
Expert Evidence on Child Abuse

Experts From Different Disciplines Testify at the Phase 1 Hearings

The Phase 1 evidentiary hearings at the Cornwall Public Inquiry began with testimony on child sexual abuse from experts in different disciplines. The experts included psychologists, social workers, police officers, law professors, and Crown prosecutors. These individuals have spent many years in their respective fields assessing victims of child sexual abuse, investigating and prosecuting child abuse cases, and training child protection workers, members of the police force, and other professionals involved in the area of child sexual abuse. They have conducted research on different aspects of child sexual abuse and have numerous publications in journals, books, and manuals. Several have also testified as expert witnesses in civil and criminal proceedings, at coroners' inquests, and before parliamentary committees.

The purpose of this chapter is to describe the valuable research and evidence of the experts who testified at the Phase 1 hearings. Some of the topics covered are the incidence of child sexual abuse, the impact of child sexual abuse, the reporting of sexual abuse, and impediments to disclosure by victims of child sexual abuse. Another subject is the lack of awareness by the public and by many professionals, until the 1980s, of the extent of child sexual abuse. The legal rules that perpetuated the erroneous view that child victims are unreliable witnesses—that they have poor memories, lie, and fantasize—are also discussed. The chapter describes as well the lack of accommodation of victims of sexual abuse in the court system, which has had the effect of re-victimizing survivors of abuse who testify in civil and criminal proceedings.

Before discussing the research, assessments, and experience of these different experts, I would like to describe their backgrounds briefly.

Dr. David Wolfe has been a Professor of Psychology and Psychiatry in Canada for over twenty-five years. He is currently a professor at the University of Toronto and prior to that was at the University of Western Ontario, where he taught graduate and undergraduate courses in child sexual abuse, family violence, developmental psychopathology, and professional ethics. Dr. Wolfe was a founding member and Academic Director of the Centre for Research on Violence against Women and Children at the University of Western Ontario.

Dr. Wolfe has worked in private practice as a psychologist. He has also been extensively involved in research on child sexual abuse and has authored or co-authored many books and articles on subjects such as child abuse in community institutions, and the impact of sexual abuse on later development in childhood, adolescence, and adulthood. Dr. Wolfe was Chief Psychologist for the London Children's Aid Society from 1981 to 1995, where he conducted assessments of children.

Dr. Wolfe has testified as an expert in civil and criminal trials on child abuse. Many of these trials involved adults who had been sexually abused during childhood. Also, Dr. Wolfe was appointed by the Ontario Superior Court in 1999 as the consultant to the liquidator for the Christian Brothers of Ireland in Canada in the evaluation of claimants of Mount Cashel who were abused as children in this Newfoundland orphanage. Dr. Wolfe was the 2005 recipient of the Donald O. Hebb Award for distinguished contributions to psychology from the Canadian Psychological Association. He has also received the Outstanding Career Award from the American Professional Society on the Abuse of Children.

Dr. Nicolas Trocmé is a Professor of Social Work at McGill University and is Director of the McGill Centre for Research on Children and Families. He is also Senior Advisor for Research Integration at the Batshaw Youth and Family Centre in Montreal. Prior to that, he was a professor at the University of Toronto in the Faculty of Social Work. Dr. Trocmé was also the founding Director of the Centre for Excellence for Child Welfare at the University of Toronto. He conducted his postdoctoral work at McMaster University at the Child Psychiatry Unit and the Centre for Studies of Children at Risk.

Dr. Trocmé is the recipient of numerous research grants and research contracts. In 1993, he was the principal investigator of the Ontario Incidence Study, which examined rates of reporting of child abuse and neglect. At that time, there was inadequate data on reports of children who had been abused. In 2003, Dr. Trocmé was the principal investigator of a national study on the incidence of reported child abuse and neglect and was involved in follow-up analysis in 2005–2006. His findings were shared with agencies and child protection workers throughout Canada.

Dr. Trocmé has authored or co-authored over sixty peer-reviewed publications, including journal articles and book chapters on different topics

related to child abuse. He has also testified as an expert at coroners' inquests in Ontario.

Detective Wendy Leaver joined the Toronto Police Force in 1975. She worked in the Youth Bureau and subsequently in the Pornography Unit. Detective Leaver was seconded to the federal government from 1981 to 1985 to work with Dr. Robin Badgley, who was responsible for a renowned national study on sexual offences committed on children in Canada. This study is discussed in further detail in this chapter.

Detective Leaver became a sexual assault investigator and later coordinator of the Sex Crimes Unit of the Toronto Police Force. In her fifteen years with the Unit, Detective Leaver has been involved in approximately thirty historical sexual assault investigations, the majority of which have involved institutions such as schools and churches. These cases have predominantly involved male complainants.

Detective Leaver taught a course to first-year medical students at the University of Toronto on profiling pedophiles, and she helped develop a sexual assault and child abuse training course for police officers. She was also involved in the development of a course for the Canadian Forces and the RCMP. She has lectured at the Ontario Police College, the Canadian Police College, and the Law Society of Upper Canada. Detective Leaver's courses on interviewing victims of abuse, victim management, and video-conferencing for vulnerable witnesses have been presented internationally in countries such as Australia, Italy, England, and the Netherlands.

Wendy Harvey has been a Crown prosecutor in British Columbia for over twenty-five years. She specializes in sex crimes and crimes against children. Ms Harvey has made numerous presentations and has given training sessions on sexual abuse to members of the judiciary, prosecutors, police officers, psychologists, medical doctors, and defence lawyers. Ms Harvey was involved in the Jericho Project in British Columbia, in which there were allegations of sexual crimes committed by staff on students at Jericho Hill School for the Blind and the Deaf. She developed an administrative system for criminal cases to ensure that prosecutors have advance notice of trials so that they have time to meet with vulnerable witnesses, such as child victims of abuse, prior to legal proceedings.

Wendy Harvey testified as an expert before a parliamentary committee on the 1988 reforms to the *Criminal Code* and *Canada Evidence Act*: children's evidence and protections to child victims of abuse in criminal proceedings. She has worked with the Policy Centre for Victim Issues on the United Nations Resolution on Guidelines on Treatment of Children, Witnesses, and Victims.

Ms Harvey has written books and many papers on child abuse. Her first book, *So You Have to Go to Court*, was published in 1986 and was geared to child

witnesses. Her second book, *Sexual Offences Against Children in the Criminal Process*, was released in 1993. She also authored a publication entitled “Child Witness Preparation.” Her most recent book, *Trauma, Trials and Transformation*, which she co-authored with psychologists, was published in 2006. It discusses the impact of sex crimes and provides information on the civil and criminal justice system to victims of sexual abuse.

Professor Nicholas Bala, another expert who testified at the Phase 1 hearings, has been a professor in the Faculty of Law at Queen’s University for over twenty-five years. His areas of speciality include children’s law and family law with a focus on child abuse, child witnesses, child welfare law, and children who commit crimes. Professor Bala has published extensively; he has authored or co-authored twelve books and more than a hundred articles and book chapters. His work has been cited by the Supreme Court of Canada and appellate courts in several provinces.

Professor Bala was the lead researcher in a report on the Ontario Child Abuse Register and was a consultant to the Special Advisor on Child Sexual Abuse to the Minister of Health and Welfare Canada, Rix Rogers, in 1989–1990. He also was involved in the Robins Report in 2000, on child sexual abuse in schools. In 2004, Professor Bala was a member of a research team that reviewed the Ontario Office of Child and Family Service Advocacy. He has appeared several times as a witness before parliamentary committees related to issues of child abuse and child witnesses and has made several presentations in continuing education programs for judges, lawyers, doctors, police officers, and psychologists, as well as at law reform and academic conferences. Professor Bala is the principal investigator of an interdisciplinary project on child witnesses funded by the Social Sciences and Humanities Research Council of Canada. Other members on the team include psychology professors and a victim/witness worker.

John Liston, who has a Master of Social Work degree as well as a Master of Business Administration, has been involved with the child welfare system since the late 1960s. He was the Executive Director of the Children’s Aid Society of London & Middlesex for twenty years, where he was responsible for a staff of 400 and an operating budget of \$50 million. Prior to that, he was Assistant Executive Director of the Children’s Aid Society of Metropolitan Toronto and Executive Director of the Big Brothers of Metropolitan Toronto. Mr. Liston has served in a variety of positions at Children’s Aid, including supervisor and front-line worker.

Mr. Liston has been involved in research endeavours of provincial and national significance. He oversaw the project “Protecting Children Is Everyone’s Business.” This research, conducted by a team at the University of Western Ontario, analyzed the reasons for the growing number of children in care and the increase in services

in the late 1990s and early 2000s. Mr. Liston also oversaw the operation of the first agency-based provincial training centre for the London Children's Aid Society, which is also used by other Children's Aid Societies in southwestern Ontario. Furthermore, he has participated on several provincial task forces on Children's Aid Societies. Mr. Liston is an expert in the response of child welfare to allegations of child sexual abuse.

Dr. Peter Jaffe, a psychologist since 1974, is a professor in the Faculty of Education and the Departments of Psychology and Psychiatry at the University of Western Ontario.¹ He has been teaching for over thirty years. Dr. Jaffe is also the Academic Director of the Centre for Research in Violence against Women and Children, which addresses sexual as well as physical abuse.

Dr. Jaffe is also Director Emeritus at the Centre for Children and Families in the Justice System (formerly known as the London Family Court Clinic). He was the Executive Director of the Centre for twenty-six years. The Centre receives over 200 referrals each year of child victims or witnesses, who may ultimately testify in court proceedings. The Centre has also had referrals of adult survivors of historical abuse. Dr. Jaffe has conducted many assessments of child and adult victims of abuse, as well as of pedophiles and other individuals who have sexually abused children. The Centre works collaboratively with Children's Aid, the police, and the Crown Attorney's Office.

Dr. Jaffe has been involved in both quantitative and qualitative research on child abuse. He has a plethora of publications and has co-authored books, chapters, and articles on child abuse and family violence. He has also worked on the development of child witness protocols that focus on making courts more child friendly, to avoid the re-traumatization of children. Dr. Jaffe has appeared as an expert in court proceedings on the impact of sexual abuse on adult survivors, abuse in community institutions, the effects of trauma on memory, as well as on delayed disclosure of sexual abuse.²

Types and Prevalence of Child Sexual Abuse

At the Phase 1 hearings, Dr. David Wolfe gave an overview of the different types of child sexual abuse and described the prevalence of child sexual abuse in Canada. The following World Health Organization definition, in his view, comprehensively captures the nature of child sexual abuse:

1. Dr. Jaffe was also a member of the Phase 2 Advisory Panel.

2. The evidence of Father Francis Morrissey and Father Thomas Doyle will be discussed in Chapter 8, "Institutional Response of the Diocese of Alexandria-Cornwall."

Child sexual abuse is the involvement of a child in sexual activity that he or she does not fully comprehend, is unable to give informed consent to, or for which the child is not developmentally prepared and cannot give consent, or that violates the laws or social taboos of society. Child sexual abuse is evidenced by this activity between a child and an adult or another child who by age or development is in a relationship of responsibility, trust or power, the activity being intended to gratify or satisfy the needs of the other person.

As Dr. Wolfe explained, children cannot give informed consent to sexual activity, behaviour they do not fully understand. Moreover, the relationship context is critical to understanding the nature of abuse. The abuser may be a family member, caregiver, teacher, or stranger. The World Health Organization definition describes the emotional bond the child may have with the adult perpetrator of the abuse.

A distinction is made by professionals between “intra-familial” and “extra-familial” sexual abuse. As the name suggests, intra-familial abuse is perpetrated by a person who has a family relationship with the child, and includes people who live with the child as well as members of the child’s extended family. Extra-familial abuse refers to situations in which the sexual exploiter is not related to the child; it is important, however, to note that the child victim typically knows the person committing the sexual abuse. Girls are more likely to experience intra-familial child sexual abuse within their home, whereas boys are more likely to become victims of extra-familial sexual abuse.

There are different types of child sexual abuse. Physical sexual abuse includes (1) touching or fondling of the sexual parts of the child’s body, or touching by the child of sexual parts of the older person’s body; (2) sexual kissing; (3) penetration—penile, digital, and with objects—of the vagina, anus, or mouth; and (4) masturbation of the child or the child masturbating the perpetrator. Verbal sexual abuse involves the use of inappropriate sexual language with the child and includes making lewd comments about the child’s body or making obscene phone calls. Exhibitionism and voyeurism is a type of sexual abuse in which the child poses, undresses, or performs in a sexual fashion; it includes exposure of the child to sexual activity and pornographic movies or photographs.

The concept of “grooming” of children by abusers was discussed in the expert testimony. Over time, child victims are gradually introduced by the perpetrator to sexual activities. The grooming process is designed to make the child believe that the sexual activities are “normal” and acceptable.

Pedophilia is sexual orientation toward children. It is designated as a mental disorder in the *Diagnostic and Statistical Manual of Mental Disorders* (DSM) of

the American Psychiatric Association.³ “Exclusive pedophiles” are people who are sexually aroused only to children, while “non-exclusive pedophiles” can be sexually aroused to both children and adults. Pedophiles have no common background but are from different socio-economic classes and ethnic groups. Pedophiles can be married, single, and have children. They can have a heterosexual, homosexual, or bisexual orientation. There is one clear risk factor—being male. As Dr. Wolfe explained, almost all pedophiles are male. However, it is important to understand that homosexuality is distinct from pedophilia. Homosexuality is simply “sexual orientation towards the same sex” and does not mean that a male person is sexually aroused to children.

The DSM limits the definition of pedophilia to prepubescent children; that is, children thirteen years old or younger. In Dr. Wolfe’s view, the definition of pedophilia should be extended to children under the age of sixteen.

Important Facts About Child Sexual Abuse

Over 90 percent of child sexual abuse is committed by men. Of the 10 percent of cases in which women commit acts of child sexual abuse, half of these situations also involve a male partner.

The most vulnerable ages for child sexual abuse are between seven and thirteen years old.

There have been two major prevalence studies of child sexual abuse in Canada: the Badgley Survey in 1983, and the Ontario Health Supplement Survey in 1990. The Badgley study found that 17.6 percent of women and 8.2 percent of men reported that they had been victims of child sexual abuse before the age of seventeen. The Ontario Health Supplement Survey, conducted seven years later, concluded that the incidence rate for severe child sexual abuse was 11.1 percent for females and 3.9 percent for males. As Dr. Trocmé said in his evidence, these two major studies confirmed that child sexual abuse is much more widespread than previously believed. Most child sexual abuse—70 to 90 percent—is committed by acquaintances or family members. Child sexual abuse usually occurs within ongoing relationships based on the appearance of protection, nurturing, and trust. Children often do not realize they are victims and repeatedly and voluntarily return to the abuser. They may be offered gifts, alcohol, or money. If an important or prominent member of the community such as a school principal, priest, or teacher instructs them to engage in particular sexual conduct, children may

3. American Psychiatric Association, *Diagnostic and Statistical Manual of Mental Disorders*, 4th ed. (Washington, DC: American Psychiatric Association, 1994).

believe that this is acceptable behaviour. In fact, victims of child sexual abuse may not know until many years later that they have been abused. Dr. Wolfe explained at the hearings:

With children, they don't really understand what is happening to them in many cases and it's important to keep in mind that because of the nature of the abuse, they're not frightened by it in many cases. It may actually be pleasurable. They may get to do adult things that their friends can't do like drink. So they go back for the attention, for the special relationship, sometimes for the money that they're given, the gifts and the fact that sometimes there's special esteem given if you're the friend of this teacher, if you're the friend of that coach.

Although sexual abuse is prevalent in all socio-economic classes, some children may be particularly at risk. According to experts, offenders prey on vulnerable children. Such situations include a single mother who seeks a positive male role model for her son such as a Big Brother, Boy Scout leader, or priest. Another example is a child who is developmentally delayed. Dr. Jaffe stated that children in trouble with the law, some of whom may have been in custody or in detention facilities, are also at risk of sexual abuse; they are considered “bad kids,” and if they disclose the abuse they have little credibility. Perpetrators seek to exert various controls over children—for example, financial and emotional—in order to disempower and intimidate these young people.

There is a high recidivism rate among pedophiles. This means that there is a tendency for these offenders to repeat these sexual acts. According to social science research, pedophiles who are sexually attracted to boys have the highest recidivism rate. The *Diagnostic and Statistical Manual of Mental Disorders* of the American Psychiatric Association states that the recidivism rate for pedophiles who prefer sexual encounters with boys is twice that of those who have a sexual preference for girls. According to the expert testimony, organizations with the greatest amount of access to children, such as schools and sports organizations, have the greatest risk of attracting pedophiles.

The Impact of Child Sexual Abuse

It was evident from the testimony of the experts and the research studies they presented that child sexual abuse has devastating effects not only during childhood but also long term, throughout adulthood. The impacts are psychological, physical, and financial. As will be discussed in this and the following chapters of the Report, the consequences of child sexual abuse may also be intergenerational.

Physical impacts of child sexual abuse include appetite problems, headaches, vomiting, and sleep problems. Children may also exhibit regressive behaviour such as bedwetting, thumb-sucking, excessive crying, and tantrums. Other effects include self-destructive conduct such as self-inflicting injuries and engaging in risk-taking behaviour.⁴ Children who have been sexually abused may be predisposed to panic attacks and depression and may have difficulty focusing and sustaining their attention. They may exhibit a withdrawal from participation in activities, a decline in school performance, and a lack of interest in socializing with peers. Studies confirm that sexual abuse is connected to “poorer cognitive performance.”⁵

The impact of child sexual abuse depends not only on the severity and chronic nature of the abuse but also on the child’s family and situational characteristics. Dr. Wolfe testified that “the best circumstance for a child ... would be one in which he or she tells what happens, the adults believe them,” an investigation is conducted, and there is support for the child “along the way.” In fact, one of the most significant factors in mitigating the negative effects of child sexual abuse is support from and protective actions by the child’s parents. The response from institutions and from officials in the institutions, such as childcare workers and police officers, is also important in terms of minimizing the adverse impact of the abuse. Dr. Wolfe explained:

So if they are, so to speak, shut down by that system, someone says, “No, this couldn’t have happened or you’re making it up,” or in any way attributes it to the child, then they either will quit saying anything about it or may have even a lot more adjustment problems ...

Children who are believed and supported have the best chance of growing up healthy. The impact of child sexual abuse is generally more serious if the molester is in a position of trust and authority.

Dr. David Wolfe, from the Centre for Addiction and Mental Health at the University of Toronto, along with colleagues from the Department of Psychology at the University of Western Ontario, recently completed a study entitled “Child Abuse in Religiously-Affiliated Institutions: Long-Term Impact on Men’s Mental Health,” published in the journal *Child Abuse and Neglect*.⁶ It describes the

4. See, for example, C. Wekerle and D. Wolfe, “Child Maltreatment,” in *Child Psychopathology*, ed. E.J. Mash and R.A. Barkley (New York: The Guilford Press, 2003), pp. 632–684.

5. *Ibid.*, p. 643.

6. David A. Wolfe, Karen J. Francis, and Anna-Lee Straatman, “Child Abuse in Religiously-Affiliated Institutions: Long-Term Impact on Men’s Mental Health,” *Child Abuse and Neglect: The International Journal*, vol. 30, no. 2 (2006): pp. 205–212.

effects of physical and sexual abuse on male children committed by adults in positions of authority and trust in an institution. The acts of abuse took place between the early 1960s and the late 1980s but were not investigated until the 1990s.

In this study, 63 percent of the men who had been victims of child sexual abuse at this institution reported that they suffered post-traumatic stress disorder, including flashbacks, nightmares, and anxiety attacks. Sixty-five percent of the men had substance abuse problems related to alcohol, and one-third suffered from severe mood disorders such as depression and suicide ideation. These victims of historical abuse have high rates of criminal behaviour: 50 percent have committed property offences, 49 percent substance-related crimes, and 40 percent have a history of violence. According to this study, victims have difficulty maintaining employment, developing intimate relationships, regulating their anger, and trusting others. Moreover, they have “higher lifetime rates of anxiety, alcohol abuse/dependence and anti-social behaviour than non-abused men.”⁷

Dr. Wolfe and his co-researchers state that the long-term effects of child abuse in non-familial settings are connected to the nature of the relationship of the victim with the abuser, the significance of the setting, and the nature and severity of the abuse. The importance of the institution, the role of the perpetrator(s) in the institution or organization, and the community’s response to the allegations of abuse all have an impact on the long-term effects of the abuse on the victim.

Dr. Wolfe and Dr. Jaffe conducted a study entitled “The Impact of Child Abuse in Community Institutions and Organizations: Advancing Professional and Scientific Understanding,” published in the 2003 American Psychological Association journal *Clinical Psychology: Science and Practice*.⁸ The authors identify important factors that contribute to the long-term impact of child sexual abuse committed in community institutions and organizations. The first is the significance and role of the community institution or organization within society.⁹ When an institution is highly valued, as, for example, a religious or educational institution, children may be particularly vulnerable to abuse by individuals associated with that institution. As the authors state, “When a child is abused, efforts at disclosure may be thwarted by the strong community support for the institution, as well as the resources and power of the institution itself.”¹⁰

7. *Ibid.*

8. David A. Wolfe, Peter G. Jaffe, Jennifer L. Jetté, and Samantha E. Poisson, “The Impact of Child Abuse in Community Institutions and Organizations: Advancing Professional and Scientific Understanding,” *Clinical Psychology: Science and Practice*, vol. 10, no. 2 (2003): 179–191.

9. *Ibid.*, p. 182.

10. *Ibid.*, pp. 182–183.

Another important factor is the role of the perpetrator within the institution or organization. Adults and children tend to trust individuals such as teachers, ministers, and Boy Scout leaders because of their expertise and their position within the institution. Parents are “less likely to scrutinize the activities” of these individuals, and “children are more likely to do as they’re told” and not question these authority figures.¹¹ This occurs with religious leaders, often considered representatives of God. Also in sports organizations, as, for example, hockey, a child may “fear that disclosure will jeopardize their aspirations or interfere with their ... opportunities” and may “accommodate themselves to the circumstances.”¹²

An additional factor is the degree and nature of the child’s involvement with the institution. Is the child required to participate in the institution, for example, and how often is he or she involved with the organization?

Moreover, the circumstances surrounding the abusive acts and the post-abuse events have a profound impact on the well-being of the abuse victim. That is, the nature of the sexual acts, whether violence was involved, and the response of the institution to disclosure by the child victim are important. For instance, if a religious or educational institution simply transfers a priest, teacher, or other perpetrator and does not conduct an investigation, the child victim may experience further feelings of self-blame and more serious, long-lasting consequences. Also, the failure of the justice system to respond appropriately when allegations are raised can have a devastating impact on victims of child sexual abuse.

Expert witnesses at the Phase 1 hearings summarized five typical core outcomes for adult victims of child sexual abuse:

1. Difficulty trusting people in different relationships. Victims of abuse may move from one partner to another and may be unable to maintain steady employment.
2. Difficulty controlling their behaviour. They may commit criminal acts or engage in violent behaviour.
3. Poor coping skills, which may lead to alcohol or drug abuse.
4. Anxiety or mood disorders such as depression or suicide ideation.
5. Confusion about their sexual identity or orientation. This is particularly the case for men who have had sexual relations with a male during their childhood and who, consequently, may be uncertain whether they are gay.

11. *Ibid.*, p. 183.

12. *Ibid.*

Another important long-term impact is that abused victims may themselves become perpetrators of child sexual abuse. A further consequence is that when these individuals have children, they often experience serious fears and high anxiety when their sons or daughters attend school, church, or other institutions at which they themselves were abused. There is a great mistrust of these authority figures. As Dr. Jaffe said, such abuse changes many individuals' "whole life trajectory." He referred to current research that indicates that the relationship between child sexual abuse and later mental health problems "is as high as the correlation between smoking and lung cancer."

In Dr. Jaffe's view, the potential impact of abuse is not adequately understood. Dr. Jaffe has interacted with hundreds of survivors of abuse in his career. Common responses by both members of the public and some professionals to adults who disclose child sexual abuse are that their stories are not credible or that the impact is not serious and they should "get on with their life" and put the child abuse behind them:

When they come forward, the first thing they're told, "It didn't happen" or "It couldn't have happened." Once there's a finding that, in fact, it did happen, the next thing people say, "Well, maybe it happened, but it wasn't that bad."

As will be discussed later in this Report and in my recommendations, treatment and counselling services must be readily available and accessible for survivors of historical child abuse. As both the experts and victims and alleged victims of abuse repeatedly said at the Inquiry, treatment and counselling services, particularly for male victims of sexual abuse, are lacking. Moreover, entire families are affected by the abuse, not solely the victim. As Dr. Jaffe stressed, it is important for treatment services to be available for parents as well as non-abused siblings. The London psychologist illustrated the importance of such counselling by referring to interactions he had had with a father whose son had been abused by a religious member in the community:

The reality is you have to see a whole family system, that people are affected, adults.

I talked to a father whose son was abused in their faith community and the impact on him in a profound way, his faith, feeling guilty about all the time he thought his son was having a good time with sort of a fatherly and other male mentor in the community; now realizing that his son was being violated. So there's guilt. There's impact on sibling relationships.

As Dr. Jaffe said, “So when you think about a survivor you have to think about the ripples throughout.”

It is important to note that treatment for victims of sexual abuse is often postponed for fear that discussing the abuse with a counsellor or other professional may taint the victim’s testimony and ultimately negatively affect his or her credibility as a witness. But as Dr. Wolfe said, delaying treatment until the resolution of the criminal process can have serious consequences for victims of abuse such as drug overdoses, suicide, and other self-destructive behaviour.

Difficulties of Disclosure Encountered by Child Victims of Sexual Abuse

The difficulties of disclosure encountered by child victims of sexual abuse are complex. As social scientists explain, disclosure is very difficult for such victims because of their vulnerability and the power imbalance between them and the perpetrators of the abuse.

There are many reasons why child victims of abuse fail to disclose. First, as mentioned, a young child may not in fact know that the sexual behaviour of an authority figure such as a teacher, priest, or foster parent is inappropriate. As Crown Prosecutor Wendy Harvey commented at the hearings, “[E]ventually by the time they do find out that it’s wrong, they are already entrenched in their relationship” with the perpetrator. Second, the child may be threatened by the abuser if he or she discloses the sexual acts to a person in the institution, to a parent, or to another caregiver. “You won’t have a place to live,” “You’ll have to leave your school,” or “I’m going to kill ... your dog” are examples of such threats. Moreover, the child victim may believe that she or he did something wrong. The relationship between the child, the abuser, and the institutional context also affects the victim’s ability to disclose abuse. For example, a child raised in a community in which a religious institution is highly valued is less likely to report that he has been abused by a priest, minister, or other religious figure in that institution. Furthermore, the child victim may believe that disclosure will disrupt or destroy his or her family or community. To complicate the situation, the child may care about his or her abuser. As Wendy Harvey said:

... [T]hey love them and, in fact, it’s like there’s a Dr. Jekyll and Mr. Hyde scenario where you’ve got this loving relationship, whether it be the priest or the teacher or the father or the doctor, whoever it is, who provides so much to that child and actually in many ways helps them with their development in a really positive way, but then there’s this. There’s the fact that the sexual abuse is going on and if only they could have that relationship without this, and they find that the only way that this can be stopped is by telling someone about it or reporting.

Children may not disclose because they feel embarrassed or guilty, or think they will not be believed. They also may not feel safe disclosing the sexual abuse. As Dr. Wolfe stressed, there is “the shroud of silence” that “occurs in childhood around sexuality.” Children may feel guilty or ashamed because they found the sexual acts pleasurable. It is particularly difficult for boys to disclose sexual abuse. As Dr. Jaffe explained, boys are socialized not to speak about their vulnerability: “[B]oys are raised to be strong and silent, to keep feelings to themselves, to be tough guys, to maintain a tough guise.” Another impediment to disclosure by males is that it may raise questions about their sexual orientation; the social stigma of being labelled as gay is clearly a barrier to disclosure.

Wendy Harvey discussed some of the reasons people decide to disclose the abusive acts perpetrated on them. The disclosure may occur one year, several years, or even decades after the sexual abuse:

... [A]n interesting thing [that] happens in the lives of many is that they pass by kind of this invisible threshold where one day, all of a sudden, it seems the right thing to do, to tell. And sometimes this is a year later; sometimes it's 50 years later; and sometimes the person they tell is a therapist and sometimes it's a police officer, a friend or whatever. Depending on who they tell, it may or may not find its way into a police file and there's all kinds of issues around that too.

Survivors may feel that the abuse is something they need to resolve in their lives, or they may be very concerned that their siblings, children, or grandchildren are at risk of being abused by the same perpetrator. The victims may also be in a different setting and consequently feel that their surroundings are such that it is safe to disclose the sexual abuse. They may also want to provide an explanation for their behaviour to their spouses, friends, family members, or the people with whom they work. Victims of abuse may also decide to seek therapy and compensation for the abuse. In some jurisdictions, it is necessary to make a police complaint in order to qualify for Criminal Injuries Compensation. Survivors of abuse may seek acknowledgment of the abuse as well as an apology from the perpetrator.

The Duty to Report Child Abuse

Although a legal duty to report child abuse has existed in Ontario since 1965,¹³ it was rarely reported until the 1980s. The *Child Welfare Act*¹⁴ imposed a legal duty

13. *Child Welfare Act*, S.O. 1965, c. 14.

14. S.O. 1978, c. 85.

on professionals to report child abuse to child welfare authorities. Members of the public also had an obligation under the legislation to report child abuse, although unlike professionals, no fine or other penalty could be imposed on them for failure to report. This statutory duty continued under the Ontario *Child and Family Services Act*¹⁵ and, as will be discussed in this Report, the reporting obligations of professionals have been expanded. But despite this legal duty, sexual abuse cases involving children are often not reported. Even in cases in which professionals have failed to report, legal action has generally not been initiated against them for violating their statutory duty.

Dr. Trocmé explained that prior to the 1980s, child sexual abuse was poorly understood by professionals. When child victims disclosed, professionals either did not believe them or did not know how to respond appropriately. According to Dr. Trocmé, there were problems with identification, detection, and reporting of child sexual abuse.

What were the common responses of institutions and community organizations when children disclosed abuse? The first response to disclosure of abuse was generally disbelief, and the next was to “get rid of the problem.” The term used in some of the literature is “passing the trash.” Throughout Canada and the United States, a common response when a teacher had abused a student was to send the teacher to another school or school district. The abusive acts were not reported and the offender had access to other children. This pattern was common not only in schools but also in churches, recreational clubs, and hockey organizations. Dr. Wolfe gave the example of Mount Cashel, in which Christian Brothers in Newfoundland were moved to other schools, where they continued to abuse children.

In many historical sexual abuse cases, adults saw “bits and pieces about what’s happening” but “didn’t want to believe it.” The initial reaction was “loyalty to your own.” These individuals immediately think about “the consequences to that adult rather than the first response is always the safety and security of children.” Institutions had a culture of turning a “blind eye” to the abuse. And as Dr. Jaffe has observed in his thirty years as a psychologist in the fields of child abuse and domestic violence, “[W]e still have a number of people who operate through denial.” There are professionals in the community, neighbours, and friends, he testified, who believe child abuse is predominantly a societal problem of the past. The responses of such individuals are, “We have help lines. We have shelters. We have Children’s Aid. It’s not really happening any more.” Dr. Jaffe commented:

I used the analogy of 30 kilometres down a 100 kilometre road. I think people are much more aware but ... I think there is still some resistance.

15. S.O. 1984, c. 55.

I think there's a—if you look at any group of professionals, take 100 people at random, you still have some percentage that are in denial. It can't happen any more.

In an institutional setting, it is most difficult to deal with child sexual abuse when it is committed by people with high status in the organization: “[T]he more power that person has, the more influence they have in institutions that are supposed to investigate, the greater the danger there will be a longer denial or potential cover-up around the problem.” “[C]hild abuse is about power,” stressed Dr. Jaffe:

It's about adults' position of power violating children and ultimate power corrupts and if people feel they can get away with it and there's no consequence, then there is a real danger. Some of the communities, if you have multiple perpetrators and they have significant influence, it makes it harder to uncover these cases.

Dr. Jaffe also discussed the reporting of child sexual abuse in religious institutions, places that have historically had a “profound influence” in society. These institutions often lack clear infrastructure to report sexual abuse:

It's often confusing from the outside about responsibilities and authority and when you're trying to talk about abuse within a church, you're talking about disclosing something that happened in your whole community. When someone belongs to a church, it's not just belonging to an institution. It's your very sense of being in the community, your faith. It's that more difficult to disclose it, more difficult to disclose it and be believed. So it's the ultimate institution.

And, he added, “[W]hen you have institutions where the church and the schools are combined ... it's extremely powerful.”

The importance of reporting child sexual abuse was stressed by Dr. Jaffe; “silence” is tantamount to “condoning” the abuse. People may either “watch it happen and don't say anything” or they may be “actively part of a cover-up”:

... [B]ystanders play different roles, active and passive. At the end of the day, the bystanders, whether they're active or passive, have ultimately condoned the behaviour; that it wasn't worth stopping, it wasn't worth reporting, it wasn't worth taking action on.

Condoning such behaviour has very serious consequences: it re-victimizes the child and also “puts future victims in danger of the same perpetrator.” As Dr. Jaffe warned, “Silence is the enemy of child sexual abuse.”

Prosecutor Wendy Harvey testified that only 7 to 10 percent of sex crimes are reported.

False Denials by Perpetrators Versus False Allegations of Sexual Abuse by Children

Although attention is often focused on false allegations of sexual abuse by children, empirical studies have established that the number of children who fabricate sexual abuse is statistically very small. Social scientists have repeatedly stated that false denials by perpetrators are much more common than false allegations by victims of abuse.

Dr. David Finkelhor, an expert on child sexual abuse in the United States, was one of the first social scientists in North America to research and publish studies on child sexual abuse, beginning in the 1970s. In a 1994 article entitled “Current Information on the Scope and Nature of Child Sexual Abuse,”¹⁶ Dr. Finkelhor states that only between 4 and 8 percent of reports of abuse are fabricated, exaggerated, or misinterpreted.¹⁷ This study did not address historical allegations of child sexual abuse by adults.

The conclusion that false reports of child sexual abuse are statistically few was confirmed by Ontario child abuse expert Dr. Nicolas Trocmé. In the *Ontario Incidence Study of Reported Child Abuse and Neglect*,¹⁸ Dr. Trocmé found that very few reports of child abuse are deliberately or maliciously false. According to the results of his research, only 1 percent of reports of child sexual abuse are intentionally false. Although the number of false allegations made by adults in historical abuse cases is unknown, it is also believed to be low.

As both Dr. Trocmé and Professor Bala explained at the hearings, it is important to distinguish between false and unsubstantiated allegations of abuse. An unsubstantiated or unproven allegation means that there is insufficient evidence to establish that the child sexual abuse occurred. As Professor Bala said, it is

16. David Finkelhor, “Current Information on the Scope and Nature of Child Sexual Abuse,” *The Future of Children*, vol. 4, no. 2 (1994): 31–53; David Wolfe, testimony, February 13, 2006, transcript pp. 121–128, February 14, 2006, pp. 49–52.

17. *Ibid.*

18. Nico [Nicolas] Trocmé, Debra McPhee, Kwok Kwan Tam, and Tom Hay, *Ontario Incidence Study of Reported Child Abuse and Neglect* (Toronto: Institute for the Prevention of Child Abuse, 1994).

essential to understand that a criminal acquittal or unsuccessful civil lawsuit “does not mean they were not genuine victims; [i]t simply means there was not enough evidence to establish” the criminal conviction or civil liability. The Queen’s University law professor explained that proving sexual abuse in court proceedings, whether criminal or civil, is very difficult in both current and historical cases of child sexual abuse. As will be discussed, such cases generally lack physical evidence. Sexual abuse of children only infrequently involves penetration and moreover, there is often significant delay in disclosure, with the result that any available physical evidence is not preserved. To compound the problem, there are rarely any witnesses to the abuse. Child sexual abuse and sexual crimes in general are typically committed in private—solely the child victim and the perpetrator are present.

Growing Awareness of Child Sexual Abuse

Until the 1980s, there was very little knowledge in Canada or the United States of the prevalence or impact of child sexual abuse. As Professor Bala wrote in “Child Sexual Abuse Prosecutions in Canada: A Measure of Progress,” “Until the early 1980’s, child sexual abuse was a virtually ignored social phenomenon in Canada.”¹⁹ In the 1950s and 1960s, it was believed that child sexual abuse was rare and in the few number of cases in which it was committed, strangers were the perpetrators. There were few scientifically rigorous studies on child abuse prior to the 1980s.

The women’s movement in the 1970s publicly voiced issues of domestic violence and sexual exploitation. During that decade and into the 1980s, it continued to be believed that sexual abuse was committed primarily either by strangers or by members of the nuclear family (where it was generally considered to be an incestuous problem between fathers and their daughters).

In 1983, Bill C-127 was proclaimed. Prior to that time, laws on sexual abuse focused on penetration. In order to secure a rape conviction, it was necessary to establish that penetration had occurred. Also, until 1983, it was legal for a man to rape his wife. Moreover, there were no offences in the *Criminal Code* for fondling, invitation to sexual touching, or for sexual exploitation of children by individuals in positions of trust. In addition, the language of many of the criminal offences described men as the offenders and women as victims, although boys are often victims of sex crimes and women are sometimes the offenders.

19. Nicholas Bala, “Child Sexual Abuse Prosecutions in Canada: A Measure of Progress,” *Annals of Health Law*, vol. 1 (Chicago: Loyola University Chicago School of Law, 1992), p. 177.

The 1983 reforms repealed the crime of rape and replaced it with sexual assault. Three tiers of sexual assault were introduced in the *Criminal Code*: sexual assault, sexual assault causing bodily harm, and aggravated sexual assault.²⁰ Also the rules relating to the law of recent complaint were abrogated.²¹

But it wasn't until the Badgley Report in 1984 that government officials, Crown prosecutors, police officers, mental health professionals, and the public began to understand the scope of the problem of child sexual abuse in Canada. The Badgley Report, described as "a seminal piece of work," was the "first comprehensive effort in Canada to gain a national" understanding "of the problem of sexual abuse."²² This national empirical study revealed that the incidence of child sexual abuse was much higher than previously understood. It was also one of the first major studies to document the extent to which boys are sexually exploited. Entitled *Sexual Offences Against Children in Canada*, the Badgley Report states:²³

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. These silent victims—and there are substantial numbers of them—are often those in greatest need of care and help. Only a few young victims of sexual offences seek assistance from the helping services and there are sharp disparities in the types and adequacy of the services provided for them in different parts of the country.

It found that "about one in two females and one in three males have been victims of one or more unwanted sexual acts."²⁴ These acts included being touched on a

20. Bill C-127, An Act to *Amend the Criminal Code*, 1st Sess., 32nd Parl., 1980–81–82, s. 246.

21. The "recent complaint" rule, developed at common law, permitted counsel in a criminal prosecution to elicit from the complainant or other person a complaint of a sexual assault made at the first reasonable opportunity. The complaint was admitted, not for its truth, but to show consistency and rebut the adverse inference, which the trier of fact would otherwise be invited to draw, that the victim's allegation was untrue. In other words, the law of recent complaint permitted the trier of fact to draw a negative inference against the credibility of the complainant who had not made a complaint immediately after the alleged crime had occurred.

22. Rix Rogers, *Reaching for Solutions: The Summary Report of the Special Advisor to the Minister of National Health and Welfare on Child Sexual Abuse in Canada* (Rogers Report) (Ottawa, ON: National Clearinghouse on Family Violence, Health and Welfare Canada, 1990), p. 10.

23. Robin F. Badgley, *Summary of the Report of the Committee on Sexual Offences Against Children and Youths, appointed by The Minister of Justice & Attorney General of Canada, The Minister of National Health and Welfare Government of Canada* (Badgley Report) (Ottawa: Supply and Services Canada, 1984), p. 1.

24. *Ibid.*

sexual part of the body, being sexually threatened, and being sexually assaulted. About four out of five of these unwanted sexual acts were first committed against these people when they were children or youths. The Report concluded that abuse by strangers was a relatively small problem and that most sexual abuse was committed on children by family members, friends, and acquaintances such as teachers and coaches. As the Badgley Report stated, “[A]bout one in four of the sexual offences against young persons was committed by persons either prominent in the child’s life or by persons to whom the child was particularly vulnerable.”²⁵ It found:²⁶

- the opportunities for sexually abusing the children were greater than ordinary;
- the young victims were particularly vulnerable; and
- these offenders breached the vital position of trust reposed in them due to their special relationship to these young victims.

Not only did the Badgley Report document the extent of child abuse in Canada but it also created awareness of the inadequacies of legislation, policies, and protocols in our country.

The Badgley Report concluded that the sexual assault laws in Canada did not adequately deal with grooming by pedophiles, sexual exploitation that did not involve penetration, or exploitation by people in positions of trust. The Report proposed amendments to the *Criminal Code* to address a broader range of sexual acts. As discussed below, some of the recommendations in the Badgley Report were introduced in the *Criminal Code* and *Canada Evidence Act* in 1988. It recommended that it constitute a criminal offence for an individual to touch any part of a child’s body for a sexual purpose and, similarly, to have a child touch a person for a sexual purpose. It also proposed that the one-year limitation period for the prosecution of certain offences be removed from the *Criminal Code*.

The Badgley Report made significant recommendations about both evidence and procedural law with the objective of removing obstacles to the reception of children’s testimony and accommodating child witnesses testifying in legal proceedings. These included the abolition of the corroboration requirement for the evidence of children and the availability of screens and closed-circuit television for children testifying in court.

In 1988, Bill C-15 became law. These amendments to the *Canada Evidence Act* and the *Criminal Code*, which implemented some of the recommendations

25. *Ibid.*, p. 21.

26. *Ibid.*, pp. 21–22.

in the Badgley Report, represented “major reform” of the federal laws governing the sexual abuse of children.²⁷ Substantial barriers to the reception of children’s evidence were removed. Prior to the 1990s, there had been few successful prosecutions of child sexual assault, in large part because of the obstacles to the reception of children’s evidence, the lack of preparation of sexual assault victims for the court process, and the lack of accommodation of young witnesses by the judicial system.

As a result of Bill C-15, the rule requiring corroboration for children under the age of fourteen was abolished. Children were also given the opportunity in 1988 to affirm in place of swearing on the Bible, an option previously available only to adult witnesses. New provisions were added to the *Criminal Code* to enable child sexual abuse victims under particular circumstances to testify behind a screen or by closed-circuit television. Moreover, a videotape of a child complainant can now be introduced in court for certain criminal sexual offences if particular conditions are satisfied. These reforms, designed to facilitate the testimony of child victims of abuse, were not available to adults who testified in criminal trials about sexual acts committed on them when they were children. A further reform, introduced in 1993, allows a support person in court for a child complainant who testifies in a sexual abuse case.

Bill C-15 also introduced new sexual offences into the *Criminal Code* such as (1) touching for sexual purpose, directly or indirectly, with a part of the body or with an object, any part of the body of a child under fourteen years old; and (2) inviting a child under fourteen to touch for a sexual purpose with an object or part of his/her body, directly or indirectly, the body of an adult. In addition, a sexual exploitation offence was introduced for people in a position of trust or authority with regard to children under the age the eighteen. It also applied to a person with whom a child was in a relationship of dependency.

As Prosecutor Wendy Harvey commented, an understanding was also beginning to emerge at this time that preparation of a child witness for court is very important. She explained:

... [T]he whole point of preparing a child for court is that it is an adult forum you are bringing the child into. You want to prepare them emotionally for something that they’re not used to. Even adults have difficulty testifying in a criminal court and particular difficulty with a very, very unusual experience of being cross-examined and actually having to sit in the same seat and endure it.

27. Nicholas Bala, “Bill C-15: New Protections for Children—New Challenges for Professionals,” *C-15 Forums Keynote Address Series* no. 1, October (Toronto: Institute for the Prevention of Child Abuse, 1988), p. 2.

Victim/witness programs began in the 1980s to provide child witnesses in sexual abuse cases with information about the court process, to provide support persons, and to explain that prosecutors could ask the presiding judge to allow the child to testify behind a screen or by closed-circuit television.

In 1990, the Rogers Report, *Reaching for Solutions*, was released. Rix Rogers, Special Advisor to the Minister of National Health and Welfare, had been asked to conduct a study on the long-range direction of federal initiatives on child sexual abuse. His study involved consultations throughout Canada in urban areas, small communities, and the North,²⁸ in which he met with governmental and non-governmental officials, community-based groups, and front-line service providers. Rix Rogers also met with victims of child sexual abuse and perpetrators.

The Rogers Report confirmed the findings of the Badgley Report regarding the prevalence of child sexual abuse in Canada. The 1990 Report stated that child sexual abuse “affects children in all regions, races, religions and socio-economic classes of our society.”²⁹ It found that about 95 percent of child sexual abusers are male and that although the majority of victims are girls, “many victims are boys.”³⁰ It stated that “incidents involving multiple victims and multiple offenders are becoming more common.”³¹ According to the Rogers Report, “The sexual abuse of children is symptomatic of deeply rooted societal values which tolerate and thereby permit the misuse of power and authority against vulnerable populations, including children.”³²

The Rogers Report proposed several recommendations, which focused on:

- ways to expedite child sexual abuse cases in the court system;
- improved co-ordination of systems and professionals working with child sexual abuse cases;
- improved linkage between the justice, correctional, probation and parole systems;
- use of leverage in the justice system to mandate treatment opportunities;
- full utilization of the provisions of Bill C-15;
- improved consistency in sentencing;
- requirements for education and training of all professionals in the legal system, including judges;
- specialization in the field of investigation and prosecutions;

28. Rogers Report, p. 7.

29. *Ibid.*, p. 13.

30. *Ibid.*

31. *Ibid.*

32. *Ibid.*, p. 15.

- improved use of experts in the court process;
- increased provision of victim witness support services;
- changes to the *Criminal Code* and provincial legislation to improve victim protection;
- changes in the *Criminal Code* to improve supervision and treatment of offenders;
- establishment of screening mechanisms to ensure that those with a history of abuse are not placed in positions of responsibility for children; and
- further research into the characteristics and incidence of false allegations.

Some of the recommendations in the Rogers Report were:³³

That protocols be developed in each local community and rural region to facilitate inter-disciplinary and interjurisdictional co-operation among service providers and various systems in combating child abuse.

That provincial ministries of education, culture and recreation, and social services should continue to fund and plan strategies that will encourage an enhanced liaison between school personnel and community leaders, supported by developmentally appropriate preventive education programs, targeting pre-school through elementary to secondary levels of education. As well, teacher training must regularly deal with child sexual abuse.

That all relevant professional associations be encouraged to develop policy with respect to child abuse and the role their professionals should play in the detection, treatment and prevention of abuse.

That child and youth serving organizations in Canada continue and further develop their efforts to combat child abuse in Canada, including the addition of an official policy to prevent child abuse within their organization. Official policies should set out guidelines related to the selection, training and screening of leaders.

That churches develop policies and procedures for responding appropriately to the problem of child sexual abuse. This includes the articulation of guidelines for church leaders to follow in the event of disclosures, training for appropriate pastoral counselling, procedures to

33. *Ibid.*, pp. 21–22.

follow in the event that church personnel are accused of sexual abuse, and comprehensive screening procedures for clergy and other personnel who work with children and youth.

That all police officers and supervisory personnel receive training in issues related to child sexual abuse and domestic violence; and

That all police forces have officers who specialize in the handling of child sexual abuse cases and who have had specialized multi-disciplinary training in programs of at least one week's duration.

The Report stated that “[t]he criminal justice system across Canada is having great difficulty in coping with the increased number of child sexual abuse cases and at the same time minimizing the trauma which the system has on children.”³⁴ There is a need, concluded the Report, for more programs, resources, training, and protocols to facilitate coordination between different organizations such as the police and child protection services.

In the late 1980s and early 1990s, child sexual abuse in an institutional context started to appear on the radar screens of professionals and members of the public. The 1989 Hughes Inquiry into abuse at Mount Cashel Orphanage in Newfoundland heightened awareness about issues of sexual abuse of boys in institutions. This was followed by the St. George's Cathedral case in Kingston, in which there were allegations of both current and historical abuse by a choir-master, a respected member of the community. Reports started to appear in the media and professional literature about victims of child sexual abuse in residential schools as well as Ontario training schools such as Grandview, St. Joseph's Training School, and St. John's Training School.

The Hughes Inquiry into institutional abuse resulted in greater awareness in the legal community that adult victims of child sexual abuse often have criminal records, substance abuse problems, and high unemployment rates, and that these factors should not automatically undermine their credibility.

Mount Cashel was “shocking” in that clergy, individuals in positions of trust and authority, had abused children, the abuse was “wide-scale,” and the consequences to the victims were very serious. There was recognition in the late 1980s of the need to develop protocols to address child abuse in institutions serving youth such as schools, religious institutions, and volunteer organizations.

Another case that raised public and professional awareness in Ontario was Project Guardian. In 1993, pornographic videos were discovered in a garbage

34. *Ibid.*

bag near a river in London, Ontario. It soon became evident to the London Police Department that this was a multi-victim, multi-offender case. The London Children's Aid Society worked jointly with the police in the investigation.

Not one of the victims, most of whom were disadvantaged and marginalized youth, came forward on their own to disclose the sexual abuse. Sixty percent of these children had had previous contact with the Children's Aid Society or were in foster care. Recruitment of the child victims involved psychological and financial manipulation such as gifts of sports jerseys and running shoes as well as meals at restaurants. As stated in the 1997 report *Project "Guardian": The Sexual Exploitation of Male Youths in London*,³⁵ "There was a highly successful system of peer recruitment, as well as adult-offered enticements, both of which fostered compliance, secrecy and escalation of involvement in young males lured into homosexual sex trade." Some of the adult perpetrators were "well respected professionals" in the London community.

John Liston, Executive Director of the Children's Aid Society (CAS) of London & Middlesex, stated that his staff was not prepared for a multi-offender, multi-victim investigation. The CAS protocols did not address this type of investigation. Another lesson learned from Project Guardian was the importance of a constructive and positive relationship between the CAS and the police. The importance of information sharing between agencies also became very evident. But as John Liston said, and as will be discussed in this Report, impediments remain with regard to the sharing of information. Mr. Liston argues that various statutory and regulatory provisions need to come into effect (such as Part VIII of the *Child and Family Services Act*) to facilitate information sharing between agencies such as the police, CAS, school boards, health units, and other agencies.

It was learned through Project Guardian that "[t]he dynamics underlying the sexual exploitation of children," particularly male youth, were "not well understood" by professionals. The 1997 report stressed:³⁶

... Specialized education must be offered to professionals who work with youth, so that they are able to identify potential victims, offer assistance to high risk youth, and intervene therapeutically and appropriately to protect victims. Additional training must be offered to police officers and child protection workers who routinely investigate cases of child sexual abuse ...

35. Louise Sas and Pamela Hurley, *Project "Guardian": The Sexual Exploitation of Male Youths in London* (London, ON: London Family Court Clinic, 1997), p. 2.

36. *Ibid.*, p. 181.

The need for public education was also emphasized:³⁷

There is an acute need to provide the public with concrete accurate knowledge regarding the sexual exploitation of children. Concrete examples of high risk victim behaviour, recruitment strategies by offenders, and the negative impact on victims should be offered as part of public presentations so that parents and others are sensitized to the pattern of engagement.

The report stressed that there was the “need for a national strategy to combat child sexual abuse.”³⁸

The Robins Report, entitled *Protecting Our Students*, was released in 2000 and also raised awareness in Ontario about institutional sexual abuse of students in the school system. Sydney Robins, a former judge of the Ontario Court of Appeal, was appointed to conduct a review of incidents involving a teacher in Sault Ste. Marie at the Roman Catholic Separate School Board. All of the victims were females who ranged in age from ten to eighteen years old.³⁹ The conduct of Mr. DeLuca, the teacher, “severely damaged his victims’ physical and emotional well-being and, in some cases, has had a devastating impact on their lives.”⁴⁰

The Robins Report stressed that Mr. DeLuca’s situation “is not unique”:⁴¹

... There are abusive teachers who, like DeLuca, are “opportunistic” sexual predators motivated by power, control and sexual gratification. Some are pedophiles who prefer to have sex with children and have chosen to work in schools so they can better access their targets. Others have “romantic/bad judgment” relationships with students, believing that their conduct is either harmless or is acceptable because the students are said to be doing what they want to do. Still others engage in sexual harassment or insensitive and inappropriate, though not necessarily criminal, conduct. The unhappy reality is that cases of sexual misconduct are more prevalent than the public and the teaching profession may believe.

37. *Ibid.*

38. *Ibid.*, p. 186.

39. Sydney L. Robins, *Protecting Our Students: A Review to Identify and Prevent Sexual Misconduct in Ontario Schools* (Toronto: Ontario Ministry of the Attorney General, 2000).

40. Sydney L. Robins, *Protecting Our Students: Executive Summary and Recommendations* (2000).

41. *Ibid.*

The Robins Report stated that many instances of sexual misconduct against students are concealed and are not reported. The reported cases of sexual misconduct “represent only the tip of the iceberg.”⁴² Justice Robins explains:⁴³

... Reluctance on the part of teachers to report suspected sexual misconduct by a colleague, intimidation of victims and their parents to prevent or discourage disclosure, failure to act upon disclosures of misconduct, the inadequacy of records documenting complaints made, the transfer of a suspected perpetrator from school to school, the absence of screening procedures on the hiring of new teachers have all been seen, to varying degrees, in both the DeLuca case and in numerous other cases and in the literature documenting sexual misconduct in schools.

Dr. Peter Jaffe was involved in the Robins review and interviewed some of the survivors who were sexually abused by the teacher. He said that although colleagues saw “signs, symptoms, warning signs,” “a conspiracy of silence” existed “throughout the system.” Mr. DeLuca was transferred from school to school and continued to sexually abuse students. When some of the children disclosed the abuse, they were not believed. As Dr. Jaffe testified, this case is a “reminder” of how “one perpetrator can do incredible damage to multiple victims.”

Approach of the Courts to Child Sexual Abuse Cases

After Bill C-15 was proclaimed in 1988, the constitutionality of several of the provisions in the new legislation was challenged. Decisions from the Supreme Court of Canada and appellate courts upheld the constitutionality of the new provisions, stressed the importance of accommodating child witnesses in court, and sought to more broadly admit the evidence of children in legal proceedings.

For example, the Supreme Court in *R. v. L.(D.O.)*⁴⁴ upheld the section introduced into the *Criminal Code*⁴⁵ that permitted a videotaped statement of a child in a sexual assault case to be admitted in criminal proceedings. Moreover, the 1990 Supreme Court of Canada landmark decision of *R. v. Khan*⁴⁶ expanded the

42. *Ibid.*

43. *Ibid.*

44. [1993] 4 S.C.R. 419.

45. *Criminal Code*, s. 715.1.

46. [1990] 2 S.C.R. 531.

circumstances in which the hearsay statements of a child could be admitted in court. In *R. v. B.(G.)*,⁴⁷ Justice Wilson discussed how the judiciary should take a “common sense approach” to the testimony of children. Contradictions in a child’s evidence should not always be given the same effect as similar flaws in the testimony of an adult. The Supreme Court stated:⁴⁸

... While children may not be able to recount precise details and communicate the when and where of an event with exactitude, this does not mean that they have misconceived what happened to them and who did it. In recent years we have adopted a much more benign attitude to children’s evidence, lessening the strict standards of oath taking and corroboration, and I believe that this is a desirable development. The credibility of every witness who testifies before the courts must, of course, be carefully assessed but the standard of the “reasonable adult” is not necessarily appropriate in assessing the credibility of young children.

In another Supreme Court of Canada decision a few years later, Justice McLachlin affirmed this approach to the evidence of children. Adult tests for credibility should not be applied to the evidence of children. As the Court stated, “Since children may experience the world differently from adults, it is hardly surprising that details important to adults, like time and place, may be missing from their recollection.”⁴⁹ Justice McLachlin also discussed in *R. v. W.(R.)* the abolition of the legal requirement that children’s evidence be corroborated and the previous assumption that children’s testimony is always less reliable than the evidence of adults. She warned that “if a court proceeds to discount a child’s evidence automatically, without regard to the circumstances of the particular case, it will have fallen into error.”⁵⁰

Courts also became more receptive to the admissibility of expert evidence in child sexual abuse cases. For example, the Ontario Court of Appeal held in 1989 that a properly qualified expert could give opinion evidence about the behavioural and psychological characteristics of child victims of sexual abuse. Justice Galligan, speaking for the Ontario Court of Appeal, said:⁵¹

47. [1990] 2 S.C.R. 30.

48. *Ibid.*, at 55.

49. *R. v. W.(R.)*, [1992] 2 S.C.R. 122 at 133.

50. *Ibid.*

51. *R. v. F.E.J.* (1990), 53 C.C.C. (3d) 64 (Ont. C.A.) at 72.

I would think that it is probably not generally known that children who have been sexually abused, and have reported it, commonly recant their allegations. Thus, in order for the trial judge in this case to decide whether this child's testimony should have been disbelieved because of the letter, he was entitled to know that recantations are common.

Another landmark case was the Supreme Court of Canada decision *R. v. Levogiannis*,⁵² which upheld the constitutionality of the provision introduced in Bill C-15 that allows child sexual assault victims to testify behind a screen. Justice L'Heureux-Dubé said: "[T]he evidence of all those involved in judicial proceedings must be given in a way that is most favourable to eliciting the truth."⁵³ The court also discussed the re-victimization of child victims in legal proceedings and the low conviction rates in child sexual assault cases. Justice L'Heureux-Dubé wrote:⁵⁴

... [O]ne cannot ignore the fact that, in many instances, the court process is failing children, especially those who have been victims of abuse, who are then subjected to further trauma as participants in the judicial process ... [D]espite the increase in child sexual assault complaints since the early 1980s, the ratio of charge to conviction remains unchanged.

As the Supreme Court stressed, "The plight of children who testify and the role courts must play in ascertaining the truth must not be overlooked ... [C]hildren may require different treatment than adults in the courtroom setting."⁵⁵

In 1993, the *Criminal Code* was amended to prevent accused persons in sexual assault cases from personally cross-examining a child under the age of eighteen.

Gradually, measures were introduced into the judicial system to minimize the trauma to child witnesses in sexual assault cases, with the objective of eliciting the truth. Courtrooms such as the "J" Court in Toronto and the Zebra Centre in Edmonton were constructed to accommodate these child witnesses. Such courtrooms have protective devices such as screens and closed-circuit television to ensure that the child need not see the alleged perpetrator while giving evidence. Children are provided with support persons and counsellors from victim assistance

52. [1993] 4 S.C.R. 475.

53. *Ibid.*, at 483.

54. *Ibid.*

55. *Ibid.*, at 484.

programs. They enter these courtrooms from a special entrance and have designated waiting rooms with snacks, crafts, and other distractions for these young witnesses. As Wendy Harvey explained in her evidence, the name of the Zebra Centre is a metaphor: as adult zebras encircle younger zebras, the stripes confuse predators who seek to attack the younger animals. The Zebra name, she said, is consistent with the theme of adults playing an important role in the protection of children.

But despite the amendments to the *Criminal Code* that provide for protective devices for children, many courtrooms in Canada do not have screens, closed-circuit television, or technology for videotaped testimony. Nor do they have special courtrooms similar to the “J” Court or the court at the Zebra Centre. As Ms Harvey said, a child may be in a courtroom only six or seven feet away from the accused and his supporters. She further noted:

... [T]here are still courthouses and courtrooms in Canada where there is virtually no provision of the videotaping or screens or anything of that nature and, in fact, little room for even support persons to sit.

So those are the challenges. Those are the challenges for the victim. Those are the challenges for this country.

...

Canada is not doing okay because there are many, many areas in Canada and role settings in others where these courthouses are still allowing both the accused and the victim the significant discomfort and distress of not having the physical plant in place ...

New sentencing provisions introduced by Parliament also made it clear that legislators were turning their attention to the seriousness of sexual offences perpetrated on children. A section of the *Criminal Code*⁵⁶ permits the sentencing judge, for prescribed sexual offences on children under fourteen years old, to prohibit the offender (1) from attending a public park or swimming area, daycare centre, school ground, or community centre; (2) from seeking, continuing, or obtaining employment or becoming a volunteer in a position of trust or authority toward persons under fourteen years; or (3) from using a computer system for the purpose of communicating with a child under the age of fourteen years.⁵⁷

56. S. 161.

57. See s. 161(1).

The prohibition may be for life or “for any shorter duration that the court considers desirable.”⁵⁸

In 1996, Bill C-41 came into effect, which codified principles of sentencing. Some of the provisions were geared to sexual assault victims, including children. Section 718.2 of the *Criminal Code* provides a list of aggravating principles that includes:

1. evidence that the offender, in committing the offence, abused a position of trust or authority in relation to the victim; and⁵⁹
2. evidence that the offender, in committing the offence, abused the offender’s spouse or common-law partner or child.⁶⁰

There was also acknowledgment that in order to protect victims and potential victims, some perpetrators need to be under supervision for long periods. In 1997, amendments were added to the *Criminal Code*⁶¹ on dangerous and long-term offenders.

A dangerous offender hearing takes place after the conviction of an accused for sexual assault and other specified offences. For sexual assault offences, there must be a finding by the judge that:⁶²

1. the offender’s conduct in any sexual matter shows a failure to control his or her sexual impulses; and
2. there is a likelihood of his or her causing injury, pain, or other evil to other persons through failure to control his or her sexual impulses.

The mandatory result of a dangerous offender finding is an indeterminate sentence.⁶³

Long-term offender status was introduced as a “middle ground” between an indeterminate sentence and an ordinary fixed-term sentence.⁶⁴ Individuals found to be long-term offenders can be sentenced to a term of imprisonment for a minimum of two years⁶⁵ followed by supervision on conditions for up to ten years.

58. S. 161(2).

59. S. 718.2(iii).

60. S. 718.2(ii).

61. S. 752.

62. *Criminal Code*, s. 753.

63. *Ibid.*

64. Allan Manson, *The Law of Sentencing* (Toronto: Irwin Publishing, 2001), p. 336.

65. *Criminal Code*, s. 753.1(1), (2), (3).

There are three conditions to a long-term offender designation. The court may find a person to be a long-term offender when:⁶⁶

1. it would be appropriate to impose a sentence of imprisonment of two years or more for the offence for which the offender has been convicted;
2. there is a substantial risk that the offender will reoffend; and
3. there is a reasonable possibility of eventual control of the risk in the community.⁶⁷

Another change in sentencing in recent years has involved the role of the victim. The *Criminal Code* defines a victim as “a person to whom harm was done or who suffered physical or emotional loss as a result of the commission of the offence.”⁶⁸ A victim impact statement that describes the harm and loss to the victim as a result of the offence can be presented to the court for consideration by judges in their determination of the sentence for the accused.⁶⁹ The victim impact statement must be in writing and in a prescribed form.⁷⁰

Further *Criminal Code* amendments introduced in 1999⁷¹ expanded the role of victims in the sentencing process. In the past, it was the Crown Attorney who essentially decided if a victim impact statement would be presented to the sentencing judge. Now the judge is required to permit the victim to read the impact statement in court “or to present the statement in any other manner that the court considers appropriate.”⁷²

66. *Criminal Code*, s. 753.1.

67. According to the *Criminal Code*, the court shall be satisfied there is a substantial risk that the offender will re-offend if:

- (a) the offender has been convicted of an offence under section 151 (sexual interference), 152 (invitation to sexual touching), 153 (sexual exploitation), subsection 173(2) (exposure) or section 271 (sexual assault), 272 (sexual assault with a weapon), or 273 (aggravated sexual assault), or has engaged in serious conduct of a sexual nature in the commission of another offence of which the offender has been convicted and
- (b) the offender
 - (i) has shown a pattern of repetitive behaviour, or which the offence for which he or she has been convicted forms a part, that shows a likelihood of offender’s causing death or injury to other persons or inflicting severe psychological damage on other persons, or
 - (ii) by conduct in any sexual matter including that involved in the commission of the offence for which the offender has been convicted, has shown a likelihood of causing injury, pain or other evil to other persons in the future through similar offences.

68. S. 722(4)(a).

69. *Criminal Code*, s. 722(1).

70. *Criminal Code*, s. 722(2)(a).

71. S.C. 1999, c. 25, s. 17(1).

72. *Criminal Code*, s. 722(2.1).

Another aggravating factor in sentencing an accused was added to the *Criminal Code*.⁷³ It stipulates that evidence that the offender in committing the offence abused a person under eighteen years old shall be deemed to be an aggravating circumstance. This provision was introduced in Bill C-2. A discussion of this important legislation follows.

Bill C-2: Attention to Historical Cases of Child Sexual Abuse

In 2006, Parliament and society as a whole began to realize that adult victims of child sexual abuse also needed protection in order to successfully prosecute perpetrators of these offences. Bill C-2 introduced significant amendments to the *Criminal Code*, designed to protect both children and vulnerable adults from sexual abuse and exploitation.⁷⁴ It changed some of the provisions on sentencing for child sexual abuse offences, including a minimum mandatory sentence for specific sexual crimes. It also strengthened child pornography offences and created new crimes such as the sexual exploitation of adolescents and voyeurism. In addition, the legislation offered important protections to adult witnesses of sexual abuse, designed to facilitate the giving of testimony in these cases. The competency rules for children in the *Canada Evidence Act* were also amended.

Before I highlight some of these significant amendments, the preamble of Bill C-2 is reproduced as it identifies the objectives of Parliament in enacting these statutory provisions:

WHEREAS the Parliament of Canada has grave concerns regarding the vulnerability of children to all forms of exploitation, including child pornography, sexual exploitation, abuse and neglect;

WHEREAS Canada, by ratifying the United Nations Convention on the Rights of the Child, has undertaken to protect children from all forms of sexual exploitation and sexual abuse, and has obligations to sign as a signatory to the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography;

WHEREAS the Parliament of Canada wishes to encourage the participation of witnesses in the criminal justice system through the

73. S. 718.2(a)(ii.1).

74. Nicholas Bala, Katherine Duvall-Antonacopoulos, R.C.L. Lindsay, Kang Lee, and Victoria Talwar, "Bill C-2: A New Law for Canada's Child Witnesses" (2005), 32 C.R. (6th) 48.

use of protective measures that seek to facilitate the participation of children and other vulnerable witnesses while ensuring that the rights of accused persons are respected;

AND WHEREAS the continuing advancements in the development of new technologies, while having social and economic benefits, facilitate sexual exploitation and breaches of privacy ...

A significant provision introduced to the *Criminal Code*⁷⁵ in 2006 permits an application to be made to the court to allow adult witnesses to testify behind a screen or outside the courtroom by closed-circuit television. There is recognition that adults, particularly in sexual offence cases, may be intimidated by the accused and consequently may have difficulty giving evidence in court. If the judge is of the opinion that this is “necessary to obtain a full and candid account from the witness of the acts complained of,”⁷⁶ he or she will allow the adult to testify behind a screen or by closed-circuit television. It is noteworthy that there were constitutional challenges to this provision, section 486.2 of the *Criminal Code*, within months of its amendment. To date, this provision has been upheld by the courts.

Section 486.2 of the *Criminal Code* was also amended to give children and adults with mental or physical disabilities easier access to closed-circuit television, screens, and support persons while they testify at criminal trials.

Another very important legislative change is that children under the age of fourteen need no longer satisfy the rigid competency rules that previously existed in order to give evidence in court. Pursuant to Bill C-2, there is now a presumption in the *Canada Evidence Act* that children under the age of fourteen have the capacity to testify. Victims and other witnesses under fourteen years old need no longer explain in court abstract concepts such as the oath or the difference between a lie or the truth before they are permitted by a judge to testify. Many of the competency hurdles that prevented children from testifying have now been removed as a result of Bill C-2.

Another significant provision is the new section 153 *Criminal Code* on sexual exploitation. As Wendy Harvey explained in her expert testimony, Bill C-2 expands the criminal offence “so that it goes beyond [a] relationship of dependency ... [I]t opens the door a little bit to embrace other relationships beside the trust/dependency/authority one that the courts have been tackling with over the years.” Section 153(1.2) *Criminal Code* states:

75. S. 486.2(2).

76. *Ibid.*

- (1.2) A judge may infer that a person is in a relationship with a young person that is exploitative of the young person from the nature and circumstances of the relationship, including
- (a) the age of the young person;
 - (b) the age difference between the person and the young person;
 - (c) the evolution of the relationship; and
 - (d) the degree of control or influence by the person over the young person.

Bill C-2 introduced minimum penalties for the offence of child sexual exploitation as well as other crimes committed on young people. This prevents the availability of a conditional sentence⁷⁷ for offenders who commit these sexual crimes on children. As mentioned above, Bill C-2 stipulates⁷⁸ that it is an aggravating factor for purposes of sentencing if evidence exists that the offender abused a person under the age of eighteen. Moreover, the following *Criminal Code* section⁷⁹ was added:

When a court imposes a sentence for an offence that involved the abuse of a person under the age of eighteen years, it shall give primary consideration to the objectives of denunciation and deterrence of such conduct.

As an expert at the Phase 1 hearings said, it is hoped and expected that “[t]he changes in Bill C-2 should both enhance the truth-seeking function of the criminal justice system and reduce the stress on children and other vulnerable witnesses from their involvement in the legal process.”⁸⁰

77. Conditional sentences were introduced by Parliament in 1996. A judge may order that a term of imprisonment of less than two years be served in the community on conditions. Section 742.1 *Criminal Code* states:

742.1. If a person is convicted of an offence, other than a serious personal injury offence as defined in section 752, a terrorism offence or a criminal organization offence prosecuted by way of indictment for which the maximum term of imprisonment is ten years or more or an offence punishable by a minimum term of imprisonment, and the court imposes a sentence of imprisonment of less than two years and is satisfied that the service of the sentence in the community would not endanger the safety of the community and would be consistent with the fundamental purpose and principles of sentencing set out in sections 718 to 718.2, the court may, for the purpose of supervising the offender’s behaviour in the community, order that the offender serve the sentence in the community, subject to the offender’s compliance with the conditions imposed under section 742.3.

78. See *Criminal Code*, s. 718.2(a)(ii.1).

79. S. 718.01.

80. Bala *et al.*, “Bill C-2: A New Law for Canada’s Child Witnesses,” *supra* n. 74.

Impediments to the Successful Prosecution of Child Abuse Cases

Until the 1980s, few criminal cases of child sexual abuse were successfully prosecuted in Ontario and Canada as a whole. Children's evidence was considered unreliable, there was a limited range of sexual offences in the *Criminal Code* under which offenders could be prosecuted, and children had to overcome significant legal hurdles in order to give evidence in a criminal trial. These are a few of the reasons why child sexual abuse cases either did not proceed or did not result in convictions of accused persons.

A further reason, as discussed, was that the legal system did not accommodate children. Young witnesses who had been abused were required to wait outside courtrooms in close proximity to the offender, as there were no special facilities for children. Also, when children testified, they were compelled to have face-to-face confrontation with the accused, and did not have the protection of a screen or closed-circuit television. Nor were support persons permitted to stay close to children at the witness stand while they testified. Moreover, victim/witness programs to prepare the child for court proceedings did not exist. And it was not until the 1990s that accused persons were prohibited from personally cross-examining a child sexual abuse victim, which had a significant adverse impact on the child's evidence. Cases collapsed due to the inability of the child to complete his or her testimony.

Children were traditionally considered to be unreliable witnesses. As mentioned, it was believed that young people had a tendency to lie and fantasize and that their memories were poor. This was reflected in the psychological literature, in statutes, and in court decisions until the 1980s. There was also little understanding of human memory. Defence lawyers would successfully challenge the credibility of children who were repeatedly abused over a number of years, on grounds that they could not describe in detail each separate incident of sexual abuse. Wendy Harvey discussed in her testimony the concept of script memory:

... [I]f I ask you to describe to me ... how many times have you ever driven to work? So if you drive to work like 200 times a year or so, and I insisted that you've got a pencil and paper in front of you and "I want you to write down every time that you went to work." So you've been going to work for 10 years. That's 2,000 times or so. So why isn't there 2,000 episodes of driving to work on that piece of paper? It's because the memory puts it into a script. And so what you're going to hear and what, chances are, people will write is, "Well, I pick up my briefcase and I would leave the door and I would go to my car and open the garage door and drive my car out."

...

So the same principles apply. Of course they apply when we're talking about a victim of a sex crime. Many of these victims—and it's the very nature of some sex offenders, that these are repeated, ongoing abuses and the result is that a victim will describe that as a script.

...

Now, when this gets into a court of law ... the cross-examination will be of a nature of, well, "Witness, I've done the arithmetic here and you said that this has happened for 10 years and so many times a week, and so my arithmetic tells me that this probably happened about 2,000 times. Is that correct?" "Well, I haven't really done the math." "Two thousand times, that is my arithmetic, and yet, witness, I have counted how many times that you were actually able to describe something that transpired and there's five. There's five times, witness. How could this possibly be that you have been sexually assaulted 2,000 times by this man and you can only tell us five times?" ...

And the trier of fact, the jury, is sitting there and they're going, "Yeah, witness" because they're not thinking about the times of driving to work or the fact that they can't recall the brushing of their teeth or what they had for breakfast, because when we're in a court of law, sometimes it takes on an artificiality, as if the human brain is to operate differently from how it does day to day, and it is convincing at times.

Another impediment, previously discussed, was that before children under fourteen years old were permitted to testify, they were required to pass a competency test. Children needed to demonstrate to the judge that they understood the nature of an oath that involved abstract questioning. It was very difficult for five-, eight-, or even thirteen-year-old witnesses to describe the concept of swearing an oath to a Supreme Being.⁸¹ Also children, unlike adults, were not allowed to solemnly affirm. And significantly, until the 1980s, legal rules necessitated that a child's evidence be corroborated by independent evidence before an accused could be convicted of a crime. This was virtually impossible as child sexual abuse generally occurs in private without other witnesses; only the child and the accused are present. As Detective Wendy Leaver from the Toronto Police Force said, these legal rules created significant obstacles to the successful prosecution of the sexual offenders. The police "knew that the child couldn't make it through the court system" because of the evidentiary requirements.

81. See *R. v. Bannerman* (1966), 48 C.R. 110 (Man. C.A.), aff'd Supreme Court of Canada, [1966] S.C.J. no. 74.

The perception that children were inherently unreliable had ramifications throughout the social and legal systems. When children came forward and reported abusive acts, the response was that they were lying. When Detective Leaver began to investigate sexual offences in the late 1970s and early 1980s, very little was known about child sexual abuse. There was a tendency not to believe children's accounts of sexual abuse. This was reinforced with the emergence of the theory of false memory syndrome, which asserted that children "remembered" or "recalled" acts of sexual abuse that had not actually occurred.

Nor did police officers have training in sexual assault cases. As Detective Leaver said, there was "no specialized training, no skill training in any areas of interviewing, victim management, how to investigate sexual assaults." Investigators often considered sexual crimes against children to be "family matters." Wendy Harvey stated:

... [Y]ou had to convince police that this is a police matter and, in fact—and I expect, with the greatest respect to the police, that there are still remnants of that today where, you know, "Give me something real to investigate. Give me a homicide or give me a robbery," because they still would see that this is not a police matter.

When police interviews were conducted, interviews were not audio or video recorded. Instead, police notebooks were used and the language of the child victim was paraphrased. Moreover, because of their lack of training, police officers often asked suggestive questions, which had an adverse impact on the weight attached to the child's evidence in legal proceedings.

Children were often punished for making allegations against their perpetrators, some of whom were respected community figures such as priests. Young victims of sexual abuse were returned to the institutions at which they had been abused, such as schools, churches, and foster homes. The message to these children and other potential child victims was that sexual abuse should not be disclosed.

Detective Leaver also discussed the limited sexual offences that existed in the *Criminal Code*. For example, vaginal penetration, as mentioned, constituted a criminal act, but not invitations to sexual touching or masturbation. Also, most of the offences were applicable to female but not to male victims, with the result that many young boys "weren't protected by the law." Moreover, there were strict time limitations for the prosecution of some criminal offences; cases needed to be reported and prosecuted within one year. As Detective Leaver commented, research studies have confirmed that "it takes a lot longer than a year for victims to come forward." "Everybody," the police detective said, "was frustrated with the

inability to carry these cases forward.” This assessment was confirmed by Crown Prosecutor Wendy Harvey, who said: “[T]here was clearly a time in Canada history where it was virtually impossible to prove a crime of sexual assault or of a sexual nature against a child.”

There are also particular challenges with multi-victim, multi-offender cases. These cases are complex, burden local resources, and place great strain on the community as a whole. Project Guardian in London and Project Jericho in Prescott are examples of such cases in Ontario. Collaboration between different institutions such as the police, the Children’s Aid Society, and the Crown Attorney’s Office is critical to the successful prosecution of multi-victim, multi-offender sexual abuse cases. This is discussed in detail in the Report.

Particular Difficulties in Historical Sexual Abuse Cases

There are several reasons why historical sexual abuse cases have not been successfully prosecuted. First, the offender can be criminally charged only under provisions in the *Criminal Code* that existed at the time of the sexual abuse. Therefore, if the offence was committed before either the 1983 or the 1988 amendments to the *Criminal Code*, provisions such as fondling or invitations to sexual touching do not apply, and consequently the offender cannot be criminally charged with these offences.

Another obstacle is that adults who were sexually assaulted when they were children may have problems such as alcohol addiction and drug dependencies. They may also have criminal records. Another outcome of childhood abuse is that they may not be capable of maintaining steady employment. These difficulties result in credibility issues at trial. Both Dr. Jaffe and Dr. Wolfe stressed that people involved with the judicial system—police officers, judges, and lawyers—need to more fully understand the impacts of historical sexual abuse; victims may distrust authority and may not be amicable or courteous. Dr. Jaffe said:

I think it’s important that judges and lawyers and police officers have some awareness about the aftermath of abuse, how to understand the circumstances. The example that I see over and over again is in the court system everyone likes polite witnesses: friendly, cooperative. Survivors are not polite, friendly, cooperative sometimes. They are angry, they are distrustful. They come to court. They make it very difficult. They distrust everybody and one has to accept and acknowledge that and not expect them to be the same. Again, I don’t want to stereotype all survivors, but it’s a reality.

As I discuss in this Report, it is important that trained and specialized persons interview survivors of child sexual abuse. Detective Leaver stressed at the hearings that police need more training and more resources for historical sexual abuse cases. Moreover, counselling services to help these individuals deal with some of these complex problems have not been available in the past, particularly for male victims.

Another problem, which will be discussed in greater detail, was the lack of a reliable system to document reports of abuse to the Ontario Children's Aid Societies. The Ontario Child Abuse Register was established in 1979, but concerns existed as to its accuracy and comprehensiveness. Child protection workers relied on the Ontario Child Abuse Register to determine if there were reports that a particular individual had abused a child in the past. The report needed to be "substantiated" for it to be in the Register. As will be described, an improved system is now in place known as the Fast Track System. For about the past nine years, Children's Aid Societies in Ontario have been connected by a computer system and can, with ease, acquire information on whether other Children's Aid Societies in the province have had contact with alleged perpetrators.

Another problem has been a lack of understanding of how memory functions, particularly in cases of historical sexual abuse. Many people, including police officers and jurors, believe that witnesses who are confident, non-evasive, and non-hesitant in recounting an event in the past provide more accurate and reliable testimony. But what they fail to understand is that memory comes in fragments and that hesitation may indicate that a victim is working to reconstruct his or her memories.

Connolly and Read, professors in law and psychology at Simon Fraser University, wrote in an article entitled "Remembering Historical Child Sexual Abuse":⁸²

... [M]any scholars have found that the single best predictor of belief of a witnesses' [sic] account is the confidence with which the account is expressed: the higher the confidence the more likely the witness is believed. However, in general, the level of confidence a person displays about memory reports of a variety of types of information, from eye-witness identification to general knowledge, is not highly related to report accuracy.

These authors state that compared to memory for neutral (non-traumatic) events, memory for central details of traumatic events such as childhood sexual abuse

82. Deborah A. Connolly and J. Don Read, "Remembering Historical Child Sexual Abuse" (2003), 47 C.L.Q. 438 at 446.

is superior but memory for peripheral details is poorer.⁸³ Moreover, they confirm that repeated abuse often results in an inability to describe the particular details of each sexually abusive act or the specific number of times the victim was abused. This should not, they stress, be used to successfully challenge the credibility of the witness:⁸⁴

... [R]epeated abuse has several predictable effects on memory. These include an inability to recall particular instances or details of the abuse and an inability to estimate accurately the frequency with which the abuse events occurred. Further these detrimental influences of repeated events appear to increase proportionally with increases in their actual frequencies. As a result, *when abuse has occurred on many occasions, it is to be anticipated that only a very small proportion will be recallable as independent and unique events. These kinds of predictable memory errors should not be used to discredit the witness.* (Emphasis added)

In their expert testimony, Dr. Jaffe and Ms Harvey said it is essential that people involved in the legal system, such as police officers, Crown attorneys, and judicial decision makers such as judges and jurors, acquire knowledge about memory. In historical sexual abuse cases, they could be assisted in their deliberations by hearing expert evidence on memory to properly assess the credibility of victims of childhood sexual abuse.

Another obstacle in historical sexual assault cases is getting other victims to come forward and become involved in the criminal process. Another reason for the unsuccessful prosecution of such cases is that the offender may have moved out of the jurisdiction. As Detective Leaver said, the unwillingness of victims to come forward, the death or relocation of witnesses or the perpetrator, and the fact that the site of the sexual assault may no longer exist are some of the complicating factors that impede the successful prosecution of historical sexual abuse cases.

A further obstacle to the successful prosecution of historical sexual abuse cases is that records in institutions may have disappeared. Also, in the past, there was inadequate collaboration and sharing of information between professionals in institutions such as the Children's Aid Societies and police forces. These issues will be discussed in detail in this Report.

The expert evidence given at the beginning of the Inquiry by experts in diverse disciplines on issues such as the prevalence and impact of child sexual abuse

83. *Ibid.*, at p. 449.

84. *Ibid.*, at p. 479.

and impediments to disclosure by victims of abuse was extremely beneficial. These experts also discussed the failure to report child abuse, the lack of accommodation of victims of historical child sexual abuse in the court system, and the obstacles to the successful prosecution of cases of historical sexual abuse of young persons. The information conveyed by these expert witnesses, before evidence was heard on the responses of the institutions to allegations of abuse of young persons, was undoubtedly very valuable to me, to the parties, and to members of the public.

The chapter that follows describes the impact of historical sexual abuse on the victims and alleged victims in Cornwall who testified at the Inquiry.