



Let's Go to Court

a guide to court orientation
for child + youth witnesses

INFORMATION + RESOURCES FOR VICTIM SERVICE WORKERS



Ministry of
Public Safety
and Solicitor General

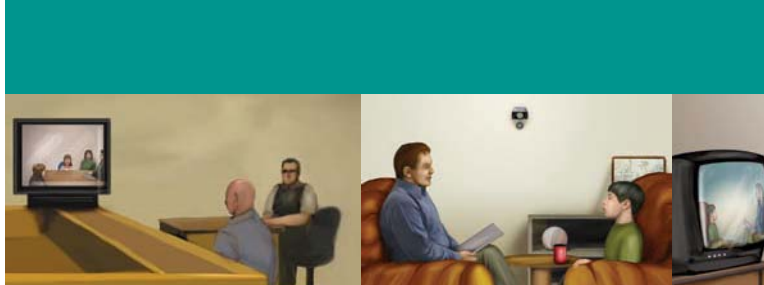


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introduction

This booklet accompanies the video, *Let's Go to Court* and is intended as a resource for Victim Service Workers and other professionals who are trained to assist child witnesses get ready to go to court.

Children of all ages are called to testify in court. Their understandable fears about testifying in a strange and stressful environment are reduced and their ability as a witness is greatly enhanced by court preparation and support. Victim Service Workers have an important contribution to make to this process.

Victim Service Workers and others who work with child witnesses have an important role to play in educating and supporting them, and helping to make going to court an affirming experience, regardless of the outcome in court. A respectful and helpful relationship lets the child know that the criminal justice community cares about them and their safety. If children are well supported through the process, their



experience is likely to be less stressful and more positive for them if they receive age-appropriate information, preparation and support from a professional service provider.

It is in the best interests of a child witness that the Victim Service Worker and the Crown counsel work together as a coordinated team. The objective of a team approach is to ensure that the witness and their parent/caregiver receive the information, preparation and support they need in a timely and coordinated manner. This will reduce anxiety for the child and help them to do their job in court. In turn, this facilitates the criminal justice process and contributes to society's search for truth and justice.

It is important for Victim Service Workers to be aware of the courtroom accommodations that are available to young witnesses in Canada. These are available on request unless the judge deems they would interfere with the proper administration of justice and prohibits their use.

Invaluable information for Victim Service Workers who work with young witnesses is provided in the *Guidelines on Justice for Child Victims and Witnesses of Crime* (see Resources



Section). The guidelines lay out a framework for assisting and protecting child witnesses throughout their involvement in the criminal justice system, and emphasize the need for collaboration among the professionals who have contact with the child. The guidelines were adopted in 2005 by the United Nations Economic and Social Council. Victim Service Workers and other criminal justice professionals who work with children are encouraged to read them as part of their responsibility to their work.

intended audience for the video and booklet

This video and booklet are designed for use by professionals as part of the process of preparing a child between eight and twelve years for being a witness in criminal court proceedings.

The video answers questions and concerns that the child may have about their participation in that process. In British Columbia, the professionals expected to use this resource are Victim Service Workers



The video answers questions and concerns the child might have.



and Crown lawyers, but may include others, particularly in smaller communities. The video is not intended as a substitute for one-to-one preparation by a skilled and trained professional. Where appropriate, the child's parent or caregiver may attend when a professional is showing a child the video, so that they are aware of the information that the child has received and can support their preparation.

before you show the video



The children in the video are acting and are not real victims or witnesses in criminal proceedings.

Before playing the video, introduce the content by describing the purpose for showing it. If a child is already familiar with what goes on in a courtroom,

the video will enhance their knowledge and perhaps explain that which has not already been explained. Having these insights will make the experience easier for them.

There are a number of children in the video who claim to have gone to court. The children are acting and are not real victims or witnesses in



criminal proceedings. In preparing a child for court, it is recommended that you tell the child that the children in the video are actors whose job it was to make a video to help children who had to go to court. Emphasize to the young witness that when they go to court they are not acting, and it is very important for them to tell the truth about what happened.

video components

The video presents information about court preparation and attending court as a witness. Video components include:

- questions and concerns that children have;
- information concerning the criminal trial process and preparing the child to testify, including a visit to the courtroom in advance of the trial;
- pointers designed to assist the witness to manage the situation emotionally;
- a demonstration of what it is like waiting to testify; and
- a brief description of procedures and testimonial supports that are available for child witnesses.



children's questions and concerns about going to court

The following is a list of questions and concerns that children may have about going to court, some of which are raised at the opening of the video. This is not an exhaustive list; other questions may arise. The answers are worded as if answering the question directly to the child.

1. Why do we have to have a trial when he did it?

Every person is considered to be innocent until it is proven in court that they are guilty. To decide if someone has committed a crime there is a trial in court. It is very important that we have a fair process for deciding if someone broke the law, because when someone is found guilty of committing a crime they can lose their freedom. A trial is considered the fairest way to help the judge make this decision. During a trial, witnesses come to court to tell the judge what they know. To make sure a mistake is not made, the judge has to hear from everyone who knows what happened. To find a person guilty the judge must be convinced that the person broke



the law; it is not enough for the judge to think that the person probably broke the law.

2. Why do I have to testify in a different city?

In Canada, the trial for the accused is most often held in or near the city where the crime took place. So, let's say something happened to you in Prince George, but after it happened you moved to Victoria. The trial will be in Prince George, and you would have to testify there because that is where the crime took place. In special circumstances, a witness may be able to testify in a different province or country in front of a video camera and be shown in the courtroom by video link.

3. Why do I have to testify twice?

In some cases, witnesses have to testify twice. The first time they testify will be at a **Preliminary Inquiry** or Hearing. When a crime is very serious the consequences for the offender are also very serious. The case will not go to trial unless it is shown at the Preliminary Inquiry that there is enough evidence to take the case to a trial in a higher court. The judge needs to hear your evidence in order to make that decision. If the judge decides that there is enough evidence, there will be a trial at a later time and you and



other witnesses will have to testify again. The judge at the trial cannot use your testimony from the Preliminary Inquiry.

4. Why is there a jury?

When a person has been accused of committing a serious offence, the accused has the right to decide whether they want a trial in Provincial or Supreme Court. When a trial is held in Supreme Court, sometimes the accused chooses to have a **jury** to decide if they broke the law. A jury is made up of 12 people from the community. They are told they have to come and listen to the evidence very carefully and decide if the accused is guilty or not guilty. The people on the jury do not know you or the accused. They will decide, based on the evidence they hear during the trial, if the accused is guilty or not guilty.

5. What if the lawyer yells at me?

Lawyers don't usually yell in court, even though that's what you might have seen on TV. Sometimes lawyers speak loudly and it may seem like they are yelling. Lawyers have a very important job to do. Often they will ask many questions and act in a serious manner. At times you may think the lawyers are so serious that it looks like they are angry, even angry at you.

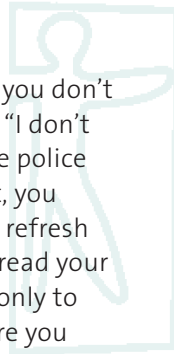


It is important for you to understand that the lawyers are not angry at you. They are doing their job and they take their job very seriously.

If you get upset when the lawyer is asking you questions, remember to take deep breaths and take your time, to help keep your head clear. You may ask that the lawyer act differently –not yell, not be so close, not go so fast. If you get to the point where you are too upset to continue, let the judge know and you will be given a break; in some cases, the lawyer will find a different way to ask the questions. The judge and the Crown prosecutor will do what they can to make sure you are treated properly.

6. What if I forget?

You might be asked about things that you don't remember. If you don't remember, say "I don't remember." Don't guess. If you told the police the answer and it is in your statement, you can be shown what you said before to refresh your memory. It is a very good idea to read your statement before you go to court not only to refresh your memory but also to ensure you know you can use it if you need it later when you are giving your evidence.





7. What if I'm asked an embarrassing question?

You might be asked to talk about things that are embarrassing. That's hard to do. It's important to remember that judges and lawyers and everyone in the court have heard people talk about embarrassing things. It's okay to tell the judge that you're embarrassed, but you should tell the judge what happened even if it's embarrassing.

If you are worried about saying these things in the courtroom with people in there besides the lawyers and judge, tell the Crown counsel about this before court day. You can ask that the courtroom be closed or that you testify from a different room.

8. What if I get confused?

It's easy to get mixed up or confused when answering questions in court. If you get confused, you should say so. That way, things can be cleared up for you. If you are asked more than one question at a time, you should ask the lawyer who is asking the questions to ask only one thing at a time.

When you answer, make sure you say which of



the questions you are answering. This will help you to answer each question properly.

9. What if I have to go to the washroom?

Try to remember to go to the washroom just before you go into court. If you need to go to the washroom while you are giving evidence, tell the judge you need a break. If you are nervous or feel you would be embarrassed to ask, let the Crown know before you go to court and they will help you ask when you need a break.

10. How do I make sure I don't have to testify on my birthday?

Although the chances of this are small, there is no absolute way to ensure that you will not have to testify on your birthday. You can help prevent having the court date set on your birthday by telling your Victim Service Worker and Crown counsel when your birthday is and asking that the date not be set then. This needs to be done far in advance.

11. Who can come to court with me?

You can ask anyone you want to accompany you to court. Usually parents or foster parents or grandparents will come to court with a young witness. If the person accompanying you to



court is also a witness they will not be able to be in the courtroom when you are testifying. Your Victim Service Worker can also accompany you to court.

12. What should I bring with me?

It is not unusual to have to wait to testify on the day of the trial. You should bring things that will keep you entertained while you wait. Books, puzzles or art supplies are some suggestions. Also, bring a snack just in case you get hungry. Some witnesses bring something to hold when they testify to calm them. Tell your Victim Service Worker and Crown counsel if you plan to do this so there are no surprises. If you are holding something in court, you may be asked about it .

13. Will the accused be in the courtroom?

The accused has the right to hear what everyone says about them in court. The law says that the judge cannot start the trial without the accused being there. There are some exceptions to this. The law also says that if a child witness wants to testify outside of the courtroom where the accused is, they can do that. If you are want to testify without seeing the accused, let your Victim Service Worker and Crown counsel know



as soon as you can so they have time to try and do something about this.

14. How long will it take?

This is a hard question to answer because every trial is different, and there's no way of knowing ahead of time how long the questions will take. Sometimes, Crown counsel can give you an estimate of how long it will be. It is not unusual to have to wait on the day that you have to testify. Sometimes witnesses can wait in a comfortable place near the courthouse as long as they can get to court right away when it is time to go in. You may have family or friends who live near the courthouse where you can wait. This is another thing you can talk to your Victim Service Worker and the Crown counsel about.

15. Is it going to happen when they say it will?

Once a date is set for the trial to begin, it usually happens on that day. However, sometimes a trial has to be delayed. If this happens, your Victim Service Worker and Crown counsel will let you know as soon as they can. The delay may be difficult for you, because you've already been waiting and are ready to go ahead. It



is important to just get on with doing the things you like to do in your life and start court preparation again when the new date is closer.

16. What will happen to the accused?

The judge's job is to listen to all the witnesses and then make a decision about what happened. If the judge decides that the accused has broken the law, they will announce that the accused is guilty at the end of the trial.

If the accused is found guilty, the judge must decide what will happen next. This is called sentencing the accused. The judge usually needs more information before they can decide what is right for this accused in this case. The judge will listen to what Crown counsel and the defence lawyer recommend for a sentence and read whatever papers those lawyers offer to the judge. You can also write a Victim Impact Statement to let the judge know how you were affected by what happened to you. Your Victim Service Worker can help you write a Victim Impact Statement.

If the accused is found not guilty, he or she is free to go as if they had not been charged.



making a court preparation plan

Developing a preparation plan starts with meeting the child and assessing what they need and want for their preparation, taking into consideration their age and any special needs or disabilities, and finding out who is already in the child's life and will be part of the preparation. The objectives of the plan will be to ensure that all is done to minimize trauma, elicit valid testimony and maintain the integrity of the preparation process. Generally the plan includes activities to ensure that the child receives:

- information about the process,
- emotional support, and
- evidence preparation

A court preparation plan works best if the child and those who are supporting them are part of designing the preparation plan.

Age-appropriate language and activities as well as awareness of cultural differences that can affect the child's and family's understanding



Age-appropriate language and activities are essential throughout court preparation.



of the process are essential throughout court preparation and court accompaniment.

The child's preparation will be enhanced if the Victim Service Worker informs the Crown counsel who will be handling the matter (or the Administrative Crown, if a Crown has not yet been assigned) that they are providing court preparation for the child. In turn, the Crown will advise the Victim Service Worker as early as possible of their plans for meeting the child.

Arrangements for the Crown's meetings with the child will ideally be coordinated with the Victim Service Worker, so that the child is aware that they are working as a team.



Court preparation includes assessing the needs and wants of the child.

stages of court preparation

The stages of preparation usually include:

- assessing the needs and wants of the child
- sessions on court procedures and emotional readiness
- a visit to a vacant courtroom
- evidence preparation with the Crown



- assessing what courtroom accommodations are needed
- planning for the child's day of testimony and court accompaniment
- after-court debriefing

Talk with the child and parent about scheduling sessions so that they do not inappropriately interfere with the child's routines. To do this effectively will require communicating with other team members to ensure their timely participation.

Information for the Victim Service Worker:

At your first meeting with the child, let them know that your job is to help them get ready to go to court, and spend some time building rapport with them. Get a sense of what they know about going to court and how they feel about it. At this first session or the next, find out if there is anything that they know will make it easier for them. Discuss with the child what is normally done for preparation and assess whether they understand and agree, as appropriate for their age level. The child may have fears about going to court and it is helpful to know what those are. Be careful not to create fears by suggesting things you think they might or should fear.



In subsequent meetings, educate the child about courtroom procedure using age-appropriate resources. In addition to the video *Let's Go to Court*, other approaches might include use of an online court preparation guide, puppets, courtroom diagrams, etc. (See Resources section). It is essential to balance information and education with emotional preparation. In each session, review the child's concerns and needs with them, so that you can gauge their level of readiness and ability to testify. It is important to advise the Crown of any concerns or special needs as early as possible.

Let the child know that their evidence is an important part, but just one part, of what the judge considers in making a decision about whether the accused is guilty. The process is like a jigsaw puzzle with many pieces, and the child's part is one piece. Throughout court preparation, reassure the child that even if the outcome is not what they would like, it doesn't mean they weren't believed or that they didn't do a good job.

It is vital that the Victim Service Worker not discuss with a witness the evidence that will be presented in court. In addition, it is important to not say anything to the child that could be seen



as influencing the content of the child’s testimony about the alleged offence. This could jeopardize the integrity of the court preparation process.

In some circumstances, the Crown may request a Victim Service Worker to assist a young witness to review their videotaped or written statement, but this should only be done with the approval and direction of the Crown counsel and must not involve discussion of the evidence.

Once the child shows some knowledge about the courtroom, arrange a visit to a vacant courtroom. This will reinforce for the child the reality and seriousness of going to court, their knowledge about the layout of the room and where the different people sit. The child can practice sitting in the witness box, practice making a promise, and develop a level of familiarity with the environment. In some locations, it may not be possible to have a courtroom visit prior to the day of the hearing, and the online interactive websites will be a helpful alternative. If an application will be made to have the child testify outside the courtroom, this visit may still be helpful to show them what will be going on in the courtroom or have them ready in case the application fails for some unforeseen reason.



It is also important to talk with the child about the day itself: what would they like to do while they're waiting, who will support them while their waiting and who will support them while they're testifying, what will they bring with them, and a reminder to wear comfortable clothes. These plans should be confirmed with their caregiver prior to the day of court.

More detailed information about court preparation is provided below and in the handbook *Victim Services for Children and Youth* (see Resources section).

fostering resiliency in children going to court

Testifying in court is a stressful situation no matter what age. As part of the goal of minimizing the child's stress, it is important that the Victim Service Worker help the child prepare for the situation in a way which builds on their strengths and helps to develop positive coping skills. This can be done in the following ways:

- Help the child to identify all the support people in their life and invite them to play a role in assisting the child through the process



in and out of court where appropriate.

- Be aware of enhancing relationships amongst the people in the child's life.
- Design the preparation with routines and set timeframes and stick to it. As much as possible, encourage the child carry on with usual routines.
- Help the child find goals to achieve within the context and support them in achieving them.
- Encourage the child to have a positive view of themselves.
- Remind the child of the many other parts of their life that will remain good and healthy. Find ways to keep this difficult time in context.
- Find ways that the child is actually helping others to understand the new knowledge around court and their role in it.
- Help the child articulate (in pictures, actions or words) any concerns or feelings they might have about the court process.
- Normalize those feelings by letting the child know that others (children and adults) also have those concerns.
- Help the child see a hopeful outcome from



the court experience.

- Teach the child skills or techniques that will assist them to cope with situations in the courtroom that they don't have the power to change.
- Help the child to articulate (in pictures, actions or words) their strengths.
- Assist the child to see how those strengths will help them when testifying in court.
- Encourage the child to look after themselves where they can by eating good food and getting rest and exercise.
- Teach techniques to handle stress and pressure.
- Teach relaxation techniques.
- Take breaks and encourage fun times with the serious times.

some significant court roles and procedures

The following are defined as though the explanations are being made directly to the child.

Judge: The judge is an expert on the law. The



judge's job is to listen to everything that the witnesses and lawyers say in court. After everyone has finished talking, the judge makes decisions about the trial and what the result will be. The judge usually decides whether the accused person has broken the law. When there is a jury, the judge gives the jury information about how the laws work, and the jury makes the decision.

Crown Counsel: The Crown counsel is sometimes called the Prosecutor or Crown Attorney or just "Crown". The Crown has received the case from the police and knows what the witnesses told the police. The Crown counsel's job is to conduct the trial in a manner that is effective and efficient and is fair to the accused. Although at the trial the Crown will help their witnesses tell what happened, they are not the witness's lawyer.

During the testimony the Crown asks the Crown witness questions while the judge (and sometimes a jury too) listens to their answers. This is called **direct examination** or **examination in chief**. After the Crown is finished, the defence lawyer will ask questions of the witnesses called by the Crown. This is called **cross examination**. The Crown will listen carefully here and



intervene if it is necessary. When the defence lawyer calls witness later in the trial, the Crown will then question those witnesses. This is also called cross-examination.

Defence Lawyer: The defence lawyer is sometimes called defence counsel or just “the defence.” The defence lawyer is the lawyer for the accused. The defence lawyer’s job is to ensure fairness for the accused in court. This means making certain the accused’s version of events are heard and understood by the judge (or jury). The defence lawyer tests the evidence about what happened by questioning the Crown’s witnesses and by calling witnesses for the defence so that they may tell their version of what happened.

Court Clerk: The Court Clerk is in the courtroom to ensure certain jobs are done to make things run smoothly. Their job includes recording the courtroom proceedings, handing documents and exhibits from the lawyers to the judge, announcing when the court is ready to hear the next witness, and asking the adult witnesses to take an oath or affirmation before they begin giving their evidence. Children are asked to promise to tell the truth.



Witness: A witness is a person who is asked to go to court and tell what they know about the subject of the trial. This is called “testifying.” Crown counsel helps the Crown witnesses to testify by asking them questions. It is most important for a witness to tell the truth when they answer the questions.

Accused: The accused is the person who has been charged by the Crown with doing something wrong and breaking the law. They have to be in court to hear the evidence by all the witnesses, and be present when the judge decides whether or not they are guilty.

meeting crown counsel

Victim Service Worker and Preparation Meetings

Often the first contact a child has with Crown counsel will be at a meeting prior to the Preliminary Inquiry or the trial. The meeting is usually held shortly before the child is scheduled to appear in court, which is usually at least several months after they were interviewed by the police.



The Victim Service Worker should contact the Crown as soon as they know the court date for the Preliminary Inquiry or the trial in order to confirm whether the Crown has already made arrangements to meet with the child and if not, to facilitate setting up a first meeting. The Victim Service Worker may assist by accompanying the child and family to the interview if the Crown agrees with this arrangement.

In order to prepare a young witness for court, it is essential that the Victim Service Worker work closely with Crown counsel. Consulting with and keeping the Crown informed of any of the child's needs will assist the Crown and ensure that the child is well supported throughout the court process. It is helpful if agencies use pre-designed forms to communicate these needs. This is particularly important where court accommodations such as closed-circuit televised (CCTV) testimony or a support person are going to be part of the child's trial experience.

An extensive list of issues and items relating to courtroom protocol and set up that are important to discuss with Crown prior to the trial is provided in the handbook *Victim Services for Children and Youth* (see Resources section).



Crown Counsel and Preparation Meetings

The following represents a description of some of the practices by Crown counsel related to preparing children witnesses, but these practices may vary depending on the Crown lawyer and case involved. Ultimately, the conduct of the trial is the responsibility of the Crown counsel. It is in the hands of the individual Crown counsel to determine what preparation on the evidence is to take place in any given case.

Prior to any court hearing, all witnesses but particularly young witnesses need to meet with the Crown who will be calling them for mutual preparation. Meetings with the Crown well in advance of the trial date allow for planning ahead. Crown will be able to find ways to help the child to give their evidence according to their mutually established needs. Where practicable, the Crown may first meet a young witness in a complicated case at least six weeks before the hearing. The Crown and the Victim Service Worker may dovetail their preparation plans to ensure the child receives comprehensive preparation on the evidentiary and legal parts of their anticipated testimony as well as emotional support.



When a child is being called as a Crown witness, they may meet with the Crown assigned to the case on more than one occasion before the Preliminary Inquiry or trial. The preparation may include:

- informing the child of procedural and other issues, including the aids available to them under section 486 of the *Criminal Code*;
- assessing the child's ability to recall and give evidence through discussion with the child and by observation;
- deciding how best to elicit the evidence, including whether any courtroom accommodations should be considered.

As part of the assessment, the Crown will talk with the Victim Service Worker who is helping the child get ready to go to court, as the Victim Service Worker may have relevant information to be considered.

In all cases, the Crown will have received all previously recorded written, audio or video-taped statements made by the child to the police.

During the preparation, Crown may seek to achieve the following:

- At the first meeting, Crown may spend some



time getting to know the child and building rapport.

- Either at the first meeting or at later meetings, Crown may:
 - review the child's statement by watching it, listening to it, or reading it over with the child;
 - ask the child to repeat or clarify particular details of their evidence;
 - provide the child with information about the court process, including what to expect in the trial; and
 - describe the type of questions they can expect to be asked.



Making time to talk with the child about how they are feeling helps alleviate some of the child's stress.

Some children have trouble with evidence preparation. It is complicated for a young person to review previous statements, and at times the subject matter may be embarrassing or troubling when it is recalled. Making time to talk with the child about how they are feeling helps alleviate some of the child's stress. In a trial that is scheduled for more than one day, the Crown may be able to reschedule the child's evidence



if it is very troubling, or if the child just doesn't feel up to it.

waiting to testify

On the day that the child is to testify, the child may need some reassurance before testifying and the Crown may have some last minute questions to ask or information to impart. Because Crown counsel will be in court once the trial begins and the child will wait outside until called to testify, a short meeting may take place early in the morning, before court begins.

The conduct of the Crown portion of the case is solely up to the Crown. Strategically for the prosecution, it is often preferable to call witnesses who lay an evidentiary foundation before calling the child witness. If there is court business before calling the child, Crown may be able to make arrangements to ensure there is not a long wait in the courthouse for the child before they take the stand. This can be done through scheduling or having the child wait somewhere comfortable nearby without being exposed to the bustle and negativity of the courthouse environment. The child needs to be as comfortable as possible, and not in a



public area where others may upset, intimidate or try to dissuade the child from testifying. The child may be afraid of seeing the accused, and a chance meeting needs to be avoided. Some courthouses have a child witness waiting room for this purpose.

Even if it is expected that the child will have a short wait, Crown counsel and the Victim Service Worker need to plan in advance where the child witness will wait before testifying. In the video, the child waits at the courthouse with a caregiver and a Victim Service Worker. This is ideal, preferably in a room or area away from the general public.

If there is an application for the child to testify by Closed Circuit Television (CCTV), the child can go directly into the separate room when called to testify and need not see the accused during the entire experience.

The child will have activities to keep them occupied while they wait. This will have been arranged in advance in discussion with the child and caregiver. The video shows a game and books. Encouraging pre-court snacks is also a good idea. Sometimes there is not suitable food available nearby and the witness and their



supporters need to bring their own supply. Candy and other foods with a high sugar content may raise the child's energy level inappropriately in this environment.

it's time to testify

Crown counsel and the Victim Service Worker will plan in advance as to how the child will enter the courtroom or the CCTV room, and who will accompany them, when it is their time to testify. The Crown may then meet the child at the courtroom entrance or CCTV room and escort them to where they will sit while they give evidence, along with the support person, if this has been arranged. The child should not enter these rooms alone.

Depending on the court facilities and other circumstances, different means can be used to ensure that the child is escorted into the courtroom promptly when it is time for them to testify. These may include: a brief court recess while Crown counsel goes to meet the child and accompanies them into the courtroom; a cell phone call by Crown counsel to the Victim Service Worker to let them know that it is time to accompany the child to the courtroom (or



CCTV room); a call by the Clerk to the Crown office to let the child's supporter know it is time for the child to come to the courtroom; or a family member or friend who is not a witness sitting in the courtroom and leaving to let the Victim Service Worker and child know when it is time to testify.

Once the child has finished testifying, they should be accompanied by a support person or the Victim Service Worker as they leave the courtroom or the CCTV witness room. This may require that the supporters stand vigil, sometimes for hours, to ensure the child is not alone when exiting the room. Accompanying adults should not leave, even briefly, as something may occur at any time in the court proceedings to interrupt the child's testimony and require the child to leave the courtroom temporarily.

courtroom procedure

The procedure will differ somewhat if the child is asking for one of the accommodations. *See next section.*

The child's appearance as a witness will start with the child promising to tell the truth. This



is shown in the video. If there is a challenge to the child's ability to understand and respond to questions, an inquiry may be conducted by the court which may include questions from the judge, the Crown lawyer, and perhaps the Defence lawyer.

After the child promises to tell the truth, the Crown lawyer will ask questions. The Crown cannot lead the child on important matters.

If there is a videotaped statement, this will usually be shown in court with the child present. If the child says that the content of the videotape is what took place during the interview and that they were trying their best to tell the truth, the videotape will become part of the evidence. This is why the child needs advance preparation with the Crown. They need to be shown the recording and have described to them the expected procedure in court.

During cross-examination, leading questions are permitted; in fact, most of the questions are leading. The cross examination may be lengthy; during breaks, the witness is not permitted to discuss the evidence with anyone. This is exactly when a child needs emotional support but supporters are restricted in what they can



do. Being there is absolutely essential, and looking after the child's basic needs and being supportive and positive will help. Victim Service Workers have found that children tell them that the cross-examination by the defence lawyer was the most difficult part of their experience.

courtroom accommodations

Out of Court Closed Circuit Televised Testimony

(CCTV): If the child asks to testify in a separate room, they will sit in front of a camera and the evidence will be transmitted to the courtroom where the judge and the accused and the public can see it on a TV monitor. Sometimes the lawyers are in the room with the witness. Alternatively, the witness may be in the room with a support person and be able to see the judge and lawyers on a TV monitor. The accused will not be shown on the monitor.

When the Crown or witness apply for this procedure, it works best for everyone if the judge's decision is made in advance so the equipment and set up will be ready for trial. On the day of their testimony, the child will not have to go into the courtroom or testify in front of the accused.



There have been cases where the accused has been ordered to be outside the courtroom instead of the child. In light of this possibility, it is all the more reason that a child witness's concerns be known and understood so the Crown can make them known to the judge as part of the application.

Screen: The screen is a frame, sometimes portable, sometimes permanent, that can be placed close to the witness to block their view of the accused. There are different styles of screen but the basic design allows the accused to be able to see the witness while the witness cannot see the accused.

Other Devices: There are other ways in which a child witness might testify without seeing the accused. An opaque divider may be placed to separate the child in the courtroom. To allow the accused to see the testimony, a camera will pick up the child's image and transmit it to a TV monitor within the view of the accused.

Support Person: If the child asks, a support person of their choosing will sit with them during their testimony. They must not talk to or communicate with the child in any way while the child is giving their evidence. The support



person usually requires preparation to do their job properly.

Appointing Counsel to do the Cross Examination:

If the accused is not represented, the court will order that the accused not be permitted to cross examine the child and will appoint a lawyer to do so.

some tips for the child to help them testify

- Look at the Coat of Arms or the judge if you do not want to look at the accused.
- Remember to take some slow breaths to relax.
- Remember that your Victim Service Worker is there to support you.
- Listen to the questions carefully, and take your time answering. It's okay if you don't know the answer to a question or don't remember; just say so, don't guess. If you don't understand or hear the question, ask for the question to be repeated.
- Be a polite witness.
- Answer only the question being asked.
- Speak in a clear, strong voice. There may be



a microphone in front of you but it is usually there to record what you say, not to make you sound louder.

- Don't shake your head to indicate yes or no, as the judge needs to hear your answers and your answers need to be recorded by the microphone.
- If you are asked a question that embarrasses you, remember that the judge and the lawyers won't be embarrassed as they have heard many witnesses in court.
- If Crown counsel or defence counsel "objects" to a question that is being asked, wait while the judge decides if the question is allowed. Don't answer until you are told to do so.
- If something is bothering you or if you have a question while you are on the witness stand, tell the judge.
- If you need to use the bathroom while you're testifying, tell the judge that you need a break.

providing support after the testimony

The best support that a Victim Service Worker can provide after the child has completed



testifying is to be with the child, give affirmations for what has just taken place, give examples of how well the child did and then move on to activities that are light, nurturing and fun. Also ensure that plans are made on how follow-up will take place. It may be that the Crown cannot get away to speak with the child at this time. If that is so, a follow up visit may be arranged if the child needs closure.

providing support after the trial

When the trial is over and the verdict has been delivered, there will be a period of adjustment for the child and their family. It is another milestone in the journey and the reactions vary. If the verdict is not guilty, disappointment, fear and even anger are likely to be the main reactions from the child and family. The Victim Service Worker needs to acknowledge and validate these reactions and feelings. The child must be reassured that the outcome of the trial was beyond their control and that they were very brave to participate in the proceedings.

If there is a guilty verdict, the child may feel torn between relief and guilt about the outcome.



Whatever the outcome of the trial, the Victim Service Worker should encourage family members or caregivers to support and praise the child for participating in the court process. The child's parents are likely to have been greatly affected emotionally by the entire experience, and it will be helpful to them for the Victim Service Worker to acknowledge and validate these feelings.

It is good practice for the Victim Service Worker to arrange a meeting soon after court to provide an opportunity for the child to debrief their court experience and to acknowledge and honour the child's hard work. The Crown, the investigating police officer, family members and any other important support people could be invited, depending on the wishes of the child.

The Victim Service Worker can also provide support to the child and family after the trial by doing the following:

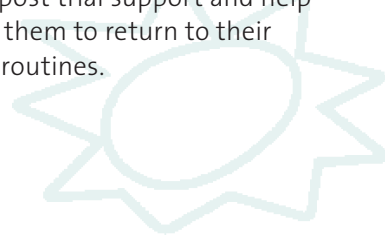
- Encourage them to consider counselling if they have not done so already.
- Suggest that parents or caregivers join a support group so that they can share their experiences with others in similar situations. Make a referral.



- Recommend specific resources and groups in the community that can help the family develop a strong support system.
- Encourage the family to re-establish normal routines and supportive relationships as soon as possible.

After the trial is over, the Victim Service Worker may find that the child and their family have difficulty letting go of the relationship that has been established. Dealing with crisis and preparing for the court case is an intense and emotionally charged time for the child, the family and the Victim Service Worker. The child may want to continue to see the Victim Service Worker for support.

It is important to validate these feelings but also to reiterate the limitations of the Victim Service Worker's role. After the child and family have been given whatever post-trial support and help they need, encourage them to return to their normal activities and routines.





glossary of terms

Adjournment: Postponement of a court hearing to a later date.

Closed circuit television (CCTV): A private television network that allows the witness to be in another room presenting evidence to the court through a live televised link up (See Courtroom Accommodations section).

Complainant: The person against whom an alleged offence has been committed, and who provided a statement to the police which led to charges being laid against an accused.



Cross-examination: Questions asked of the witness by the lawyer for the other side, following direct examination, the aim of which is to test the witness's evidence and see if any new evidence can be brought out.



Courtroom Accommodations: Also called Testimonial Aids and are utilized to facilitate the testimony of children and other vulnerable witnesses. (See Courtroom Accommodations section).

Jury: A group of twelve adults selected by the lawyers to hear all the evidence in a hearing in Supreme Court and decide whether the accused is guilty.

Leading question: A question that contains or suggests the answer. This type of question is permitted during cross-examination. In examination-in-chief, leading questions are only permitted on non-controversial matters.

Mistrial: When a judge ends a trial because some irreparable damage has occurred. The trial is then scheduled for a new date and has to start all over again. An example of when a mistrial takes place is if a jury member reveals mid-trial that they are an associate of one of the parties or witnesses and have discussed this with the other jurors.

Preliminary Inquiry: A hearing in Provincial Court. Evidence is introduced and witnesses are called to allow a judge to decide if there is sufficient evidence to proceed to trial in a



superior court. For a witness, it is as important to be accurate at the preliminary hearing as at the trial, so preparation in advance is still needed.

Stay of Proceedings: A decision by the Crown to not proceed with a charge(s) against an accused may result in a stay of proceedings. The Crown will either stay the charges in open court or by signing the document. The Crown may decide to stay charges if, for example, an essential witness changes their story, making it unlikely that a trial would result in a conviction. Once a stay is entered, the charges may be reinstated within one year if the situation changes.

Support person: A person of the witnesses choosing who may sit with them during testimony e.g. a victim service worker (see Courtroom Accommodations section).

Victim: The person against whom an alleged offence is committed. During the trial process, the victim is referred to as the complainant or the witness.

Voir dire: A trial within the trial where evidence is introduced and discussed, to give the judge the opportunity to decide if it is admissible in the trial. If the evidence is admissible, the



witness(s) from the voir dire may have to give the evidence again in front of the jury or in a judge alone trial, the lawyers can agree that what was said in the voir dire becomes part of the trial without it having to be repeated.

Verdict: The decision made by a judge or jury after consideration of all the evidence. The verdict is usually a matter of finding the accused guilty or not guilty.



resources

Bill C-2 an Act to Amend the Criminal Code (Protection of Children and Other Vulnerable Persons) and the Canada Evidence Act.

<http://www.parl.gc.ca>

Children as Witnesses, Vol 1: Child Witness Court Preparation. Centre for Children and Families in the Justice System, London, Ontario.

<http://www.lfcc.on.ca>



Cory's Courthouse. A Canadian online court preparation guide and resources for young children.

<http://www.tcac.on.ca/courthouse>

Courtprep.ca. A Canadian online interactive court preparation guide and resources for youth.

<http://www.courtprep.ca>

Guidelines on Justice for Child Victims and Witness of Crime. International Bureau for Children's Rights. <http://www.ibcr.org>

Highlights of Bill C-2 Amendments to Protect Children and Other Vulnerable Persons.

Department of Justice Canada.

<http://canada.justice.gc.ca>

What's My Job in Court. An Answer and Activity Book for Kids Who are Going to Court. Ontario Ministry of the Solicitor General. (Available from Victim Services and Community Programs Division, Ministry of Public Safety and Solicitor General, Vancouver, BC.)

Victim Services for Children and Youth Handbook.

Victim Services and Community Programs Division, Ministry of Public Safety and Solicitor General, Vancouver, BC.



other references

P. Hurley, K. Scarth & L. Stevens, *Children as Witnesses: Helping Young People Give Their Evidence in Court; Helping Courts Hear the Evidence of Children* (London, Ont. Centre for Children, Families and the Justice System, 2002)

A. Maleszyk, *Crimes Against Children: Prosecution and Defence* (Toronto: Canada Law Book, 2002)
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L. Park and K.E. Renner, *The Failure to Acknowledge Differences in Developmental Capabilities Leads to Unjust Outcomes for Child Witnesses in Sexual Abuse Cases*. 1998, 17, *Cnd. Journal of Community Mental Health*, 5.

W. van Tongeren Harvey & P. Dauns, *Sexual Offences Against Children and the Criminal Process*, (Markham: Lexis Nexis, 2001)

L. Sas, *I'm Doing My Job in Court, Are You? Questions for the Criminal Justice System*, London, Ont. London Family Court Clinic, 1999.

A. Graffam Walker, *Handbook on Questioning Children: A Linguistic Perspective*, 2nd ed. (Washington: ABA Center on Children and the Law, 1999)



some related web sites

www.csica.zener.com

Canadian Society for the Investigation of
Child Abuse

www.lfcc.on.ca

London Family Court Clinic

www.peelcc.org

Peel Children's Centre

www.safeschools.gov.bc.ca

Safe School Centre

www.gov.mb.ca

Government of Manitoba

www.simcoecas.com

Simcoe County Children's Aid Society

www.attorneygeneral.jus.gov.on.ca

Ontario Attorney General Victim/Witness
Assistance Program

<http://helping.apa.org>

Website of the APA which includes material on
building resilience in children and youth.



notes



Let's Go to Court

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