

Often, both the police and social services are working on a case collaboratively. However, each organization has its own mandate, responsibilities and record-keeping systems.

For these reasons, accurately establishing the number of cases of child sexual abuse that occur, and the percentage of these cases that come into the criminal justice system (and the ambit of Bill C-15), requires a costly, case-by-case study of police and social service files in each jurisdiction.

Conscious of all these problems, the Department structured a multi-site research project to provide comparable data from three different provinces. It began with studies in Calgary, Edmonton and three rural Alberta locations. These studies became the model for similar research projects in Hamilton, Ontario, and in Regina and Saskatoon, Saskatchewan. (Appendix 1 lists all the research studies.)

The findings from these studies provide part of the picture. Information found in general research reports from Quebec and Ontario fills in more detail.

Research projects on specific elements of the new law provide an additional perspective on victim-witness support programs, on the use of videotape evidence, on the needs of people with communication difficulties, and on police perceptions of child sexual abuse cases. A case law review examines the response that the new legislation received in British Columbia courts and, to a lesser extent, in judgments from other parts of the country.

Unfortunately, national statistics on child sexual abuse and on the criminal justice system's handling of child sexual abuse cases were not available at the time of writing this report.[4] However, some statistics are becoming available from a variety of databases.[5] They will provide additional insight into the application of the new child sexual abuse offences and the offenders.[6]

The Research Studies

Anticipating the child sexual abuse amendments to the Criminal Code, the Research Section of the Department of Justice Canada began to assemble data, well before 1988, about sexual offences involving adults and children in Canada. Comprehensive information was difficult to gather, but these efforts prepared the Section for the challenge of conducting research on Bill C-15.

Here is a brief sketch of the research studies that are the basis for this report. Appendix 1 lists all the research studies.

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4 The Department commissioned a study to determine if statistical data could be compiled from available sources but representative information from every part of the country is not available at this time. Roberts, J.V., and M.G. Grossman, Child Sexual Abuse in Canada: A Survey of National Data, Technical Report, Department of Justice Canada, 1992.

5 Information is being compiled from the Revised Uniform Crime Reports Survey, the Homicide Survey, the Youth Court Survey and the Adult Criminal Court Survey. The data for these surveys are collected by the Canadian Centre for Justice Statistics, Statistics Canada.

6 This research will be available in Biesenthal, L. and J. Clement, Canadian Statistics on Child Sexual Abuse, Technical Report, Department of Justice Canada, 1992.

Site studies

A Review of the Implementation of the Child Sexual Abuse Legislation in Selected Sites

This study synthesizes the information gathered from the site studies in Edmonton and Calgary, Alberta; Regina and Saskatoon, Saskatchewan; and Hamilton, Ontario. In this report it is referred to as the "multi-site study".

Review and Monitoring of Child Sexual Abuse Cases in Selected Sites in Alberta

This study used data from the Alberta Family and Social Services files and from the Calgary and Edmonton municipal police department files. The data covered the period from January 1, 1988, to July 31, 1990. Social services handled 1949 cases during that time. The police handled 3292 cases. A sample of cases from these files was taken and studied in detail. The researchers also observed cases in court, studied court transcripts and surveyed key people in the child welfare and justice systems. In this report, this research is referred to as the "Alberta site study".

Review and Monitoring of Child Sexual Abuse Cases in Selected Sites in Rural Alberta

The researchers studied three rural communities: Bassano (population 1200), Peace River (population 6043), and the Gleichen area (population 3738). They reviewed police (RCMP) files where charges had been laid or there were court proceedings after January 1, 1988. Child welfare and police files that were active between July 31, 1989, and July 31, 1990, were also reviewed. They also observed cases in court. The overall sample size was small: 43 police files and 53 child welfare files. This study does not provide statistics; rather, it describes the characteristics of child sexual abuse cases identified in a rural area. In this report, this research is referred to as the "rural Alberta site study".

Review and Monitoring of Child Sexual Abuse Cases in Selected Sites in Saskatchewan

A total of 1101 police files from Saskatoon and Regina were reviewed for this study, covering the period from January 1, 1988, to December 31, 1990. Child welfare files were not reviewed in Saskatchewan. The researchers observed cases in court, studied court transcripts and surveyed key people in the justice system (e.g., police, crown attorneys, judges, defence lawyers). In this report, this research is referred to as the "Saskatchewan site study".

Review and Monitoring of Child Sexual Abuse Cases in Hamilton-Wentworth, Ontario

Researchers reviewed all child sexual abuse cases reported to the Catholic Children's Aid Society and the Hamilton-Wentworth Children's Aid Society for the period September 1, 1989, to August 31, 1990. They also reviewed all reports of child sexual abuse made to the Hamilton-Wentworth police during the same period. A total of 325 cases were studied. The researchers also observed some court cases and studied a few transcripts. They surveyed key people in the social services and justice systems. In this report, this research is referred to as the "Hamilton site study".

Processing of Child Sexual Abuse Cases in Selected Sites in Quebec

The researchers analyzed a sample of files from municipal police records for 1988, 1989 and 1990 in Montréal and Québec City. In all, 257 cases involving child sexual abuse were studied. As well, during the winter of 1992, the researchers interviewed 68 people working in the criminal justice and social services systems in Montréal, Québec City and Baie-Comeau / Sept-Îles. They also reviewed documents (policies, protocols, forms) provided by the people they interviewed. In this report, this research is referred to as the "Quebec study".

Case law review

The Prosecution of Sexual Offences Against Children and Bill C-15: A Case Law Research Project

The lawyers and researchers collected, analyzed and interpreted reported and unreported case law related to Bill C-15. The focus was on British Columbia court decisions, although the team collected cases from a few contact people in all geographical areas of Canada. Over an 18-month period, approximately 400 cases of child sexual abuse and sexual assault involving children were collected. These cases are not a complete collection of court decisions on child sexual abuse offences, but do provide insight into the courts' response to the legislation. In September 1992, a computer search of child sexual abuse cases was used to update the report. In this report, this research is referred to as the "case law review".

Evaluations of pilot projects

Evaluation of the Videotaping Pilot Project in Winnipeg and Parklands (Manitoba)

Videotaping of statements by victims of child sexual abuse began in Parklands on July 11, 1986, and in Winnipeg on October 24, 1986. The study looked at the impact that making a videotape had in cases occurring up until May 31, 1988. In all, 693 cases were selected for study. A videotape had been made in 123 cases. No videotape had been made in 570 cases. Although many cases had not yet reached the trial stage when the study was concluded, it provides descriptive and comparative information on the ways in which cases are processed if a videotape has been made. In this report, this evaluation is referred to as the "videotape report".

Program Review of Child Victim-Witness Support Project (Ontario)

The Metro Toronto Special Committee on Child Abuse operates the Child Victim-Witness Support Project[7] to prepare children for the experience of giving evidence in court about their sexual abuse. The children participate in four one-and-a-half-hour group sessions, held once a week. The study reviewed cases reported to the police and to the two Metro children's aid societies between September 1987 and August 1988. It identified what happened to these cases and how many were referred to the Child Victim-Witness Support Project. The researchers also studied the impact that the Project had on children. They observed 29 children in court and interviewed 40 children, and 40 adults related to the children. In this report, this evaluation is referred to as the "Toronto child victim-witness support report".

A Review of the Victim Support Worker Program (British Columbia)

The Victim Support Worker Program provided information, services and support to child sexual abuse victims and their families or caregivers in Vancouver, British Columbia. The study reviews its activities between October 1985 and June 1987. In all, 103 cases were referred to the program, with 41 clients receiving assistance. A questionnaire was used to find out about their satisfaction with the service. In this report, this evaluation is referred to as the "Vancouver victim support worker report".

The Evaluation of Phase III of the Child Advocacy Project (Manitoba)

The Child Protection Centre of the Health Services Centre ran a three-phase child advocacy project. Phase III monitored the handling of child sexual abuse cases originating on native reserves in Manitoba. Eight cases of child sexual abuse came to the attention of the Child Protection Centre. These cases involved multiple victims or multiple perpetrators. As well, 23 other cases of suspected child sexual abuse came to researchers' attention, and 19

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7 This project received funding from the Departments of Justice Canada and Health and Welfare Canada over a three-year period.

suspected perpetrators were identified. More than 300 people, including representatives of 40 of 61 Indian bands, participated in workshops about interviewing child victims/witnesses and preparing them for court. The evaluators collected data, reviewed files and interviewed key people. In this report, this evaluation is referred to as the "Manitoba child advocacy project".

Other studies

The Impact of Bill C-15 on Persons with Communication Disabilities

The researchers examined the impact that Bill C-15 had on people who were involved in the criminal justice process as victims, witnesses or accused, and who had a communication disability. The study defines a "communication disability" to "include any impairment which affects the ability to communicate with other persons, whether that impairment is of an intellectual, emotional, physical or sensory nature". The researchers looked at the law and its implications for communication-disabled people. Late in 1991 and early in 1992, the researchers interviewed 20 people who had extensive experience in dealing with victims and witnesses with communication disabilities, to identify how the law was operating and what changes might be required to better accommodate people with communication disabilities.[8] In this report, this research is referred to as the "communication disabilities study".

Processing Child Sexual Abuse Cases: A Survey of Police Officers

Researchers added four questions to a survey sent to 106 police agencies at the federal, provincial and municipal level by the Canadian Police College. The agencies were asked to ask a police officer who handled child sexual

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8 On June 30, 1992, an amendment to subsection 486(2.1) of the Criminal Code came into effect. A judge may allow a person of any age, who is able to communicate evidence but has difficulty doing so because of a mental or physical disability, to give evidence outside the courtroom or behind a screen or other device.

abuse cases to complete the questionnaire. The questions asked police officers if certain courtroom practices had been used in cases they had worked on, and for their perceptions regarding the implementation of Bill C-15. Responses were received from 79 police officers (a 75 percent response rate) who had recent experience with some aspect of sexual abuse cases. In this report, this research is referred to as the "police officers' survey".

Child Sexual Abuse Prior to Bill C-15: A Synthesis Report

The study reviewed criminal justice system information on child sexual abuse cases from four sites: Vancouver, British Columbia; Lethbridge, Alberta; Winnipeg, Manitoba; and Hamilton-Wentworth, Ontario. The data were collected in 1984 and 1985 during research on the impact of the 1983 sexual assault provisions. They provided some information on the case referral system, police investigations, the court process, and dispositions. In this report, this research is referred to as the "pre-1988 data report".

Detecting, Processing and Treating Cases of Child Sexual Assault: An Evaluation of the Role and Impact of the Child Abuse Team in Fredericton, New Brunswick

The researchers reviewed all cases of child sexual abuse that were investigated by the Fredericton Child Abuse Team from 1984 to 1988, inclusive. The report provides detailed information on about 300 cases handled by the multidisciplinary team and reports on the challenges faced by the Fredericton Child Abuse Team in responding to child sexual abuse situations. In this report, this research is referred to as the "Fredericton study".

Implementation of Bill C-15, The Investigation and Prosecution of Child Sexual Abuse Cases in Selected Ontario Communities with Emphasis on the Implementation of Bill C-15

For 10 weeks during the summer of 1991, the researchers interviewed 193 people from the criminal justice and child welfare systems in eight Ontario

communities. In this report, this research is referred to as the "Ontario communities study".

The Nature of the Research

The various research studies reflect a variety of research methods. In some cases, a formal evaluation of a program was completed. In others, the research describes the situation in a particular jurisdiction but does not measure a program against pre-established objectives.

Much of the research includes comments and quotations from interviews with key participants: judges, crown attorneys, defence lawyers, police, social workers, witnesses, victims, and the victims' families. These comments provide valuable insight into people's perceptions of the impact of the amendments. Although the information is anecdotal, its consistency with the multi-site research findings and with information gathered in various parts of the country by other researchers suggests that it may give an accurate portrait of the new law.

Consultations on Bill C-15

The research provides information on the way the law is being implemented in various parts of the country. It does not provide a national profile of child sexual abuse cases. To gain an understanding of how representative of the national situation the available research was, and to identify areas of the law that might require further reform, the Department of Justice Canada held consultation meetings with key justice and social services system personnel across the country.

The consultations took place between November 1991 and June 1992. The team[9] met with people from every province and territory who had practical experience

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9 The consultations were organized by Carolina Giliberti, Senior Criminologist, Research Section, Department of Justice Canada. The composition of the consultation team fluctuated over the course

with the application of Bill C-15. Judges, defence lawyers, crown attorneys, chiefs of police, social workers and government officials participated in the meetings.

These consultation meetings confirmed many of the research study findings and complement the body of knowledge that the Department has acquired over the last several years. This report includes the results of these consultations.

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of the consultations but always included at least one social science researcher and a lawyer. As well, a representative of Health and Welfare Canada attended some of the consultations.

Chapter Three -

An overview of some of the research findings

Cooperation and coordination between the criminal justice system and the social services system are crucial to a successful response to child sexual abuse situations. For that reason, some of the research examines the way the child welfare system handled child sexual abuse cases and presents the views of child welfare service providers. However, this report's main focus is on the criminal justice system, since Bill C-15 amended the Criminal Code and the Canada Evidence Act.

Unfortunately, blanket statements about how the criminal justice system has responded to child sexual abuse situations cannot be made. There are too many regional variations. Nonetheless, information gathered across the country does show some considerable patterns and trends. This chapter summarizes findings about the type of abusive behaviours that occur, about victims and perpetrators, and about what happens to abuse cases that come into the criminal justice system.

The site studies in Calgary and Edmonton, Regina and Saskatoon, and Hamilton, provide the basis for the information in this chapter. The range in the percentages reflects the variations from site to site, which derive, in part, from the different ways that cases are processed in different sites. The site results are consistent with the findings in the Report of the Committee on Sexual Offences Against Children and Youth, the pre-1988 data report, Canadian Statistics on Child Sexual Abuse (Biesenthal and Clement, 1992), and the other studies, and with the anecdotal information collected in the studies and during the consultations.

Has anything changed since 1988?

The research shows that during the last four years:

- More cases of child sexual abuse were reported to the police.
- Police laid charges in more situations because the new law covers a broader range of inappropriate sexual behaviour involving children.
- Fewer violent and intrusive abuse situations were prosecuted.
- More cases involving younger complainants, between four and nine years of age, were prosecuted.
- More younger complainants were allowed to testify in court.

Who were the victims of sexual abuse?

- 70 to 80 percent of the victims of child sexual abuse were females.
- Males made up 20 to 30 percent of victims. Persons consulted reported an increase in the number of cases coming into the criminal justice system that involved male victims.
- Victims of child sexual abuse[1] were most often under 12 years of age.[2]
- 15 to 22 percent of victims were under five years of age.

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1 This figure includes both cases of child sexual abuse under the Bill C-15 offences and cases under the sexual assault provisions of the Criminal Code.

2 The Alberta site study survey found that in Edmonton a higher proportion of victims were over 12.

What type of abuse usually took place?

- The most common form of abuse was genital fondling, which occurred in 42 to 60 percent of cases.

- The next most common form of abuse was oral sex, which occurred in 7 to 30 percent of cases.

- Vaginal penetration with a penis occurred in 11 to 20 percent of cases. Anal penetration with a penis occurred in 2 to 6 percent of the cases.

- Between 36 and 58 percent of cases involved a single incident of abuse. However, the abuse lasted over a year in 26 percent of Calgary cases, 14 percent of Edmonton cases, and 14 percent of Saskatchewan cases.

- Over 85 percent of cases involved one accused. Saskatchewan had the highest percentage of multiple offender cases, with 14 percent.

Who was charged with the sexual abuse of children?

- In over 94 percent of cases, the accused in a child sexual abuse case was male.

- Most of the accused were adults. However, a significant proportion of accused (between 17 and 29 percent) were under 18 years of age.

- The accused was related to the victim in between 30 percent of the cases (Saskatchewan and Edmonton) and 57 percent of the cases (Calgary).

- The highest proportion of cases involving a stranger was in Edmonton, where 25 percent of cases involved an accused unknown to the child victim. In Hamilton, only 7 percent of the cases involved a stranger to the child.

What happened to cases coming to police attention?

- The unfounded rate[3] ranged from a low of 5 percent in Saskatoon to a high of 22 percent in Hamilton.

- The most common reason for finding a complaint unfounded was "lack of evidence".

- Police noted that they did not believe the victim in only 2 percent of the unfounded Calgary cases and in less than 5 percent of unfounded Hamilton cases.

- Many substantiated cases reported to the police did not make it all the way to trial. Cases do not go forward for a variety of reasons (e.g., victim unable or unwilling to testify, insufficient evidence). As well, some cases were not completed during the time of the research studies, so information about them is missing.

- Charges were laid in 46 percent of the Saskatoon cases in which the police decided that the charges were founded, in 44 percent of

3 "Unfounded" means that the police investigation has established that a crime did not happen or was not attempted.

Calgary cases, 31 percent of Hamilton cases, and 25 percent of Edmonton cases.

- Of the cases in which charges were laid, the accused pleaded guilty before trial in between 22 and 28 percent of the cases.

Were the accused convicted?

- When cases went to trial, the accused was convicted in between 25 percent of cases (Edmonton) and 49 percent of cases (Hamilton).

- The overall conviction rate (guilty pleas and convictions at trial) ranged from 59 percent in Edmonton to 83 percent in Hamilton.[4]

Were offenders sent to prison?

- Incarceration rates ranged from 51 percent in Edmonton to 74 percent for convictions in Hamilton.[5]

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4 The high conviction rate can be explained by the number of cases that do not go to trial owing to a high number of charges being withdrawn and a significant number of guilty pleas. The conviction rate results are consistent with a 1987 Canadian study (Hann and Kopelman, 1987), which found a 73 percent conviction rate in sexual assault cases.

5 These findings are consistent with other studies, which found incarceration rates for sexual assault cases to range from 55 percent (EKOS Research, 1988) to 66 percent (Roberts, 1990a).

Chapter Four -

A section-by-section analysis of the effects of the amendments to the Criminal Code and the Canada Evidence Act

This chapter examines each section of Bill C-15 to identify how the amendment changed the law, the purpose of the change, concerns about it, and what the research shows about the effect of the change.

Please note that since Bill C-15 became law, the numbers of many sections of the Criminal Code have changed. This chapter uses the old section numbers when referring to Bill C-15. The new section numbers are in the margin.

Section 1 The heading preceding section 140 and sections 140 and 141 of the Criminal Code are repealed and the following substituted therefor:

Sexual Offences

150.1(1) *consent no defence*

139.(1) Where an accused is charged with an offence under section 140 or 141 or subsection 146(1), 155(3) or 169(2) or is charged with an offence under section 246.1, 246.2 or 246.3 in respect of a complainant under the age of fourteen years, it is not a defence that the complainant consented to the activity that forms the subject-matter of the charge.

150.1(2) *exception*

(2) Notwithstanding subsection (1), where an accused is charged with an offence under section 140 or 141, subsection 169(2) or subsection 246.1 in respect of a complainant who is twelve years of age or more but under the age of fourteen years, it is not a defence that the complainant consented to the activity that forms the subject-matter of the charge unless the accused

(a) is twelve years of age or more but under the age of sixteen years;
(b) is less than two years older than the complainant; and
(c) is neither in a position of trust or authority towards the complainant nor is a person with whom the complainant is in a relationship of dependency.

150.1(3) *exemption for accused aged 12 or 13*	(3) No person aged twelve or thirteen years shall be tried for an offence under section 140 or 141 or subsection 169(2) unless the person is in a position of trust or authority towards the complainant or is a person with whom the complainant is in a relationship of dependency.
150.1(4) *mistake of age*	(4) It is not a defence to a charge under section 140 or 141, subsection 155(3) or 169(2), or section 246.1, 246.2 or 246.3 that the accused believed that the complainant was fourteen years of age or more at the time the offence is alleged to have been committed unless the accused took all reasonable steps to ascertain the age of the complainant.
150.1(5)	(5) It is not a defence to a charge under section 146, 154, 166, 167 or 168 or subsection 195(2) or (4) that the accused believed that the complainant was eighteen years of age or more at the time the offence is alleged to have been committed unless the accused took all reasonable steps to ascertain the age of the complainant.

Change

Before Bill C-15, it was a crime for a person to have sex with a female under 14 years of age who was not his wife (old section 146). A person charged under that old section could not say in his defence that the girl had consented to have intercourse with him.

The five new subsections of section 139 create new law on the defence of consent with respect to sexual crimes concerning girls *and* boys under the age of 18. The new law is gender neutral. Children under 12 can never consent to sexual activity. Children under 14 years of age generally cannot consent to sexual activity. However, to recognize that young people of a similar age may engage in some normal sexual experimentation, the law makes some exceptions. The defence of consent is available to an accused who is 12, 13, 14 or 15 years of age, if there is less than two years' age difference between the accused and the complainant, and the complainant is at least 12 years old. In these circumstances, the use of the criminal law is considered inappropriate. The accused cannot be in a position of trust or authority over the complainant. The complainant cannot be

in a relationship of dependency with the accused. An accused has to have taken all reasonable steps to find out the age of the complainant.

Purpose of change

The new law makes it clear that children under 12 are not old enough to consent to any sexual activity with anyone. This eliminates the possibility of an accused arguing that a child "wanted" or "invited" the sexual activity or "seduced" the accused.

Children 12, 13, 14 and 15 years old may engage in consensual sexual activity with their own age group *if* the two come to the relationship as equals. This reflects the Badgley Report findings that children are not victimized only by adults, but may also be victimized by another young person. The section strikes a balance between protecting young people from coercive sexual activity and respecting their right to agree to sexual exploration with their peers.

Concerns

The section could be used to charge two consenting young people who are just slightly more than two years apart in age with a criminal offence.

The age limits set in the law could be the subject of a challenge under the Canadian Charter of Rights and Freedoms for being arbitrary and discriminatory.

Research findings

From their interviews with justice system professionals, the Ontario communities study researchers concluded that "[m]ost respondents had not experienced problems with this provision". However, the defence of consent is still raised by defence lawyers in some cases. The multi-site study's review of trial transcripts and tapes found that the defence of consent was raised in 48 percent of the proceedings in Calgary, 18 percent in Edmonton, 16 percent in Saskatchewan, and 10 percent in Hamilton. However, there is no information about how the defence strategy was used or on its success (multi-site study, p. 66).

The accused argued that the complainant seemed older and that there had been a justifiable mistake of age in 9 percent of Calgary cases and 5 percent of Saskatchewan cases. It was mentioned in one Edmonton case (multi-site study, p. 67). The research does not indicate whether the accused argued that all reasonable steps had been taken to find out the age of the complainant.

In Calgary and Edmonton, the researchers found only six cases where the age difference between the accused and the complainant was an issue. The cases resulted in three findings of guilty and three acquittals. There were three cases in Saskatchewan and none in Hamilton (multi-site study, p. 67).

Summary

While some defence lawyers and judges criticize the section for unjustifiably limiting an accused's right to make a defence based on a young person's consent, most people seem to find that the section properly protects young people from being pressured into engaging in a sexual activity. There is general consensus that consent should never be an issue when a child is under 12 years of age.

(repeal of section 141)

Change

Section 141 said that no charges could be laid for certain sexual offences[1] more than one year after the offence was alleged to have been committed. The

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1 The section referred to the seduction of a female between 16 and 18 (section 151), seduction under promise of marriage (section 152), sexual intercourse with stepdaughter, etc. or female employee where the accused is no more to blame than the female person (paragraph 153(b)), parent or guardian procuring defilement (section 166), householder permitting defilement (section 167), corrupting children (section 168).

amendment removed the one-year limitation period. Charges for all indictable[2] sexual offences can now be laid at any time.

Purpose of change

Victims of child sexual abuse do not always disclose the abuse right away. Dropping the one-year limitation period makes the limitation period for all indictable offences the same. The change is also consistent with other Bill C-15 amendments, which eliminated gender-specific crimes.

Research

The multi-site study found that the majority of cases were reported within one month of the incident and that many cases were reported immediately. However, a significant number of cases (between 10 and 20 percent, depending on the site) were reported more than a year after the last incident (multi-site study, p. 30).

Participants in the consultations reported a dramatic increase in the number of cases where the abuse happened years ago but is only being reported now. These cases of past abuse present problems for the justice system. Police have limited resources to investigate abuse cases and some would prefer to focus on the most recent offences. Judges find that the lack of other evidence means that they are faced with having to decide whether to believe the victim or the accused. Defence counsel argue that it is difficult to prepare an adequate defence, since so much time has lapsed since the offence allegedly occurred.

Summary

The new law recognizes that, for many reasons, it may take some time for victims of child sexual abuse to speak of the abuse and to come forward with a complaint. However, there are some concerns that past cases of abuse are more difficult to investigate and judge.

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2 Charges for summary conviction offences have to be laid within six months of the date on which the alleged offence occurred.

151
sexual interference

140. Every person who, for a sexual purpose, touches, directly or indirectly, with a part of the body or with an object, any part of the body of a person under the age of fourteen years is guilty of an indictable offence and is liable to imprisonment for a term not exceeding ten years or is guilty of an offence punishable on summary conviction.

Change

This is a new offence. It makes it a crime to touch a young person under 14 for a sexual purpose. It replaced a number of crimes that focussed on nonconsensual male intercourse with a young or vulnerable female.

Purpose of change

This section describes a broad range of inappropriate touching that was not covered in the old law. It is gender neutral and recognizes that both girls and boys may be the victims of sexual interference, and that both men and women may be offenders. It was not intended to replace the sexual assault offences, but to provide protection for children who are the victims of inappropriate sexual touching.

Concerns

There was some concern that caregivers, teachers, coaches and others in contact with young people would become afraid to express their caring and concern through normal hugging and touching. Critics of the law also worried that the lack of a definition of "for a sexual purpose" would result in confusion and court battles (Stewart and Bala, 1988: p. 6).

Research

The multi-site study found that only 10 to 20 percent of child sexual abuse cases involved vaginal penetration by a penis (multi-site study, p. 31). The research from the Toronto Child Victim-Witness Support Program is similar: the majority of sexual offences with children as victims involve touching, not intercourse.

Vaginal penetration accounted for 20 percent of these abuse cases. It accounted for 16 percent of cases in the Fredericton study.

The multi-site study found that most of the charges under this new sexual interference section involved the accused fondling the genitals, chest or buttocks of the victim or, in a few cases, the victim fondling the accused[3] (multi-site study, p. 61).

Charges involved male victims in 27 percent of the Hamilton cases, 16 percent of the Saskatchewan cases, and 14 percent of both the Calgary and Edmonton cases.

Charges were laid against women in five cases in Saskatchewan but in no cases in Hamilton, Edmonton or Calgary.

The research also shows that more charges involving child victims were laid under the new section than had been brought under the old section 146 which had covered intercourse with a female under 14 who was not the accused's wife (multi-site study, p. 56). In all, the multi-site study identified 430 prosecutions under this section (multi-site study, Table 4.1).

Accused were often charged under section 271 (first-level sexual assault) although the multi-site study found that there was an increasing application of Bill C-15 and specifically of this new sexual interference section (multi-site study, p. 58). In Quebec, however, charges were much more likely to be laid under section 271 than under the new section. Out of 118 cases reviewed, 85 charges were under section 271 and only 11 were brought under this section.

Crown attorneys consulted said that they often advised that charges be laid under both this section and the first-level sexual assault section. Some defence counsel and crown attorneys said they preferred to proceed under the sexual assault

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3 In Calgary and Edmonton, genital fondling was alleged in 69 percent of the charges under this section. It was alleged in 59 percent of the charges in Saskatchewan and in 47 percent in Hamilton.

section because that section is more flexible and more familiar. In general, all parties consulted felt that this section was useful and filled a gap in the law.[4]

The case law review suggests that an accused will often admit to having touched the victim but will argue that the touching was innocent, nurturing or accidental. The researchers report a wide difference in judicial response to the words "sexual purpose". In one case, an accused was found to have a sexual purpose and was guilty of the offence because he allowed a three-year-old girl to take his penis out of his pants and rub her vagina against him. The accused had argued in his defence that the child initiated the contact (R. v. L.(D.)). But in another case, a judge found that an accused did not have a sexual purpose when he put his hands inside a child's pants and put the child's head on his private parts (R. v. Laughlin).

In another case, responding to the defence argument that the victim initiated the sexual touching, the Manitoba Court of Appeal held that the accused's sexual activity with a 12-year-old girl was sexual interference. The court found that an accused who intends sexual interaction of any kind with a child and touches the child is guilty of an offence (R. v. Sears).

Summary

Police do not always lay charges under this section, sometimes preferring to rely on the sexual assault offence defined in section 271 or to lay charges under both sections. This may be because they do not want to jeopardize a prosecution by proceeding under a new, and not well-tested, section of the law. Some inappropriate sexual activity could be covered under either section; however, there is a general feeling that this section covers a broader range of inappropriate sexual activity. The Ontario communities study researchers found that "Crowns, CAS workers, and police commented that the new offences have resulted in

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4 Some defence counsel said that the number of sexual offences concerning children is confusing. They recommended that the Bill C-15 offences be dropped, leaving the sexual assault offences (sections 271, 272 and 273) to cover all situations of sexual assault involving children.

more charges being laid because the new offences have expanded the range of criminal conduct against children."

152
invitation to sexual touching

141. Every person who, for a sexual purpose, invites, counsels or incites a person under the age of fourteen years to touch, directly or indirectly, with a part of the body or with an object, the body of any person, including the body of the person who so invites, counsels or incites and the body of the person under the age of fourteen years, is guilty of an indictable offence and is liable to imprisonment for a term not exceeding ten years or is guilty of an offence punishable on summary conviction.

Change

This is a new offence. It makes it a crime for someone to encourage a child under 14 to touch his or her own body or someone else's body for a sexual purpose. It replaced the crime of gross indecency (section 157). Gross indecency could only be prosecuted as an indictable offence. The new child sexual abuse offences can all be prosecuted as summary conviction offences or as indictable offences.

Purpose of change

In sexual abuse situations, the offenders may ask or force (by threats) child victims to touch them. Inappropriate sexual activity can therefore take place without an offender actually touching the child (Stewart and Bala, 1988: p. 8). Under the old law, a sexual assault charge could not be laid unless the offender touched the child. For these reasons, some inappropriate sexual activity with children escaped prosecution under the old law.

Concerns

There is no definition in the law of "for a sexual purpose".

Research

The Fredericton study found that in 10 percent of the recorded child sexual abuse cases, the victim had fondled the perpetrator and that in a few cases the perpetrator had only asked the child to engage in sexual activity, without doing anything else. Most of the cases in this study occurred before Bill C-15 came into effect, but the information confirms that in some cases of child sexual abuse the perpetrator may invite the child to engage in sexual activity without actually touching the victim.

The multi-site study found that there were significantly fewer cases prosecuted under this section than under the sexual interference section (multi-site study, p. 61). In all, the study noted 52 prosecutions (multi-site study, Table 4.1). This was attributed to the availability of other charges, when the activity involved anything more than an invitation, such as actual touching. The charge under this section relates to a limited range of inappropriate sexual activity.

The type of behaviour involved in these charges was different from that in charges under the sexual interference section. Victims had allegedly fondled the accused in 70 percent of Calgary cases charged under this section, in 40 percent of the Edmonton cases, and in 44 percent of the Saskatchewan cases. Exposure was part of the charge in 50 percent of the Calgary cases and 17 percent of the Saskatchewan cases. Invitation was an issue in 75 percent of the Hamilton cases, 50 percent of the Edmonton cases, 33 percent of the Saskatchewan cases, and 20 percent of the Calgary cases (multi-site study, p. 61).

The victims were males in 1 of the 10 Calgary cases, in 5 of the 20 Edmonton cases, in 3 of 4 Hamilton cases, and in none of the Saskatchewan cases (multi-site study, p. 68).

In a 1988 Ontario Provincial Court case, the accused challenged the constitutional validity of the section, claiming that the words "invite, counsel or incite" create three separate offences and that the lack of a definition of "sexual purpose" and the age distinctions in the section violate principles of justice set out in the Charter. The court upheld the section and rejected the accused's arguments (R. v. C.(D.G.)). In the other case, the judge decided that the accused was guilty of the charge because saying the words "If you want to have sex sometime, my room's upstairs," constituted an invitation to sexual touching (R. v. Camacho).

The Quebec study found only one case involving a charge under this section.

Summary

The new section closed a loophole in the old law.

Section 2 Sections 146 and 147 of the said Act are repealed and the following substituted therefor:

153(1) *sexual exploitation*

146.(1) Every person who is in a position of trust or authority towards a young person or is a person with whom the young person is in a relationship of dependency and who

(a) for a sexual purpose, touches, directly or indirectly, with a part of the body or with an object, any part of the body of the young person, or

(b) for a sexual purpose, invites, counsels or incites a young person to touch, directly or indirectly, with a part of the body or with an object, the body of any person, including the body of the person who so invites, counsels or incites and the body of the young person,

is guilty of an indictable offence and is liable to imprisonment for a term not exceeding five years or is guilty of an offence punishable on summary conviction.

153(2) *definition of "young person"*

(2) In this section, "young person" means a person fourteen years of age or more but under the age of eighteen years.

Change

This is a new offence. It replaced the sections of the law that made it a crime for a male over 14 to have sexual intercourse with a girl who was between 14 and 16 years of age and who was of "previously chaste character". The new offence is gender neutral.

It recognizes that young people have special relationships with some people, such as parents, teachers, coaches and babysitters. Children are taught to trust and obey them. The new section makes it an offence for a person in a position of trust or authority over a child, or a person upon whom a child is dependent, to engage in sexual activity with the child.

Purpose of change

Under the old law, a person charged with the sexual assault of a girl between 14 and 18 years of age could argue that she had already engaged in sexual activity with someone else and/or that she had consented to the sexual activity in question. The law limited the extent to which the court could test to see if the consent to the sexual activity was, in fact, freely given. The new section reflects the reality that teenagers are not always in a position to make a "free" decision when the person soliciting the consent is a person in a position of trust or authority over them.

Concerns

The section would make it a criminal offence, for instance, for a 17-year-old counsellor to kiss a 15-year-old camper. The general public might not find this type of behaviour criminal in nature (Stewart and Bala: 1988, p. 9).

Research

The multi-site study identified 50 prosecutions. Charges covered a broad range of conduct including genital fondling, chest fondling and vaginal penetration by a penis (multi-site study, Table 4.1).

The Quebec study identified only two prosecutions under this section.

The case law review reported on several prosecutions. A stepfather was found guilty of sexual exploitation because he was in a position of trust and authority over his stepdaughters (R. v. R.(L.M.). In another case, a 30-year-old employer was found to be in a position of authority over a 16-year-old employee (R. v. Bains). However, a neighbour in his mid-30s who had known a 15-year-old complainant for five years was found not guilty of sexual exploitation because there was no relationship of dependency (R. v. H.(K.)).

During the consultations, a defence counsel expressed concern about the lack of a definition for "person in a position of trust or authority". For instance, are all teachers in such a position regardless of whether or not a student is in their class? Or, does the definition only extend to students in a teacher's class?

Summary

The section provides protection to teenagers who may be vulnerable to sexual advances made by people with whom they are in a relationship of dependency or who are in a position of trust or authority over them. Owing to their special relationship with the teenagers, the law expects these people to exercise responsibility and restraint, no matter how sexually attracted they might feel and no matter what the teenager does.

Section 3 Sections 151 to 155 of the said Act are repealed and the following substituted therefor:

159(1) *anal intercourse*

154.(1) Every person who engages in an act of anal intercourse is guilty of an indictable offence and is liable to imprisonment for a term not exceeding ten years or is guilty of an offence punishable on summary conviction.

159(2) *exception*

(2) Subsection (1) does not apply to any act engaged in, in private, between

(a) husband and wife, or

(b) any two persons, each of whom is eighteen years of age or more,

both of whom consent to the act.

159(3)

(3) For the purposes of subsection (2),

(a) an act shall be deemed not to have been engaged in h private if it is engaged in in a public place or if more than two persons take part or are present; and

(b) a person shall be deemed not to consent to an act

(I) if the consent is extorted by force, threats or fear of bodily harm or is obtained by false and fraudulent misrepresentations as to the nature and quality of the act, or

(II) if the court is satisfied beyond a reasonable doubt that that person could not have consented to the act by reason of mental disability.

Change

The old sections 151 to 154 concerned crimes involving males and young or vulnerable females.[5] These sections were replaced by the three new gender-neutral crimes in sections 151, 152 and 153.

The old section 155 made buggery and bestiality offences. This new section deals exclusively with "buggery". Another new section covers bestiality.

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5 Section 151: seduction of female between 16 and 18; section 152: seduction under promise of marriage; section 153: sexual intercourse with stepdaughter, etc. or female employee; section 154: seduction of female passengers on vessels.

Even if both parties consent, anal intercourse is a crime if one of the persons involved is under 18 years of age (unless they are husband and wife). Under the old law (section 158), no one under 21 could consent to anal intercourse.

Anal intercourse is also a crime if it occurs in a public place or if more than two persons are present, even if the persons engaging in the act are both over 18.

Purpose of change

The new law recognizes that persons over 18 should be free to decide on their sexual activities for themselves. The law, however, maintains restrictions on this particular sex act when a person under 18 is involved.

Concerns

While the new law generally recognizes that young people between 14 and 18 can engage in consensual sexual activity, it prohibits anal intercourse. This could make this section vulnerable to a Charter challenge because it does not allow a sexual activity often engaged in by male homosexuals (Stewart and Bala, 1988: p. 10).

Research

The communication disabilities study, The Impact of Bill C-15 on Persons with a Communication Disability, questioned the part of this section that says that a person's consent to anal intercourse is invalid if he or she could not have consented because of a mental disability. This is the only section in the law that limits the defence of consent when the complainant is a person with a mental disability. The people interviewed in this study suggested that this provision should either be extended to cover all sexual offences or be removed (so that a disabled person has the same freedom to participate in sexual acts as other adults).

In 1989, an Alberta Provincial Court judge upheld the constitutional validity of the section. He said that although the section created an absolute liability offence (if you did it you are guilty, regardless of why it happened or your intentions),

this intrusion on fundamental rights was justified (R. v. (H.D.)). Recently, an Ontario Court, General Division, judge came to the opposite conclusion, finding that the section was unconstitutional because setting a special age limit for anal intercourse could not be justified (R. v. M.(C.)).[6]

Summary

The constitutional validity of this section is unresolved.

160(1) *bestiality*	155.(1) Every person who commits bestiality is guilty of an indictable offence and is liable to imprisonment for a term not exceeding ten years or is guilty of an offence punishable on summary conviction.
160(2) *compelling the commission of bestiality*	(2) Every person who compels another to commit bestiality is guilty of an indictable offence and is liable to imprisonment for a term not exceeding ten years or is guilty of an offence punishable on summary conviction.
160(3) *bestiality in presence of or by child*	(3) Notwithstanding subsection (1), every person who commits bestiality in the presence of a person who is under the age of fourteen years or who incites a person under the age of fourteen years to commit bestiality is guilty of an indictable offence and is liable to imprisonment for a term not exceeding ten years or is guilty of an offence punishable on summary conviction.

Change

The law created a new section specifically concerning the crime of engaging in sexual activity with animals. (Under the old law, section 155 covered both buggery and bestiality.) As well, it added two new offences concerning children: inciting a child under 14 to commit bestiality, and engaging in bestiality in front of a child under 14.

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6 This case has been appealed to the Ontario Court of Appeal.

Research

The multi-site study did not find any charges laid under this section.

Section 4 Sections 157 and 158 of the said Act are repealed.

Change

Section 157, referred to here, made an act of gross indecency an indictable offence punishable by up to five years in prison. "Gross indecency" was not defined in the law. Bill C-15 created new offences that replaced the old offence of gross indecency.

Parts of section 158 were included in sections amended by Bill C-15, and other parts were dropped entirely. The language of parts of this section was archaic and was changed.

Section 5 Sections 166 and 167 of the said Act are repealed and the following substituted therefor:

170
parent or guardian procuring sexual activity

166. Every parent or guardian of a person under the age of eighteen years who procures that person for the purpose of engaging in any sexual activity prohibited by this Act with a person other than the parent or guardian is guilty of an indictable offence and is liable to imprisonment for a term not exceeding five years if the person in question is under the age of fourteen years or to imprisonment for a term not exceeding two years if the person in question is fourteen years of age or more but under the age of eighteen years.

Change

The old section (parent or guardian procuring defilement) covered females of any age. The new section extends protection to both girls and boys, but limits the section to young people under 18. It is a crime for parents or guardians to arrange for a person to engage in sexual activity with a young person for whom they are responsible.

Purpose of change

The change makes the section gender neutral: both girls and boys can be victims of this offence. It is also consistent with other amendments. Other sections of the Criminal Code apply to a parent or guardian who acts as a pimp for a person over 18 years of age.

Research

The multi-site study did not find any charges laid under this section.

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171 *householder permitting sexual activity*

167. Every owner, occupier or manager of premises or other person who has control of premises or assists in the management or control of premises who knowingly permits a person under the age of eighteen years to resort to or to be in or on the premises for the purpose of engaging in any sexual activity prohibited by this Act is guilty of an indictable offence and is liable to imprisonment for a term not exceeding five years if the person in question is under the age of fourteen years or to imprisonment for a term not exceeding two years if the person in question is fourteen years of age or more but under the age of eighteen years.

Change

The old section (householder permitting defilement) covered only female victims and male offenders. The new section extends protection to both girls and boys. As well, both males and females can now be charged with this offence. It is

a crime to knowingly permit a person under 18 to be a party to a sexual offence described in Bill C-15.

Research

The multi-site study did not find any charges laid under this section.

Section 6 Subsection 168(2) of the said Act is repealed.

Change

Section 168 makes it an offence to corrupt children by participating in adultery or sexual immorality or indulging in habitual drunkenness or other form of vice in the home of a child. Subsection 168(2) said that a charge could not be laid under this offence if more than a year had gone by since the offence occurred.

Purpose of change

Removing the one-year limitation period in this section is consistent with other Bill C-15 amendments.

Research

The multi-site study did not find any charges laid under this section.

Section 7.(1) Section 169 of the said Act is renumbered as subsection 169(1).

173(2)
exposure

Section 7.(2) Section 169 of the said Act is further amended by adding thereto the following subsection:
(2) 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 fourteen years, is guilty of an offence punishable on summary conviction.

Change

Subsection 169(1) makes it a crime to commit an indecent act in a public place, or in any place if the intent is to insult or offend anyone. The new subsection, 169(2), creates a new exposure offence, making it a crime to expose one's genitals, for a sexual purpose, to a child under 14 years of age.

Purpose of change

The Badgley Committee found that "[a]cts of exposure constitute the largest single category of all types of sexual offences committed against children and youths . . . one in five females and one in 11 males reported [in the National Population Survey] that they had been victims of acts of exposure".[7] The Committee also found that, in some cases, acts of exposure are followed by sexual assaults.[8]

The Committee rejected the argument that because there is no physical injury in most cases, exposure should be treated as an unavoidable nuisance, rather than as a crime. Instead, the Committee recommended the creation of a new specific offence to prohibit the behaviour, saying that children have a right to be protected from exposers.[9] Bill C-15 reflects this approach.

Research

The multi-site study found that exposure occurred in between 5 percent (Saskatchewan) and 21 percent (Edmonton) of the substantiated cases of child sexual abuse. However, it identified relatively few charges under this section. During a 31-month period, Edmonton police laid 26 charges and Calgary police laid two charges. Three charges were laid in Saskatchewan during a 36-month period. During one year, Hamilton police laid seven charges (multi-site study, p. 66). Exposure may often be the first act in a developing pattern of sexual abuse.

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7 Sexual Offences Against Children, Volume 1, op. cit., p. 59.

8 ibid, Chapter 9, "Exposure Followed by Assault", pp. 261-273.

9 ibid, p. 257.

By the time a report is made to the police, other inappropriate sexual activity may have taken place and charges may be laid under other sections of the Criminal Code dealing with more intrusive sexual abuse.

The case law review found one case. It considered whether the accused had a sexual purpose when he exposed his penis to the complainant. The judge held that the accused had a sexual purpose and was guilty of the offence because he closed the bedroom door, showed the child some sexually explicit material and then exposed himself (R. v. Porter).

Summary

The Badgley Committee's research indicates that there are many incidents of exposure with children as victims. In many cases, however, these incidents do not result in charges (probably because the police are not notified or the perpetrator cannot be identified). When charges are laid, they are usually under another section of the Criminal Code because other inappropriate sexual activity has also occurred.

179(1)(b)
vagrancy

Section 8 Paragraph 175(1)(e) of the said Act is repealed and the following substituted therefor:
(Every one commits vagrancy who)
(e) having at any time been convicted of an offence under section 140, 141, 146, subsection 155(3) or 169(2), section 246.1, 246.2 or 246.3, or of an offence under a provision mentioned in paragraph (b) of the definition "serious personal injury offence" in section 687 as it read before January 4, 1983, is found loitering in or near a school ground, playground, public park or bathing area.

Change

Section 175 makes vagrancy a summary conviction offence. The new paragraph says that a person who has been convicted of a sexual abuse or sexual assault

offence or of bestiality or exposure when the complainant was under 14, is committing the vagrancy offence by loitering near school grounds, playgrounds, public parks or bathing areas. This adds the new sexual abuse, bestiality and exposure offences to this section.

Purpose of change

The old section 175 did not create a specific offence concerning convicted sex offenders who loiter near areas where children are. Since getting caught is not necessarily enough to stop an offender from repeating a sex offence, the section is meant to protect children by keeping offenders away from them (Stewart and Bala, 1988: p. 13).

Concerns

Some people argued that the section infringes an offender's rights. An offender who has been convicted and punished should not be presumed guilty and further punished just for being found in a particular place.

Research

The case law review includes two cases that concern the constitutional validity of the loitering offence. In a 1988 case, a British Columbia Provincial Court judge found an accused not guilty, holding that the loitering offence violates the Charter and cannot be justified (R. v. Graf). In a later case, another British Columbia Provincial Court judge convicted an accused, deciding that the loitering offence does not violate the Charter. The court found that loitering connotes a malevolent purpose and that the offence requires more than simply being present in a particular place. The British Columbia Supreme Court agreed (R. v. Heywood).

During the consultations, people reported that, in their experience, this section was rarely used.

Summary

This section may be tested again for its constitutional validity.

Section 9 Subsections 195(2) to (4) of the said Act are repealed and the following substituted therefor:

212(2)

(2) Notwithstanding paragraph (1)(j), every person who lives wholly or in part on the avails of prostitution of another person who is under the age of eighteen years is guilty of an indictable offence and is liable to imprisonment for a term not exceeding fourteen years.

212(3) *presumption*

(3) Evidence that a person lives with or is habitually in the company of a prostitute or lives in a common bawdy-house or in a house of assignation is, in the absence of evidence to the contrary, proof that the person lives on the avails of prostitution, for the purposes of paragraph (1)(j) and subsection (2).

212(4) *offence in relation to juvenile prostitution*

(4) 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 eighteen years is guilty of an indictable offence and is liable to imprisonment for a term not exceeding five years.

Change

These new subsections make it an offence to act as a pimp or be a customer of a prostitute who is under 18 years of age. It is not a defence to a charge under subsections (2) or (4) for an accused to say the person seemed older. According to subsection 139(5) of Bill C-15, an accused has to take all reasonable steps to find out the prostitute's age. The old section had no specific provisions concerning juvenile prostitution. (Young prostitutes can be charged with soliciting in a public place [section 213] and prosecuted under the Young Offenders Act.)

Purpose of change

The Badgley Committee found an "ingrained pattern of exploitation, disease and violence in the daily lives of juvenile prostitutes".[10] It found these young people at risk and recommended many different measures to try to help them.[11] Law reform was only one aspect of these recommendations: "While the Committee is under no illusions that merely amending the law is an adequate or realistic response to juvenile prostitution, it does consider that the law has an important role to play in deterring and punishing those who sexually exploit young persons in this manner and in proclaiming the patent unacceptability of 'sex for pay' where young persons are concerned".[12]

Concerns

Because pimps often have only one juvenile prostitute working for them, the law was amended to say that a person who lives with or is habitually in the company of *a* prostitute is, in the absence of evidence to the contrary, living off the avails of a prostitute and committing a crime. People who live with prostitutes but are not pimps could be vulnerable to charges. There could be a Charter challenge (Stewart and Bala, 1988: p. 14).

Research

The multi-site study found very few charges under subsections (2) and (4). There were no prosecutions in Calgary, Edmonton or Hamilton, and only seven in Saskatchewan. The study includes the anecdotal information that subsection (2) is only enforceable when a prostitute complains to police about a pimp and that charges can only be laid under subsection (4) if the buyer of the sexual services is caught in the act. The study concludes that "traditional police methods are not appropriate for enforcing subsections (2) and (4)" (multi-site study, p. 65).

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10 Sexual Offences Against Children, Volume 1, op. cit., p. 91.

11 Recommendations 41 - 48 concern juvenile prostitution. ibid., pp. 91 - 99.

12 ibid., p. 92.

The consultations confirmed the multi-site study findings. Those consulted reported that the section is ineffective and police said that they were unable to enforce the law.

The Supreme Court of Canada upheld the constitutional validity of subsection 212(3). It commented on research about the violent and exploitative nature of the actions of pimps and concluded that prostitutes were vulnerable witnesses who were likely to be intimidated. It found that the subsection offered them appropriate protection (R. v. Downey).

Summary

Young prostitutes continue to be charged under the same section as prostitutes who are over 18 (section 213). The new subsections have been unsuccessful in bringing customers and pimps of juvenile prostitutes to justice, which was the intent of Bill C-15.

Section 10 Subsection 246.1(2) of the said Act is repealed.

Change

Subsection 246.1(2) concerned the sexual assault of a person under 14. The defence of consent was not available unless the accused was less than three years older than the complainant. The changes to section 139 now cover this situation.

Section 11 Sections 246.4 and 246.5 of the said Act are repealed and the following substituted therefor:

274 *corroboration not required*

246.4 Where an accused is charged with an offence under section 140, 141, 146, 150, 154, 155, 166, 167, 168, 169, 195, 246.1, 246.2 or 246.3, no corroboration is required for a conviction and the judge shall not instruct the jury that it is unsafe to find the accused guilty in the absence of corroboration.

Change

Since 1983, the law has not required corroborating evidence[13] in prosecutions for incest (section 150), gross indecency (section 157) and all three levels of sexual assault (sections 246.1, 246.2 and 246.3). However, according to section 586 and the pre-1988 subsection 16(2) of the Canada Evidence Act, corroboration was still required when a child gave unsworn evidence in court.

By adding the new sexual offences to this section and removing the restrictions on the unsworn evidence of children in section 586, the new law makes it possible to convict a person accused of a sexual abuse or sexual assault crime on the basis of the child complainant's testimony alone. The testimony can be given under oath or after a promise to tell the truth. No other evidence is necessary. Of course, in every case, the judge (or jury) must believe beyond a reasonable doubt that the accused is guilty.

Purpose of change

The corroboration requirement made it very difficult to get a conviction in many cases of child sexual abuse. The child is almost always the only witness, and medical evidence often is not available.

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13 Corroborating evidence is independent evidence, such as medical reports or witness testimony, that confirms the complainant's testimony implicating the accused.

The old law was based on assumptions that children lie about sexual abuse and that children generally are not reliable witnesses. These assumptions were rejected as unfounded.[14]

The Badgley Committee believed that a child's testimony should be treated in the same way as an adult's testimony.[15] It is up to the judge (or jury) to decide on the credibility of the witness and the weight that should be given to the testimony.

Concerns

Fears were expressed that allowing the uncorroborated evidence of a child to stand alone would lead to false allegations and wrongful convictions (Stewart and Bala, 1988, p. 22).

Research

A case challenging the constitutional validity of the section failed (R. v. M.(E.J.).

It is clear from the case law review that judges are still coming to terms with the impact of this change. While some judges have continued to comment on the risks of convicting an accused on the basis of the child's evidence alone (R. v. H.(C.), R. v. M.(E.J.), R. v. B.(E.R.), R. v. Campbell), others have weighed the credibility of the testimony of a child witness without discussing the lack of corroboration and have convicted the accused (R. v. Hughes, R. v. P.(D.W.)).

Judicial ambivalence over the change in the rule was found by other researchers as well. Some judges participating in the consultations spoke of the need for confirming evidence before they could convict an accused. The Ontario communities study researchers report that half of the judges they talked to did not object to the provision, but many said that they had difficulty assessing credibility without corroborating evidence.

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14 Sexual Offences Against Children, Volume 1, p. 69.

15 ibid.

Many crown attorneys and defence counsel reported to those conducting the consultations that the new provision had not resulted in a change in court practice: there will not be a conviction unless there is some other evidence, besides the child's testimony, to confirm the alleged abuse.

The Ontario communities study researchers found that crown attorneys had varied estimates of how many cases went to trial without corroboration. Some said there were very few; others said that 50 to 75 percent of the time they were in court without corroborating evidence. Some judges and crown attorneys participating in the consultations said that more charges are being laid now that corroboration is no longer required.

One crown attorney commented, "We're beginning to see helpful pieces of evidence that corroborate the child that we never saw before, because we're getting more experienced . . . because of a combination of the police, the doctors and the prosecutors [we] are just getting a little better at what we're doing."

Before cases get to court, however, the lack of corroborating evidence plays a significant role. The multi-site study found that the availability of witnesses was a significant factor in decisions to lay charges in Hamilton and Calgary (multi-site study, p. 42, 43). In Edmonton, charges were more likely when there was more than one victim. Of 45 police officers interviewed for the Toronto child victim-witness support report, 95 percent said that the presence of corroborating evidence or a witness was important or very important to their finding that a crime had occurred.

Police told the Ontario communities study researchers that it was difficult to proceed with charges involving young children unless there is other evidence besides the child's testimony: "If you've got uncorroborated evidence of a four-year-old, we probably won't charge".

Corroboration is also important during social service investigations of sexual abuse allegations. Eighty-two percent of the child welfare workers interviewed

told the Toronto child victim-witness support report researchers that corroborating evidence of a witness was important or very important to their finding that child sexual abuse had occurred.

Summary

Although judicial interpretation of this section is still in a state of flux, all the research on this topic suggests that the change has improved the possibility of successfully prosecuting child sexual abuse offences. More cases are coming to court, particularly cases involving young children.

275
rules respecting recent complaint abrogated

246.5 The rules relating to evidence of recent complaint are hereby abrogated with respect to offences under sections 140, 141, 146, 150 and 154, subsections 155(2) and (3), and sections 166, 167, 168, 169, 246.1, 246.2 and 246.3.

Change

This section abolished the recent complaint rule with respect to sexual assault offences in 1983. The amendments add the new child sexual abuse offences to the section.

Purpose of change

The general legal principle in criminal trials is that a witness's conversations with someone else are not admissible as evidence at a trial. The witness's statements are seen as self-serving. The person to whom the statements were made cannot testify about what the witness said, because this is considered hearsay evidence and not allowed.

However, a different rule developed in sexual assault cases. If the complainant told someone about the sexual assault at the first opportunity, the complainant could testify as to what she had said, and the person to whom she made the statement could also testify as to what was said. This could serve as evidence that an assault had taken place and that the complainant had not consented.

Over time, the rule began to be used against complainants who did not complain loudly and clearly about a sexual assault right away. The failure to complain was used as evidence to infer that no sexual assault had taken place. The law on recent complaint was changed because Parliament realized that many victims of sexual assault do not complain about the incident right away for many reasons, including fear and feelings of shame or guilt.

Concerns

The 1983 changes to the law proved problematic (Ruebsaat, 1985: p. 50-56). Although the fact that complainants had not complained about a sexual assault at the first opportunity could not be held against them, the fact that they *had* complained could no longer be introduced as proof of the sexual assault. The defence, on the other hand, could point out that a complaint had not been made right away and use this fact to undermine the complainant's testimony.

Research

The Ontario communities study reports many problems with this section: "Although some respondents thought it favourable, many more did not." One judge felt that a rule that had been of great benefit to complainants was lost. Defence lawyers stated that the provision works to the advantage of the defence.

Judges, crown attorneys and defence lawyers participating in the consultations said that the delay in making a complaint is still raised by the defence to undermine a complainant's credibility, and by the crown attorney to bolster a complainant's credibility. They reported confusion about the intent of the provision.

The Quebec study also reports on some concerns about this provision.

The communication disabilities study found that respondents supported the section. People with communication disabilities are more likely to take some time to report sexual abuse. They may have trouble articulating what happened. They may not be able to report because the person who abused them is their caregiver. They may not understand that what happened is wrong. They may be very vulnerable to threats to keep silent. The section means that their complaints have as much credibility as complaints made right away.

The case law review noted several cases where evidence that the complainant told someone about the abuse right away was not admitted in evidence (R. v. Jackson, R. v. Jones, R. v. McW.(C)). However, evidence of the lack of an immediate complaint by the complainant can be raised by the defence to prove that the complainant made up the story of the abuse. Recent complaint can still be used where the defence is suggesting that the complainant recently fabricated the story (R. v. Owens, R. v. Pangilinan). In that case, the crown attorney can introduce testimony to explain when the complaint was made.

Summary

For a variety of legitimate reasons, victims of child sexual abuse do not necessarily complain of the abuse at the first opportunity. A rule that prohibits a judge or jury from holding against the complainant the failure to complain immediately is therefore important. However, the rule works against complainants who did tell someone about the abuse right away, because this evidence generally cannot be raised at the trial to confirm their testimony and support their credibility.

Section 12 All that portion of subsection 246.6(1) of the said Act preceding paragraph (a) thereof is repealed and the following substituted therefor:

276(1) *evidence of complainant's sexual activity*

246.6(1) In proceedings in respect of an offence under section 140, 141, 146, 150 or 154, subsection 155(2) or (3), or section 166, 167, 168, 169, 246.1, 246.2 or 246.3, no evidence shall be adduced by or on behalf of the accused concerning the sexual activity of the complainant with any person other than the accused unless

((a) it is evidence that rebuts evidence of the complainant's sexual activity or absence thereof that was previously adduced by the prosecution;

(b) it is evidence of specific instances of the complainant's sexual activity tending to establish the identity of the person who had sexual contact with the complainant on the occasion set out in the charge; or

(c) it is evidence of sexual activity that took place on the same occasion as the sexual activity that forms the subject-matter of the charge, where that evidence relates to the consent that the accused alleges he believed was given to the complainant. (unchanged by Bill C-15))

Change

Complainants cannot be questioned at trial about sexual activity with someone other than the accused except in a few specific circumstances. This new subsection extends this protection to the new sexual abuse offences.

Purpose of change

This change is consistent with other Bill C-15 amendments that removed the concepts of "previously chaste character" and "more to blame [for the sexual encounter] than the accused" from the Criminal Code. Under the old law, questioning about a young victim's sexual experiences was permitted. There was an assumption that an unchaste young person was more likely to lie about a sexual assault, and evidence of past sexual experience could be used at trial to challenge the credibility of the complainant's testimony. The Badgley Committee recommended that the unacceptable assumption that linked chastity to veracity be abolished.[16]

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16 Sexual Offences Against Children, Volume 1, op. cit., p. 72.

Concerns

An accused has a right to make a full answer and defence to charges at a trial. Because this section limits questions that the accused can ask a witness, some have argued that it infringes an accused's Charter rights[17] (Stewart and Bala, 1988: p. 25).

Research

The multi-site study tabulated the issues that were most frequently raised by the defence in cross-examination. The subject of past sexual conduct came up most often in Saskatchewan where it was raised in only nine percent of cases. It was seldom raised in the other sites studied (multi-site study, p. 73).

Judges interviewed by the Quebec study researchers reported that defence lawyers still ask complainants questions about past sexual activity. The judges said that they have a hard time deciding which questions can be allowed.[18]

Summary

The extent to which the law can limit the questions that the defence can ask a complainant about other sexual activity tends to be raised more often in cases involving adult complainants than in charges involving children.

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17 This section was ruled unconstitutional by the Supreme Court of Canada in the R. v. Seaboyer; R. v. Gayme case. Bill C-49, which provides new wording for this and other sections of the Criminal Code, came into force on August 15, 1992.

18 The 1992 Supreme Court of Canada decision in R. v. Seaboyer; R. v. Gayme outlined when questions about a complainant's past sexual conduct can be allowed. Bill C-49 subsequently amended the law, clarifying when such questions are permissible.

Section 13 Section 246.7 of the said Act is repealed and the following substituted therefor:

277 *reputation evidence*

246.7 In proceedings in respect of an offence under section 140, 141, 146, 150 or 154, subsection 155(2) or (3) or section 166, 167, 168, 169, 246.1, 246.2 or 246.3, evidence of sexual reputation, whether general or specific, is not admissible for the purpose of challenging or supporting the credibility of the complainant.

Change

Evidence of a complainant's sexual reputation cannot be introduced in evidence at a trial. This new section extends this protection to the new sexual abuse offences.

Purpose of change

Before the 1983 sexual assault amendments, evidence of a complainant's sexual reputation was admissible as evidence to challenge her credibility and to prove that she had consented (or that the accused had an honest belief that she had consented). This evidence is no longer accepted in sexual assault or sexual abuse cases.

Research

The multi-site study found that evidence about a complainant's sexual reputation was rarely raised at the trial. It was never brought up in Calgary and Hamilton. It was raised in 18 percent of the Edmonton prosecutions and 4 percent of the Saskatchewan cases. However, the contexts in which this matter arose are unknown (multi-site study, p. 73).

Summary

Evidence of the sexual reputation of a complainant is not permitted as evidence at a trial.[19]

Section 14.(1) Subsections 442(3) and (3.1) of the said Act are repealed and the following substituted therefor:

486(2.1) *testimony outside court room*

(2.1) Notwithstanding section 577, where an accused is charged with an offence under section 140, 141, 146, 150 or 154, subsection 155(2) or (3), or section 166, 167, 168, 169, 246.1, 246.2 or 246.3 and the complainant is, at the time of the trial or preliminary inquiry, under the age of eighteen years, the presiding judge or justice, as the case may be, may order that the complainant testify outside the court room or behind a screen or other device that would allow the complainant not to see the accused, if the judge or justice is of the opinion that the exclusion is necessary to obtain a full and candid account of the acts complained of from the complainant.

486(2.2) *condition of exclusion*

(2.2) A complainant shall not testify outside the court room pursuant to subsection (2.1) unless arrangements are made for the accused, the judge or justice and the jury to watch the testimony of the complainant by means of closed-circuit television or otherwise and the accused is permitted to communicate with counsel while watching the testimony.

Change

These are new subsections that allow a complainant who is under 18 at the time of the court hearing to testify in sexual assault and sexual abuse cases without having to see the accused. The decision to permit the complainant to testify behind a screen or other device, or through a closed-circuit television system is up to the judge. The judge must believe that the arrangements are necessary in order for the complainant to be able to give all her or his evidence. The accused must be able to communicate with his or her lawyer at all times.

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[19] The Supreme Court of Canada decision in R. v. Seaboyer; R. v. Gayme confirmed the constitutional validity of this section.

Purpose of change

The experience of testifying in court can be very traumatic for a victim of a sexual offence, particularly a young person.

The courthouse and the courtroom can be intimidating, and the trial process itself can be traumatic. In the past, some young victims were unable to testify when they came to court and saw the accused again (Stewart and Bala, 1988: p. 27).[20] These new sections were an attempt to improve the experience of child victims with the justice system.

Concerns

It is a fundamental principle of our justice system that an accused has the right to hear the evidence against him or her in person. The defence could argue that a screen or closed-circuit television arrangement reflects negatively on the accused and denies the accused the presumption of innocence. From a practical point of view, screens and closed-circuit television systems might not be available in every courthouse in the country.

Research

The case law review identified several factors that judges have considered in deciding whether to allow a young complainant to give evidence behind a screen or by means of a closed-circuit television system. The factors include the age of the child, whether the child is undergoing psychiatric therapy, whether the child expects to be protected from seeing the accused, the degree of the child's fear and anxiety about seeing the accused, and the child's general shyness and emotional frailty (R. v. Boyd, R. v. Dick (Sandra), R. v. Cooper, R. v. C., R. v. R.(P.S.)). In one case, the court refused to allow the use of a screen at the trial because the complainant had testified without one at the preliminary inquiry (R. v. Allan).

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[20] The adults interviewed by researchers for the Toronto child victim-witness support report said that a child's most common fear in going to court, was seeing the accused.

There must be an evidentiary basis for the decision (R. v. Levogiannis), although it is unclear what type of evidence is required. One case held that it would defeat the purpose of the section to ask the child to testify about the need for a screen (R. v. Carr).

The use of a screen

The case law review identified a number of cases where the use of a screen had been challenged as unconstitutional. The judgments upheld the constitutional validity of the provision R. v. Levogiannis,[21] R. v. A.(B.N.), (R. v. B.(A.). However, one judgment suggested that, although using a screen does not infringe an accused's rights, the *way* it is used might (R. v. A.(B.N.)).

The multi-site study found that complainants testified behind a screen in 24 percent of court proceedings in Saskatchewan, 9 percent of proceedings in Calgary, and 3 percent in Edmonton. Screens were not used in Hamilton courts during the time of the study (multi-site study, Table 4.3).

Of the 79 police who responded to the police officers' survey, 44 percent said that screens were always or sometimes used to block the child's view of the accused. Of these, 94 percent found the screen helpful. In four of 29 cases observed for the Toronto child victim-witness support report, the complainant was allowed to testify behind a screen.

The Ontario communities study found that justice personnel had the most experience with and the fewest problems with the use of screens in court. However, screens do raise some issues for them. The screen is an artificial contrivance, and a child complainant still knows that the accused is there. The child often sees the accused on the way to the witness stand. The screen can give a jury the impression that the accused is guilty or that the child is not a credible

21 This case has been appealed to the Supreme Court of Canada.

witness. The screen interferes with the accused's ability to look the accuser in the eye.

One-way screens, which allow the accused to see the complainant but block the complainant's view of the accused, are used in some courts.

People participating in the consultations reported that screens are not routinely used in court for three main reasons: there are no resources to buy the screens; it is too difficult to set up the screen properly (for instance, the screen may prevent the child's voice from being heard); the testimony of a child victim has more impact if it is given in full view, without the use of a screen.

The Ontario communities study researchers report some confusion over the placement of the screen: should it be in front of the witness or in front of the accused? If it is placed in front of the child, it may box the child in, which is uncomfortable. If it is placed in front of the accused, it may prevent the judge (or the jury) from seeing the accused's reaction to the complainant's testimony.

In general, those participating in the consultation said that the provision allowing for a screen was useful, even if it was not used that often. They reported on other strategies to protect a child witness from having to see the accused. Many crown attorneys participating in the consultations said that they used informal methods to block the child's view of the accused. They might position themselves between the child victim and the accused, or they might ask to move the witness box.

Judges participating in the consultations said that they felt that they could have the accused sit in a part of the courtroom away from the witness stand during the complainant's testimony.

The use of a closed-circuit television system

Saskatchewan courts were the only ones of those studied by the multi-site survey that had used closed-circuit television in trials.[22] It had been used in five cases, 24 percent of the cases reviewed (multi-site study, p. 76).

The police officers' survey heard from seven police officers who said that closed-circuit television was sometimes used. The Ontario communities study researchers spoke to five justice system professionals who had been involved in cases using closed-circuit television. Most crown attorneys told the researchers that they did not use closed-circuit television because it was not available. The communication disabilities study also found that while screens were available in all courtrooms, closed-circuit television was rarely available.

The case law review notes a few cases in which a closed-circuit television system was used and several in which its use was at issue. No Charter challenges to the use of closed-circuit television identified in the case law review have been successful.

In two cases reported in the case law review, the defence asked for a closed-circuit television system rather than the use of a screen. The defence argued that the television system was fairer to the accused because the jury would only be able to infer that the complainant was afraid of the courtroom, not that she was afraid of the accused. In both cases, the judges found that the complainants should testify in court (R. v. Dick (Sandra), R. v. Allan).

Only a few of the judges and defence counsel participating in the consultation had experience with closed-circuit television in the courtroom. A number of

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[22] The Department of Justice Canada provided funds, through its Criminal Law Reform Fund, to assist the Saskatchewan Department of Justice with a project to develop and test methods of implementing the closed-circuit television and screen provisions of the law. The Department also gave financial support to the Ministry of the Attorney General (Ontario) to set up a model project to explore the use of a mobile closed-circuit television system in Ottawa-Carleton courts.

crown attorneys and defence lawyers said that they found the television system only adds to the "strangeness" of the court process. They prefer to have the child testify in court.

Judges have suggested procedures to follow when a complainant is to give evidence by means of closed-circuit television (for example, R. v. Dick (Sandra)).

An unusual problem arose in one case in which the accused was defending himself. The eight-year-old complainant was allowed to testify by means of closed-circuit television and the accused could ask her questions through an intermediary. The appeal court ordered a new trial because it felt that an intermediary should not have been used and that an inquiry should have been held to determine the effect the accused's asking his own questions would have had on the complainant (R. v. H.(B.C.)).

The use of "other devices"

Subsection (2.1) also allows the use of "other devices" to block an under-18 complainant's view of the accused. The research did not uncover any cases in which "other devices" had been used.

Subsection 486(1) - Clearing the courtroom

Subsection (1) was not changed by Bill C-15, but it provides an important protection to child sexual abuse complainants. The subsection allows a judge to exclude some or all members of the public from the courtroom during all or part of a hearing. It is a general principle of law that trials are to take place in public. This subsection allows for an exception to the rule in certain circumstances.

The multi-site study found that requests to exclude the public were made in 33 percent of Hamilton cases, 22 percent of Calgary cases, 18 percent of Edmonton

cases, and 4 percent of Saskatchewan cases. If a request was made, the judge almost always agreed (multi-site study, p. 76).

Witnesses were cleared from the courtroom during the child's testimony in 62 percent of the cases in Saskatchewan, 70 percent in Hamilton, 83 percent in Calgary, and 97 percent in Edmonton (multi-site study, Table 4.3).

The number of people in the courtroom can have an important effect on a child witness's ability to testify. The multi-site study found that when there were less than ten people in the courtroom, 79 percent of child witnesses demonstrated a high ability to communicate. This ability dropped to 53 percent when there were more than ten people in the courtroom (multi-site study, p. 50).

Summary

The opportunity provided by Bill C-15 to use screens and closed-circuit television systems to accommodate complainants under 18 years of age, has not yet been fully explored or implemented.

There was some concern that these special measures are only available to victims and not to other witnesses in child sexual abuse cases who are also under 18.

486(3) *order restricting publication*

(section 442) (3) Where an accused is charged with an offence under section 140, 141, 146, 150 or 154, subsection 155(2) or (3), or section 166, 167, 168, 169, 246.1, 246.2 or 246.3, the presiding judge or justice may, on his or her own motion, or shall, on application made by the complainant, by the prosecutor or by a witness under the age of eighteen years, make an order directing that the identity of the complainant or the witness and any information that could disclose the identity of the complainant or witness shall not be published in any document or broadcast in any way.

486(4)
mandatory order on application

(3.1) The presiding judge or justice shall, at the first reasonable opportunity, inform every witness under the age of eighteen years and the complainant of the right to make an application for an order under subsection (3).

(2) Subsection 442(5) of the said Act is repealed.

Change

In hearings dealing with sexual assault and sexual abuse offences, the judge can order a ban on the publication of any information that could identify a complainant or a witness under 18. The ban is not automatic. The judge himself or herself can decide to make the ban. The judge must make the ban if the crown attorney, the complainant, or the witness under 18 asks for it.

This new section is different from the previous section because it allows a witness under 18 to request a publication ban, and it extends the circumstances in which a ban can be requested to include the new sexual abuse offences. It also uses the words "published in any document or broadcast in any way" instead of the more narrow phrase "published in any newspaper or broadcast".

Purpose of change

The new section is consistent with other changes brought about by Bill C-15.

Concerns

Generally, publication bans are viewed with suspicion by the media, who assert that they have a Charter right to represent the public at criminal trials and to report to the public on what has gone on in court. However, the Badgley Committee found that in only 0.4 percent of the media reports that they studied had information been given out that could identify a complainant. The Committee described the media as showing "commendable restraint" in this area.[23]

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23 Sexual Offences Against Children, Volume 1, p. 75.

Research

The multi-site study found that a ban on the publication of complainant-identifying information was requested in 90 percent of the Hamilton proceedings, 79 percent of the Saskatchewan proceedings, 61 percent of the Calgary proceedings, and 55 percent of the Edmonton proceedings (multi-site study, p. 76). Similarly, 79 percent of the police responding to the police officers' survey mentioned that this was a common occurrence.

The judges interviewed in the Quebec study supported the publication ban but found it difficult to explain the provision to journalists. Although many judges and defence lawyers who were interviewed by the Ontario communities study researchers agreed with the publication ban for victims and young witnesses, some felt that the name of the accused should be kept private until after a guilty verdict. Similar views were expressed by participants during the consultations.

Other respondents noted that the publication ban holds some disadvantages for the defence. Publishing names could discourage false accusations and could also bring forward witnesses with important information.

The accused's name will only be kept private if publishing it would identify the complainant or a witness. Thus, in one case, the court banned the publication of the name of the accused in order to protect the identity of the complainant (R. v. O.(R.R.)). In another case, the Ontario High Court found that the trial judge had no authority to ban the publication of the accused's name with the sole purpose of protecting the accused (R. v. D.(G.)).

The Alberta site study reports that the Alberta Teachers Association and the Alberta School Trustees Association want teachers, as an occupational group, to be protected from being named as accused in child sexual abuse cases until there is a finding of guilt. They worry that unsubstantiated accusations can irreparably damage a teacher's career.

Summary

In a landmark decision on the constitutional validity of this section (with respect to sexual assault victims), the Supreme Court of Canada held that by banning the publication of the names of complainants the law may encourage more victims to come forward with sexual assault complaints. This justifies the section's minor infringement on Charter rights (Canadian Newspapers Co. Ltd. v. Canada (Attorney General)).

Section 15 Section 586 of the said Act is repealed.

Change

This section required that the unsworn evidence of a child be corroborated before a conviction could be entered against an accused. The need for corroboration of a child's evidence was removed from the Criminal Code and from subsection 16(2) of the Canada Evidence Act by Bill C-15. Corroboration in sexual assault and child sexual abuse offences is not required according to section 274 of the Criminal Code.

Section 16 The said Act is further amended by adding thereto, immediately after section 643 thereof, the following heading and section:

Videotaped evidence

715.1 *evidence of complainant*

643.1 In any proceeding relating to an offence under section 140, 141, 146, 150 or 154, subsection 155(2) or (3), or section 166, 167, 168, 169, 246.1, 246.2 or 246.3, in which the complainant was under the age of eighteen 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.

Change

This is a new provision. It allows the court to accept as evidence a videotape in which the complainant describes the sexual offence that occurred. The videotape has to be made within a reasonable time after the offence. The complainant has to testify that what was said in the videotape is true.

This is a departure from the usual rules of evidence, which do not allow hearsay evidence and evidence of previous consistent statements.

Purpose of change

There were two main purposes behind this provision: to preserve the evidence of a child who might have difficulty remembering details of the abuse by the time a trial takes place, and to save the child from having to repeatedly tell the story of the abuse.

Children often had to tell a number of different people -- social workers, police, crown attorneys -- about the abuse. They then had to repeat their story in court. It was thought that if a videotape were made early on in the investigation of an abuse allegation, the child could be spared repeated questioning by social services and justice system professionals.

Initially, it was also thought that if there were a videotape of a child's disclosure, the child would not have to testify in court. However, the rights of the accused require that the child testify that the video is true and be cross-examined on its contents, if the defence wishes. By the time Bill C-15 was passed, it was clear that a child complainant would still have to be a witness at the trial, even if a detailed disclosure had been recorded on videotape.

Concerns

There were concerns about the constitutional validity of allowing videotaped evidence in court. There were also concerns that the words "within a reasonable time after the alleged offence" would be interpreted narrowly and would not reflect the reality that children often do not disclose abuse for some time (Stewart and Bala, 1988: p. 30).

Research

Videotapes were accepted as evidence in a few cases (R. v. Beauchamp and Beauchamp, R. v. Meddoui). The Alberta Court of Appeal held that a complainant can adopt the statements in a videotape if she recalls giving the statement and was trying to be honest when the tape was made. It does not matter if she has a good memory of the abuse incident(s) at the time of the trial. This decision acknowledges that the section allows a videotape of a child sexual abuse disclosure to be used to assist a complainant in giving evidence in court[24].

However, early on, the provision met with Charter challenges. Courts in Alberta, Manitoba and Ontario ruled that the section violated the rights of an accused and was unconstitutional. Some courts took the opposite position, but the constitutional uncertainty created a chill around videotaped evidence that has not yet lifted. The Supreme Court of Canada will be deciding the constitutionality of videotaped evidence in 1993 (R. v. D.O.L.).

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24 The Alberta Court of Appeal decision was confirmed by the Supreme Court of Canada.

Although videotapes were not often used in court, the multi-site study found that police and/or social workers were nevertheless making videotapes during their investigation of abuse allegations. In Saskatchewan, videotapes were made in 34 percent of the police investigations. In Edmonton, 119 videotapes were made, 18 percent of the cases investigated by the Edmonton police. Only three videotapes were made in Calgary and none were made in Hamilton during the period of the study (multi-site study, p. 69).

In Quebec, the provincial police made 300 videotapes in 1989. During the period of the study, however, only four videotapes were made in Québec City and Montréal, and the justice and social services system professionals interviewed by the researchers said that videotapes were very rarely used in court.

The pre-court use of videotapes was at issue in a few cases identified by the case law review. In one case, the judge acquitted the accused because he felt that a sexual assault counsellor who had watched the videotape with the complainant before the trial had coached her about her testimony (R. v. Bidwell). In another, the crown attorney had showed the complainant the videotape several times before the trial. The judge found that this was a fundamental flaw in the crown attorney's case (R. v. D.O.L.).

Two cases in the case law review deal with the meaning of "within a reasonable time after the alleged offence". Two days after the offence was held to be an acceptable time (R. v. Meddoui). In a case where sexual abuse lasted for two-and-a-half years, the videotape was made some months after the last incident. This was held to be too long a delay (R. v. D.O.L.).

Although videotaped disclosures are not being used on a regular basis in court, they are finding support among the police, crown attorneys and social service workers. Police told the Ontario communities study researchers that there are several advantages to making a videotape: it is a word-for-word account of a child's statement; the child's feelings and emotional state are evident; the interviewer can concentrate on the interview without worrying about note-

taking; prosecutors can screen the tape to get an idea of what a child's testimony would be like.

Twenty-seven percent of the respondents to the police officers' survey said that videotapes had either always or sometimes been made of a child's disclosure. Of those respondents, 95 percent said that the practice was useful.

Crown attorneys reported using the videotapes to become familiar with the child's evidence well in advance of meeting the child and then before interviewing the child. They gave many reasons for not introducing the tapes as evidence in court: the child was able to testify; the child can be cross-examined anyway, so the videotape does not spare the child that experience; if there are inconsistent statements, the defence can use the videotape against the complainant; the child's personal testimony has more impact on a judge (and jury); the constitutional uncertainty about videotapes might result in a retrial, which would be a further ordeal for the complainant; the sound and picture quality of the videotapes is not always good; some videotapes are too long; disclosures often continue over a period of time, so that the first videotape that is made (and the only one that can be used as evidence in court) does not contain all the information; judges may not believe that the videotape is a spontaneous disclosure, that it was not rehearsed; the videotape shifts the court's emphasis onto the complainant.

Similar views were expressed during the consultations, when some criminal justice system personnel mentioned policies not to use videotapes in case they could be used to contradict or undermine the child's testimony. If a videotape has been made, the defence can use the videotape in the cross-examination of the complainant to try to raise doubts about the consistency and truthfulness of the complainant's testimony.

There is some anecdotal information to suggest that the presence of a videotape may assist in plea negotiations and in securing guilty pleas.

Some respondents interviewed for the communication disabilities study said that videotapes are extremely useful in criminal prosecutions, even if they are not permitted in court. They would like to see police make videotapes when interviewing complainants of any age who have a communication disability. Similarly, a police officer told the Ontario communities study researchers that videotapes are very helpful when interviewing a person who is mentally challenged: "[A] videotape is invaluable because the person is communicating something to you that often you can't put down on paper with the same impact you get from watching it."

Participants in the consultations reported that there are protocols across the country for making videotapes, and that videotapes are routinely made by social service workers and police. However, most judges, crown attorneys and defence counsel said that they were opposed to the use of videotapes as evidence in court. Some of this opposition can be traced to the unresolved issue of the constitutional validity of the videotaped evidence section, but problems with the quality of the tapes and the possibility that they may reveal that the child was asked leading questions were also given as reasons for keeping videotape evidence out of court.

How do children feel about videotapes? The Manitoba videotape report concluded that children were not upset by the making of a videotape. However, the Ontario communities study researchers were told that watching it later with the crown attorney was traumatic for some children.

Does videotaping save children from repeated interviews about the abuse incident? No. Comparing cases where videotapes were made with those where videotapes were not made, the videotape report found that police interviewed the child again more than 80 percent of the time, in either situation. The Toronto child victim-witness support report found that, on average, children had to repeat their story four times.

On the other hand, several respondents reported using a videotape to learn more about the child and the situation. Although the child was interviewed again, the child did not have to answer as many detailed questions about the abuse, and interviews were shorter.

Summary

Videotapes are being made by police and social workers during the investigation of sexual abuse allegations. They may be used by crown attorneys before meetings with the complainant and to prepare for the trial, and by social workers in therapy. However, videotaped evidence is generally not being used in courts to replace the actual evidence of a young complainant, in part because of unresolved challenges to the constitutionality of the provision. When a videotape is used, it can be of assistance to a complainant who cannot remember all the details of an incident that happened some time in the past.

Section 17 Subsection 4(2) of the Canada Evidence Act is repealed and the following substituted therefor:

4(2)

(2) The wife or husband of a person charged with an offence against subsection 50(1) of the Young Offenders Act or with an offence against any of sections 140, 141, 146, 150 or 154, subsection 155(2) or (3), or sections 166 to 169, 175, 195, 197, 200, 246.1 to 246.3, 249 to 250.2, 255 to 258 or 289 of the Criminal Code, or an attempt to commit any such offence, is a competent and compellable witness for the prosecution without the consent of the person charged.

Change

The list of offences to which this section applies has been expanded to include the new Bill C-15 offences.

Purpose of change

There are usually no witnesses to an incident of child sexual abuse. Under common-law rules, a spouse could not be required to testify against his or her spouse except in certain specific circumstances. This section adds the child sexual abuse offences to the specific circumstances in which a spouse can be required to testify against his or her spouse. This can be very important when the accused is a parent of the complainant.

Research

In a significant number of cases, the alleged offender was the victim's father. The Calgary portion of the Alberta site study found that 42 percent of the alleged offenders were fathers, stepfathers, foster fathers or adoptive fathers of the victim. The multi-site study found that fathers were accused in 33 percent of the Calgary cases, 24 percent of the Hamilton cases, 18 percent of the Edmonton cases, and 14 percent of the Saskatchewan cases (multi-site study, p. 30).

Almost half of the defence lawyers interviewed by the Ontario communities study researchers were in favour of the new section. One said that when child sexual abuse allegations arise in the context of a matrimonial dispute, it is important to be able to cross-examine the non-offending spouse.

Summary

The section has not met with controversy.

Section 18 Section 16 of the said Act is repealed and the following substituted therefor:

16(1) *witness whose capacity is in question*

16.(1) Where a proposed witness is a person under fourteen 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

(a) whether the person understands the nature of an oath or a solemn affirmation; and

(b) whether the person is able to communicate the evidence.

16(2) *testimony under oath or solemn affirmation*

(2) A person referred to in subsection (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.

16(3) *testimony on promise to tell truth*

(3) A person referred to in subsection (1) who does not understand the nature of an oath or solemn affirmation but is able to communicate the evidence may testify on promising to tell the truth.

16(4) *inability to testify*

(4) A person referred to in subsection (1) who neither understands the nature of an oath or a solemn affirmation nor is able to communicate the evidence shall not testify.

16(5) *burden as to capacity of witness*

(5) A party who challenges the mental capacity of a proposed witness of fourteen years of age or more has the burden of satisfying the court that there is an issue as to the capacity of the proposed witness to testify under an oath or a solemn affirmation.

Change

This section is significantly different from the old law on child evidence. Before these amendments, a "child of tender years", who did not understand the "nature of an oath", could only be a witness if the judge found that the child was "of sufficient intelligence to justify the reception of the evidence" and understood the "duty to speak the truth". The old law required that a child's unsworn evidence be corroborated (old section 16(2) of the Canada Evidence Act).

The old section 586 of the Criminal Code said that a person could not be convicted upon the unsworn evidence of a child unless that evidence was corroborated.

Now, children under 14 who do not understand the nature of an oath or solemn affirmation, but who can communicate the evidence, can testify if they promise to tell the truth. However, children under 14 years of age who do not understand the nature of an oath or solemn affirmation and cannot communicate the evidence cannot testify. There is no special corroboration requirement.

At trial, the crown attorney or the defence can challenge the mental capacity of a witness over 14 years of age to testify under oath or solemn affirmation. The challenger has to satisfy the court that it should conduct an inquiry under subsection (1) before allowing the witness to testify.

Purpose of change

Unfounded assumptions[25] about children's inability to be reliable witnesses prevented many child sexual abuse prosecutions from going ahead. The law now allows the trial judge to decide about the ability of a child under 14 to testify.

Concerns

There was some uncertainty about whether the evidence of a child given under a promise to tell the truth would have the same weight as evidence given under oath or solemn affirmation. The law is not specific on this point (Stewart and Bala, 1988: p. 33). Other concerns, related to the dropping of the corroboration requirement, were discussed earlier.

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25 Sexual Offences Against Children, Volume 1, p. 32. The Badgley Committee research indicated that "the assumptions about the untrustworthiness of young children and their inability to recall events with respect to sexual offences are largely unfounded."

Research

Giving testimony under oath or affirmation or on promising to tell the truth

The multi-site study found that in Calgary, 76 percent of victims/witnesses under 14 gave testimony after being sworn in. The rest gave evidence on promising to tell the truth. In Edmonton, half of the victims/witnesses under 14 were sworn in. Four out of five Hamilton victims/witnesses under 14 were sworn in. No information was available from the Saskatchewan study (multi-site study, p. 71). Twenty-two of 29 child witnesses observed for the Toronto child victim-witness support report were sworn in.

Twenty-two percent of respondents to the police officers' survey reported changes in the average age of child victims/witnesses being sworn in. Of the 19 descriptions provided, 42 percent reflected a belief that the average age was lower than in the past. As well, 37 percent of respondents said there had been a change in the weighting of sworn versus unsworn evidence; 24 percent reported an increase in unsworn evidence.

Regardless of whether a witness under 14 testifies under oath, by making a solemn affirmation or upon promising to tell the truth, the Alberta Court of Appeal (R. v. Meddoui), confirmed by the Supreme Court of Canada, held that the evidence should not be treated any differently. Most judges answering the Ontario communities study researchers said that they did not give unsworn evidence less weight than sworn evidence. However, they can and do discuss the reliability of unsworn testimony with the jury.

Does a child's testimony have the same weight as an adult's?

In 1962, the Supreme Court of Canada decided that the sworn evidence of a child should not be treated in the same way as the sworn evidence of an adult. It said that in every case in which a child testifies, the judge must remind himself or herself, or the jury, of the danger of accepting the child's evidence. This became

known as the Kendall warning. It was based on the assumption that children were not reliable witnesses (R. v. Kendall).

Although Bill C-15 recognized that children are reliable witnesses and changed some provisions with respect to a child's testimony, it did not specifically say that the Kendall warning was no longer appropriate. Since 1988, the Supreme Court of Canada has had an opportunity to say that the Kendall warning had become incorrect. It did not do so (R. v. Khan, B.(G.) v. The Queen, R. v. W.(R.)). However, in one of these cases, the court noted that, with the removal of the requirement that a child's evidence be corroborated the law no longer assumes that a child's evidence is less reliable than an adult's (R. v. W.(R.)).

The British Columbia Court of Appeal ruled in 1991 that a judge should not make any assumptions about the reliability of evidence because of a witness's age or the type of offence. Each witness's credibility should be considered on its own. The court rejected the need for a Kendall-type warning when young witnesses are testifying (R. v. K.(V.)).

Testing the ability of a child under 14 to testify

The case law also says that when a witness is under 14 years of age, the judge *must* conduct the inquiry outlined in subsection (1) (R. v. D.(R.R.)). Most judges appear to conduct the inquiry themselves, giving the prosecution and the defence a chance for input. However, some judges turn the questioning over to the crown attorneys. Some crown attorneys participating in the consultations said that they prefer to lead the questioning. Similar comments were made to the communication disabilities study researchers. Crown attorneys told them that they like to lead the questioning because the child already knows them. The judge can be a bit frightening, making the child quiet and unresponsive.

In about half of the cases, judges reported that the jury is present.

Judges often begin by asking general questions about a child's name, age, address, school, church, and then ask if the child knows the importance of telling the truth. They may ask questions about God and the Bible. Some respondents to the Ontario communities study were concerned about the religious aspects of judges' questioning. They felt that asking a child if he or she goes to church regularly or reads the Bible is not realistic nowadays. However, the Toronto child victim-witness support report found that a child's religious training did not seem to be a criterion in judicial decisions.

Many of the respondents to the communication disabilities study emphasized the need to keep questions concrete. For example, the question "Do you know what it means to promise to tell the truth?" involves two difficult conceptual matters -- promises and truth -- making it hard for children and mentally challenged people to answer easily.

One Court of Appeal case, which was confirmed by the Supreme Court of Canada, holds that a judge does not have to ask a child specifically about the meaning of "truth" and "a promise". The judge can assess the child's understanding generally and weigh the nature and maturity of the child's responses to a variety of questions (R. v. Khan).

Without exception, all participants in the consultation noted that this provision has been effective in allowing younger children to testify.

Summary

Children between four and nine years of age are generally more likely to testify upon promising to tell the truth. Children over nine are usually sworn in.

The new law is seen as a positive development that is allowing younger children and mentally challenged people to testify.

Section 19.(1) On the expiration of four years after the coming into force of this Act, the provisions contained herein shall be referred to such committee of the House of Commons, of the Senate, or of both Houses of Parliament as may be designated or established by Parliament for that purpose.

(2) The committee designated or established by Parliament for the purpose of subsection (1) shall, as soon as practicable, undertake a comprehensive review of the provisions and operation of this Act and shall, within one year after the review is undertaken or within such further time as the House of Commons may authorize, submit a report to Parliament thereon including such recommendations pertaining to the continuation of those sections and changes required therein as the committee may wish to make.

Change

Bill C-15's requirement that Parliament review the legislation after four years was an innovation.

Research

Some of the researchers pointed out that, at the time of their studies, Bill C-15 had not yet been fully implemented. It takes time for courts to equip themselves with devices like screens and to find the resources for equipment like closed-circuit television systems. It also takes time for cases to make their way through the justice system. The delay between the time a charge is laid and the trial itself can move a case outside the scope of a structured research study. For instance, in the study of the videotaping of a child's disclosure in Manitoba, only 20 of 149 cases had been completed by the conclusion of the study.

Cases that question the constitutional validity of a section may not be resolved until they reach the Supreme Court of Canada. Thus, judges and lawyers are now waiting for a ruling on section 715.1, which allows for a videotape of a child's disclosure, made within a reasonable time after the offence, to be admissible as evidence. Without this ruling, crown attorneys are reluctant to present these videotapes in court. Research findings about the impact of this provision of Bill C-15 are therefore limited.

Summary

The research provides some important insights into the effects of Bill C-15, but the four-year review period is too short to fully assess all aspects of the legislation.

Section 20 This Act or any provision thereof shall come into force on a day or days to be fixed by proclamation.

The law came into force on January 1, 1988.

Chapter Five -

Other research information relating to the effects of Bill C-15

The relationship between the criminal justice system and the social services system

In cases of child sexual abuse, it is especially important that the criminal justice system and the social services system, each with its own mandate and responsibilities, work together effectively and efficiently. The criminal justice system operates to control and punish unacceptable behaviour. It punishes offenders, and in doing so it shows others that the offender's act will not be tolerated.[1] On the other hand, the social services system operates under provincial laws. Its role is, in part, to ensure that children are safe and to protect them, if necessary.

From a legal point of view, charges in a criminal trial must be proved beyond a reasonable doubt. In social service work, the workers must believe that something has happened on a balance of probabilities. A criminal prosecution requires a higher level of certainty.

Several of the research reports contain insights into how the child sexual abuse legislation was put into effect by professionals in both these systems. The research sheds some light on aspects of the practical application of the law, but its national relevance is limited by the degree to which both justice and social services are managed at a local level. Generalizing from the information gathered in one town or region and assuming that that is the case everywhere is dangerous.

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1 The news release announcing the proposed child sexual abuse measures stated that "child sexual abuse is unacceptable in Canada and will not be tolerated". Government Introduces Measures Against Sexual Abuse of Children, Government of Canada News Release, June 20, 1986, op. cit.

The multi-site study reviewed both police and social service files (except in Saskatchewan, where social service files were not included in the site study). It found that, in Alberta, over 40 percent of cases ended up as active cases, handled by both the criminal justice and the social services systems.[2] In Hamilton, there was an overlap in 87 percent of cases (multi-site study, Table 3.1). This reflects different protocols and practices established between the police and social services. In some jurisdictions, if an allegation of child sexual abuse comes to the attention of social service workers, the police are automatically notified. A joint investigation may then take place. In other jurisdictions, social services will begin the investigation and notify police later if the allegations are confirmed.

In Quebec, for instance, the provincial child protection law says that social services must be notified whenever a child is at risk. Social services then manages the investigation and decides what to do to protect the child. The police may or may not be involved.

The relationship between police and social service personnel has changed significantly over the last few years. In many communities, protocols have been established to identify the role of each agency and to smooth the handling of child sexual abuse cases. In several communities, coordinating committees bring together representatives of organizations such as social services, the police, the medical profession, the crown attorneys' office, and school boards.

The participants in the consultations reported good working relationships between the police and social services. The multi-site study found a high degree of interagency cooperation in the development of protocols for dealing with child sexual abuse in both Alberta and Ontario. (This was not a research issue in Saskatchewan) (multi-site study, p. 50).

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2 The mandates of social service agencies are different across the country. For instance, in Alberta, social service agencies must take actions that are the least intrusive to the family.

Although the criminal justice system and the social services system no longer operate as two solitudes, the research shows that there are still unresolved tensions between the two systems.

The Quebec researchers concluded that the lack of coordinated action between the criminal justice and the social services systems is a significant problem in spite of numerous protocols and paper agreements on procedures. During the consultations across the country, several participants from social services and some from the police noted the need for improved communications with the crown attorneys' office.

Social service agency respondents to the Ontario communities study said that, even though there had been improvements in their relationship with the police and the crown attorney's office, there are still frustrations. They identified several sources of strain. They were concerned that charges were not always laid, even though the case seemed to be a strong one from the perspective of social services. They believe that the safety of the child is not always the first concern for police, whose job is to catch the offender. They feel that police lack training about child sexual abuse and, often, an experienced officer will get transferred to other work. They also reported a lack of communication that results, for instance, in social workers not being told well in advance about court dates.

Police have their frustrations with social services, too. They report that social service workers may be bound by confidentiality requirements and refuse to share any information with police. The information flow seems, to some police, to go only one way. They feel that social workers sometimes compromise a police investigation by asking complainants leading questions, which can later undermine a prosecution. Police also complained about staff turnover on the social service side.

The general perception, articulated during the consultations, is that although there are still tensions between the criminal justice and social services systems,

there is much more consultation and coordination between the systems than there was ten years ago.

Delays between a report of sexual abuse, the investigation and the trial

The multi-site study found that the time between a report to police and a preliminary inquiry ranged from 5.3 months in Calgary and 5.2 months in Edmonton, to 9 months for Hamilton cases. However, Hamilton cases proceeded to trial more quickly (2.3 months), whereas in Calgary it took 6.5 months, and in Edmonton, 6.9 months. The overall time lapse between the report to police and a trial ranged from a low of 8 months in Edmonton to a high of 11 months in Hamilton (multi-site study, p. 47).

The Toronto child victim-witness support report researchers found longer delays in Toronto courts. One third of the cases took 7 to 12 months; to complete another third took from 12 to 30 months. A constant court backlog and frequent adjournments explained the delays, which were longest at the District Court level.

Police in Quebec told researchers that court cases often take two years to go through the system.

The Ontario communities study respondents told researchers that court delays have a detrimental impact on child witnesses: the longer the delay, the more difficult it can be for a child to give evidence. If a long period of time had passed since the abuse, the multi-site study found that children had difficulty "telling the story" (multi-site study, p. 52).

Some people suggested that child sexual abuse cases get priority in the court system.

The child witness in court

One of the four main objectives of Bill C-15 was to improve the experience of the child victim and witness. There were many concerns that the court process resulted in a second victimization of a child who had been sexually abused. Some of the research provides insight into how well children's needs have been accommodated by the new law.

In the courtroom, technical changes in the law, such as allowing a screen to block the child victim's view of the accused, were somewhat successful, although not frequently used. (See discussion on page 62 of this report.) However, many other "informal" measures were put in place to help children testify. They did not require legislative amendment, but rather relied on the imagination and willingness of criminal justice system personnel.

Some of these measures were changes to the physical surroundings in the courtroom, including the use of a booster seat for a child at the witness stand, allowing the child to bring a toy, blanket, or the like, to the witness stand, allowing the use of props, such as dolls or drawings, and using a microphone to amplify the complainant's voice.[3]

The Toronto child victim-witness support report notes that microphones were only used in three trials, although the researchers observed that judges frequently asked children to speak up when giving their testimony. The communication disabilities report notes that the use of a microphone can help a witness with a communication disability who has difficulty speaking loudly enough for everyone in court to hear.

Other measures can make the child witness more "emotionally" comfortable in the courtroom. The most frequently observed measure was the presence of a

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3 Courtrooms are equipped with microphones to record proceedings for the purpose of making an accurate court transcript. These microphones do not amplify the voices of people speaking in court.

support adult with the child in the courtroom. A support adult stayed in the courtroom in 92 percent of Hamilton cases, 75 percent of Calgary cases, 48 percent of Edmonton cases, and 38 percent of Saskatchewan cases (multi-site study, Table 4.3). Support adults were in the courtroom in 22 of the 29 cases observed by the Toronto child victim-witness support report researchers.

In a few cases, a support adult went to the witness stand with the child, or the child sat on a support adult's knee when testifying. In the police officers' survey, 47 percent of respondents said that they had always or sometimes observed a support adult accompanying a child to the witness stand. Of these respondents, 94 percent felt that the practice was useful.

Of all the informal measures, defence counsel most often objected to arrangements allowing an adult to be with the child at the witness stand. Judges, however, usually permitted it (multi-site study, p. 89). In one case, a participant told the consultation team that a judge allowed the child to sit on his knee when testifying.

Forty-three percent of the respondents to the police officers' survey reported a change in the way judges responded to child witnesses. Of these respondents, 55 percent noted an increase in judicial awareness, tolerance and patience. The participants in the consultations also noted a general feeling that, most of the time, the judges show appropriate sensitivity to the special needs of child witnesses.

Regardless of these changes, the research suggests that testifying in court is still very traumatic for a child (multi-site study, p. 91). The courtroom can be an intimidating place, and seeing the accused again may be stressful. However, the multi-site study found that, in spite of the difficulties, children do well in court and are competent witnesses. The Saskatchewan site study concluded, "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 circumstances. Analysis of child

witnesses' ability to communicate showed that ability to communicate was lowest during the oath/communication stage, highest during examination-in-chief and intermediate during cross-examination" (multi-site, p. 47).

Finally, the multi-site study found that children have difficulty understanding an acquittal of the accused. From the child's point of view, the "not guilty" verdict suggests that the judge (or jury) did not believe the child. Children tend to be more upset by the courtroom experience if the trial does not result in a conviction.

Preparing a child for court

The extent to which children are provided with assistance to prepare for the court experience varies across the country. In some communities, crown attorneys with special training meet with a child before court to explain the process and answer questions. In other communities, the police have victim services personnel who meet with a child to explain what will happen. In other communities, social workers have the responsibility for preparing children for court. And, in some communities, special child witness preparation projects have been set up.

These child victim-witness support projects offer a number of different services, such as holding regular group meetings with other young victims or witnesses, organizing tours of a courtroom, having a trained staff member accompany a child to court as a support person, and meeting with the family to answer questions and explain the criminal justice process. At this time, these programs tend to be offered on a pilot project basis and have not been integrated into ongoing criminal justice system services.

Some research suggests that where court preparation programs are offered, they are successful in assisting child witnesses in understanding the criminal justice process. Crown attorneys from Ontario communities with a victim-witness

assistance program told the Ontario communities researchers that children who participated in the program were better prepared for court than children who had not had the opportunity to participate in the program. The children had a greater understanding of the court process and, as a result, were more comfortable and better able to communicate their evidence.

One problem with the group programs was identified in the Fredericton study. Male victims of child sexual abuse may have to wait several weeks or months for a group to start, because there are insufficient numbers of boys to form a group.

The Toronto child victim-witness support report concluded that there were inadequate resources allocated to preparing children for court. Participants in the consultations reported that they did not feel that children were being adequately prepared for court. The only exceptions were in Prince Edward Island and Newfoundland where participants said that court preparation services were adequate.

In conclusion, the research indicates that going to court is a traumatic experience for children but one that can be somewhat alleviated by structured court preparation services. However, these services are only available to child victims and witnesses in a few communities in Canada.

Chapter Six -

Conclusion

This report provides information on the criminal justice system's response to child sexual abuse since 1988. It does not document the enormous variety of activities and programs under way in health, social service, education and religious communities. These efforts are also making an important contribution by providing services and support to children and adults who have been sexually abused, and by working to end the sexual abuse of children.

The research on the new child sexual abuse provisions provides some key information on the effect the Bill C-15 provisions have had. Detailed information comes from only a few sites in Canada and cannot be used to generalize about the situation in every part of the country. However, information from the other research studies and from the cross-country consultations serves to complement the information from the site studies and to confirm it. The consistency in the data from the various research sites validates all the findings.

Everyone who participated in the consultations said they thought that more disclosures of child sexual abuse are being brought to the criminal justice and social services systems.

The new sexual abuse offences

All the research indicates that child sexual abuse can include a wide variety of behaviour. Under the old law, vaginal penetration by a penis was an element of many of the sexual offences. The new law is more comprehensive, and recognizes that inappropriate sexual activity involving children ranges from exposure through inviting a child to touch, fondling, and oral sex, to vaginal or

anal intercourse. It also recognizes that both females and males can be victims of child sexual abuse, and that both males and females can be perpetrators.

Although charges continued to be laid under the sexual assault provisions of the Criminal Code, the research found that charges under the new offences increased over time. More charges were laid under section 151 (sexual interference) than under section 152 (invitation to sexual touching) or section 153 (sexual exploitation).

The victim in 20 to 30 percent of the cases reviewed in the multi-site study was a boy. This indicates that the gender-neutral provisions of Bill C-15 are important in extending protection to male victims of child sexual abuse.

Conviction rates in cases of child sexual abuse were high. The rates can be explained, in part, by a large percentage of guilty pleas. As well, a significant number of cases do not result in charges or else drop out of the system before trial; these cases are not included in conviction rate calculations. Regardless, the high conviction rates do suggest that the law is effective in allowing the successful prosecution of child sexual abuse offenders.

The new rules of evidence and the new procedures

Bill C-15 changed a number of procedural aspects of the law. Children who do not understand the meaning of taking an oath can testify if a judge finds that they are able to communicate the evidence and promise to tell the truth. Children's evidence does not need to be corroborated. To accommodate child victims in the courtroom, a judge can allow them to testify behind a screen or in another room by way of a closed-circuit television system. In certain circumstances, a videotape of a child's disclosure can be allowed as evidence.

The multi-site study found that most victims of child sexual abuse and sexual assault are under 12 years of age, and that between 15 and 22 percent are under

five. Since children under nine are generally found not to understand the meaning of taking an oath, the provision allows cases with younger victims to proceed.

Professionals working in the criminal justice system shared the perception that younger children are now being allowed to testify. This suggests that the provision has been successful in catching perpetrators who can no longer escape prosecution because of the young age of their victims.

Although the presence of corroborating evidence may be important during the police investigation of a child sexual abuse allegation, and may influence the decision to lay charges, the multi-site study found that there were many convictions without corroborating evidence.

Police officers and other criminal justice professionals support the provision protecting a child victim from having to see the accused in court. However, screens to block the victim's view of the accused when testifying were not used in many courtrooms. Closed-circuit television systems were hardly used at all.

The delay in implementing this aspect of Bill C-15 may be attributed, in part, to a lack of resources for purchasing the necessary equipment and, in part, to the time it takes for these kinds of changes to become part of established courtroom practice.

Videotapes of an early interview of a child following a disclosure of sexual abuse have been offered as evidence in only a few cases. They are used to help a child give evidence, and may be used to refresh a complainant's memory about a sexual abuse incident that may have happened several months or even years before the trial. Despite their potential usefulness, there is a widespread perception that the use of the tape might be challenged under the Canadian Charter of Rights and Freedoms, and crown attorneys are waiting for a Supreme Court of Canada ruling to clarify the matter before introducing tapes as evidence at trials.

In the meantime, many social service agencies and police officers continue to make videotapes during their investigations. The tapes are proving useful in recording the child's early statements about the abuse and are being used by some crown attorneys in their preparation of a case. They are not working to save a child from having to recount the abuse experience to several professionals, although they may be saving the child from having to repeat all the details. There is some anecdotal information to suggest that the videotapes are useful in family therapy work and in securing guilty pleas before trial.

Offences relating to the use of the services of a juvenile prostitute

Bill C-15 made it an offence to buy the services or live off the avails of a prostitute under the age of 18. The research shows that customers and pimps of juvenile prostitutes are not being charged under the new provisions. It seems that the new law has not had any impact on juvenile prostitution.

Perpetrators

The research provides a profile of the people who commit child sexual abuse offences. Over 90 percent of them are male. In some parts of the country, up to 30 percent of them are under 18.

In the vast majority of cases, the perpetrator is someone the child knows. Most often, the perpetrator is the child's father, stepfather or common-law spouse of the child's mother. Sometimes, the perpetrator is a brother, uncle, grandfather or other relative, or a neighbour or acquaintance. Strangers to the child were the perpetrators in less than 2 percent of the Fredericton cases studied. Strangers were the perpetrators in 25 percent of the Edmonton cases, the highest proportion in the research of cases involving strangers.

Unfortunately, the research does not provide insights into why these men sexually abuse children or about the kind of treatment programs that might be successful in stopping this criminal behaviour.

Difficulties for children

The various research studies that interviewed children or observed them in court provide clear evidence that going to court is traumatic for a child. Notwithstanding the new law's provisions, which seek to accommodate child victims and witnesses, children find going to court difficult. The courtroom is an intimidating place; seeing the accused again can be frightening; and the defence's cross-examination techniques can be unsettling. On the other hand, the court observation data show that most children communicated evidence well and were competent witnesses.

The number of people in the courtroom can have an important effect on a child witness's ability to testify. When there were fewer than 10 people in the courtroom, child witnesses demonstrated a high ability to testify. The ability dropped when there were more people present.

The multi-site study found that a child victim's or witness's feelings about the court process were directly affected by the outcome of the proceedings. If the accused was found not guilty, children were more upset by their court experience.

It is hard for children to understand that a "not guilty" verdict does not mean that the judge (or jury) thought the child lied or that the sexual abuse did not take place. It means only that the charges against the accused were not proved beyond a reasonable doubt.

The delays before a case gets to trial also have a negative effect on children. The multi-site study found that children were less able to "tell their story" if a long time passed between the sexual abuse and the trial.

Social service professionals said that they were sometimes limited in the kind of therapeutic support they could offer a child before the trial had taken place. They do not want their therapeutic work to be interpreted as "coaching" the child, thereby undermining the prosecution. This means that children sometimes have to wait until after a trial is over before receiving treatment. Given the delays before cases come to court, this may mean a wait of several months or longer.

The effect of Bill C-15

The changes brought about by Bill C-15 reflect a major shift in the criminal justice system's approach to child sexual abuse cases. They are premised on the belief that children can be reliable witnesses. They recognize that children who come to court as witnesses have unique needs that can be accommodated through sensitivity and special measures. They communicate the message that adult sexual activity with children is unacceptable and a criminal offence.

In the first four years since the coming into force of Bill C-15, many of its provisions have been put into effect. Other provisions are not yet fully implemented. It takes some time for changes of this sort to be fully integrated into the criminal justice system.

Finally, child sexual abuse is a social problem. It cannot be solved solely by the criminal law and criminal justice system services. All sectors of society must work together with a combined and coordinated commitment to improve the lives of children.

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Appendix 1

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Appendix 3

List of projects relating to child sexual abuse funded by the Department of Justice Canada

During the years 1986 to 1992, special project funds were available to provide project support for the implementation of Bill C-15. Some projects were national in scope. Others were developed in a community to serve that community.

Requests for project funds far outstripped available resources. Innovative projects and projects that could provide information on a new approach to handling child sexual abuse situations were most likely to receive funds.

Some funds were provided for training sessions to inform key justice system personnel (for example, crown attorneys and police officers) about the new law, and to enable professionals from a variety of disciplines (for example, health and social services) to work out ways to work effectively together. Other funds supported the production of public legal education materials on the law. Public legal education projects developed brochures, books, posters, videotapes and theatre productions to inform specific audiences (for example, teenagers or teachers) about child sexual abuse issues and the law.

Some funds were made available for research into various aspects of the law and the effectiveness of different programs (for example, the use of videotaped evidence or child victim-witness support programs).

Four of the projects funded by the Department were also evaluated by the Department. Child victim-witness support projects in Metropolitan Toronto[1]

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1 Program Review of the Child Victim-Witness Support Project, Campbell Research Associates and Social Data Research Limited, December 1990. A Working Document of the Research Section, Department of Justice Canada.

and in Vancouver[2] were the basis of separate studies into the impact that these types of projects have on children who come in contact with the criminal justice system as victims or witnesses of child sexual abuse or sexual assault. A project on the videotaping of evidence in Manitoba provided insights into the ways videotaped evidence can be used and the impact the tapings have on child victims.[3] Another project looked at the Child Advocacy Project in Manitoba and the handling of cases of child sexual abuse originating on native reserves.[4]

The Department continues to fund projects concerning child sexual abuse issues through its Criminal Law Reform Fund and Public Legal Education and Information Fund. In addition, under the federal Family Violence Initiative, funds are available for projects on child sexual abuse, as well as on spousal abuse, senior abuse and family violence generally. The amount of money now available for child sexual abuse projects is, however, quite limited.

Training Projects

Saskatchewan Council for Children and Youth (Saskatchewan)
Conference: "Beyond Badgley"

The purpose of the conference was to bring together administrators, managers and practitioners to discuss strategies for coordinated work on child sexual abuse matters.
1988

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2 J. Currie (Focus Consultants), A Review of the Victim Support Worker Program, July 1987. Background research for the Research Section, Department of Justice Canada. This study pre-dates the coming into force of Bill C-15.

3 R. Gunn, Evaluation of the Videotaping Pilot Project in Winnipeg and Parklands, February 1989. A Working Document of the Research Section, Department of Justice Canada.

4 WMC Research Associates (Man.) Ltd., An Evaluation of Phase III of the Child Advocacy Project, A Technical Report, Department of Justice Canada, January 1987.

Manitoba Department of the Attorney General (Manitoba)
Project: videotaping of investigatory interviews with victims of child sexual abuse

The project was designed to develop expertise and set out procedures for the videotaping of a child's evidence.
1988 - 1989

Saskatchewan Department of Justice (Saskatchewan)
Project: separation of the child and accused in the courtroom

The demonstration project tested the use of closed-circuit television and witness screens to assist child witnesses.
1988 - 1989

Saskatchewan Department of Justice (Saskatchewan)
Project: protocols and procedures for interviewing child complainants and videotaping their statements

The purpose of the demonstration project was to develop protocols and training materials on videotaping a child's evidence and to build a level of expertise on videotaping among justice system personnel.
1988 - 1989

Ministry of the Attorney General (British Columbia)
National conference: videotaping evidence

The conference brought together justice system personnel from across the country to discuss videotaping interviews with child victims of sexual abuse, presenting videotaped evidence in court, and using closed-circuit television systems in court.
June 1988

Ministry of the Attorney General (Ontario)
Pilot Project: closed-circuit television testimony

The project, in Ottawa-Carleton, developed and tested a mobile closed-circuit television system for use in cases where a child is testifying about sexual abuse.
1990 - 1991

Community Services Council of Newfoundland (Newfoundland)
Project: coordinated response to child sexual abuse victims

The Department funded two phases of this four-phase project. The purpose of the project was to develop a coordinated, province-wide, effective response to situations of child sexual abuse. It also worked to improve the public's knowledge about child sexual abuse issues.
1987 - 1988

Institute for the Prevention of Child Abuse (Ontario)
Publication: Bill C-15 Guidelines for Communities

Following a series of eight meetings across Ontario with community groups working on child sexual abuse issues, the Institute prepared recommendations and strategies for handling child sexual abuse cases. The publication promotes interprofessional collaboration.
1988

Ad Hoc Committee on Child Sexual Abuse Workshop (Yukon)
Workshop

The workshop goals were to develop a coordinated approach to the investigation of child sexual abuse complaints and to develop skills among agency personnel.
March 1987

Regina Child Abuse Prevention Committee (on behalf of the Saskatchewan Department of Social Services) (Saskatchewan)
Training Workshop

The Committee structured the workshop to provide information and skills development training to participants from legal, medical and social service backgrounds. The focus was on investigating and interviewing techniques and on providing counselling for victims and treatment for offenders.
March 1988

Public Legal Education and Information Projects

Le Conseil de la Police amérindienne, Pointe Bleu (Québec)
Research, publications and videotapes: child sexual abuse and family violence in a native community

After conducting research and discussions within the community, the group prepared brochures and videotapes on the problems of family violence and child sexual abuse, and on the law. The material was developed for the Pointe Bleu community and was also made available to communities across the country.
1989 - 1991

Nishnawbe-Aski Nation (Ontario)
Workshops

Two workshops were held in two different locations in Northern Ontario. Their purpose was to increase understanding about Bill C-15 and to provide native communities with an opportunity to identify strategies for assisting victims and for stopping child sexual abuse.
March 1989

Public Legal Information Association of Newfoundland and Arctic Public Legal Education and Information Society (Northwest Territories) (Newfoundland and Northwest Territories)

Theatre script and publications: on family violence

The project developed script outlines and counselling materials to provide a basis for community theatre productions on family violence issues. The main audience for the theatre productions were nonliterate and native people.

1989 - 1990

Public Legal Education Society of Nova Scotia and the Nova Scotia Family and Child Welfare Association (Nova Scotia)

Workshop

The two-day workshop brought together child protection workers, social workers, health and justice system workers, teachers and others to inform them about the new child sexual abuse legislation and related matters.

February 1989

Legal Resource Centre of Alberta (Alberta)

Workshops for helping professionals and a pilot project on participational drama

The project had two components. The first one-day workshop for people working with and for children informed them about the legal changes brought about by Bill C-15. The second seminar worked with selected specialists to determine how well sensitive subjects related to child sexual abuse could be discussed through the use of participational drama. A university course was developed later.

1989

Community Legal Education Association (Manitoba) and Actor's Showcase, Manitoba's Theatre for Young People (Manitoba)
Live theatre and information sessions

The group presented the play "Feeling Yes, Feeling No" in schools in rural Manitoba and followed the drama with information sessions about child sexual abuse and the law. A second project then evaluated the drama presentation. Workshops were held to give people in the helping professions more information on the new law.

1988 - 1990

Research Projects

The Institute for the Prevention of Child Abuse
Research on the implementation of Bill C-15 in eight Ontario communities
(See page 18 for more information.)

This project provided information on the implementation of Bill C-15, which contributed to the Department's overall research work on the effects of the new law.

1990 - 1992

New Brunswick Department of Justice
(1) An evaluation of the Fredericton Child Abuse Team (See page 18 for more information.)

An evaluation of the Child Abuse Team was completed by independent researchers.

1984 - 1988

(2) Defining a model strategy for responding to child sexual abuse and training police, crown attornies and child protection workers to implement the strategy

This "train the trainers" project provided information about child sexual abuse, ways to respond to abuse situations, and the needs of victims, and suggested police, prosecution and child protection procedures.

1988 - 1989

Family Services of Greater Vancouver (British Columbia)
Victim Support Worker Project (See page 16 for more information.)

The funds enabled the project organizers to continue a project that was designed to reduce the stress and anxiety experienced by child/adolescent victims of sexual abuse and assault who come in contact with the criminal justice system. The project also sensitized criminal justice system personnel about the special needs of these victims/witnesses.
1988

Metropolitan Toronto Police Force (Ontario)
Evaluation: Child Victim-Witness Police Data Project (See page 16 for more information.)

To assess the effects of the Child Victim-Witness Project, the Department supported the collection of police, crown and social service data. This information enabled the Department to evaluate the impact of the Project.
1987 - 1990

Catherine Mahoney, University of Victoria (British Columbia)
Research study: issues in the questioning of adults and children

The project studied questioning techniques and sought to identify how to elicit reliable information from child witnesses.
1988

Dr. Stephen P. Norris, Educational Researcher (Newfoundland)
Research study: evaluation of a novel on child sexual abuse

The novel on child sexual abuse, Ask Me No Question, was developed by the Public Legal Information Association of Newfoundland with the financial assistance of the Department. This study evaluated its effectiveness in reaching a teenage audience.
1991

Appendix 4

Description of the law information work undertaken by the Department of Justice Canada

To inform the public about the new child sexual abuse legislation, the Department prepared three publications on the new law.

The Secret of the Silver Horse
This storybook for children distinguishes between secrets to keep and secrets to tell. It encourages children to tell someone if they are being sexually abused. It recognizes that children may have to tell more than one person before they find someone who will listen to them.

Since 1988, 800,000 English copies and 350,000 French copies of the story have been printed.

What to do if a child tells you of sexual abuse . . . Understanding the Law
This booklet explains the child sexual abuse legislation and gives readers practical advice on how to respond to a child's disclosure of sexual abuse.

Since 1988, 1,200,000 English copies and 1,500,000 French copies of the booklet have been printed.

Canada's Law on Child Sexual Abuse: A Handbook
The Handbook provides a detailed description of the new law and answers questions about it. Its intent is to help child protection workers and other professionals who work with children to understand the changes brought about by Bill C-15.

Since 1988, 173,000 English copies and 35,000 French copies of the Handbook have been printed.

All three of these publications are also available on audio cassette.

In addition to these publications, the Department paid for the three radio features on the law, contributed to production costs of a two-part television series and assisted with an article on the law for a teenage magazine.