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# **Sexual Offences Against Children**

**Volume 1**

**Report of the Committee on Sexual Offences  
Against Children and Youths**

appointed by

**The Minister of Justice and Attorney General of Canada  
The Minister of National Health and Welfare**

**Canada**

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## Committee on Sexual Offences Against Children and Youths

August, 1984

The Honourable Donald J. Johnston  
P.C., M.P.  
Minister of Justice and  
Attorney General of Canada

The Honourable Monique Bégin  
P.C., M.P.,  
Minister of National Health  
and Welfare

Dear Mr. Johnston and Madame Bégin:

In accordance with the Terms of Reference assigned on February 16, 1981, we have inquired into and report upon the "prevalence in Canada of sexual offences against children and youths" and "the problems of juvenile prostitution and the exploitation of young persons for pornographic purposes".

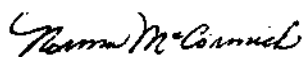
In undertaking our mandate, we have received valuable assistance and support across Canada from all levels of government, the helping professions and many community and voluntary associations. Our findings show that vital changes must be made in order to afford Canadian children and youths better protection from all forms of child sexual abuse and exploitation.

The actions we propose provide a rational and co-ordinated framework whose implementation would assure a level of protection that is essential for young persons to have against sexual offences. In recognition of the child's vulnerabilities and special needs, efforts to provide better assistance and protection for sexually abused children and youths must be assigned high priority by the Government of Canada. These activities must be undertaken on a co-operative basis with the provinces and non-governmental organizations, and must be strongly co-ordinated.

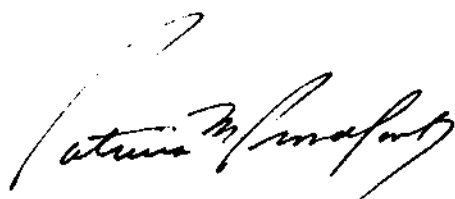
We respectfully submit our recommendations. We do so unanimously.



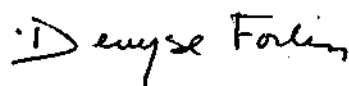
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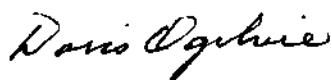
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Chairman

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**Part I**

**Terms and Recommendations**

## Chapter 1

### Work of the Committee

The Minister of Justice and Attorney General of Canada and the Minister of National Health and Welfare of the Government of Canada announced the establishment of the *Committee on Sexual Offences Against Children and Youths* on December 19, 1980. The charge given the Committee was "to enquire into the incidence and prevalence in Canada of sexual offences against children and youths and to recommend improvements in laws for the protection of young persons from sexual abuse and exploitation". The Committee was instructed to obtain "comprehensive factual information" about these issues and also to "examine the problems of juvenile prostitution and the exploitation of young persons for pornographic purposes".

#### Terms of Reference

The Committee was assigned its specific Terms of Reference when Members were appointed on February 16, 1981. The establishment of the Committee was complementary to the announcement by the Minister of Justice of proposals containing amendments to sexual offences in the *Criminal Code*. The Minister's statement noted that "further amendments to the *Criminal Code* will be considered, if necessary, following receipt of the report and recommendations of the Committee".

The Terms of Reference given the Committee were:

1. The Committee on Sexual Offences Against Children and Youths is appointed by the Minister of Justice and the Minister of National Health and Welfare to conduct a study to determine the adequacy of the laws in Canada in providing protection from sexual offences against children and youths and to make recommendations for improving this protection.
2. The Committee is asked to ascertain the incidence and prevalence of sexual abuse against children and youths, and of their exploitation for sexual purposes by way of prostitution and pornography. In addition, the Committee is asked to examine the question of access by children and youths to pornographic material. The Committee is asked to examine the relationship between the enforcement of the law and other mechanisms used by

the community to protect children and youths from sexual abuse and exploitation.

3. The Committee will collect factual information on and examine *Criminal Code* sexual offences and offences under related laws which either expressly refer to children and youths as victims or which are frequently committed against children and youths.
4. In particular, the following matters are to be examined:

The elements of the offences with special attention to issues of age and consent and related considerations of evidence and publicity.

The incidence and prevalence of sexual offences against children and youths in Canada. Where possible, comparisons are to be made with the incidence and prevalence of sexual offences in general.

Whether such offences are likely to be brought to the attention of the authorities; whether they are likely to be prosecuted and, if prosecuted, are likely to result in convictions.

The effectiveness of criminal sanctions and methods other than the application of criminal sanctions in dealing with the types of conduct involved in these offences.

5. The study is to be completed within two years from the time of establishment of the Committee, and its recommendations will be contained in a report which will be made public. Officials from the Departments of Justice and National Health and Welfare will be available for consultation and will provide any assistance the Committee may require for the purpose of facilitating its work.

In reviewing its assigned Terms of Reference, the Committee assessed available sources of information, identified issues for which research information was required and designed studies to be undertaken. Because of the scope of the research proposed, following its third meeting the Committee requested that its term of operation be extended to three years. This request was approved. During the course of its review, the Committee held 14 meetings.

## Members of the Committee

In announcing the establishment of the Committee on December 19, 1980, the Ministers' statement noted that in addition to appointing laymen, its composition was to include "representatives from the fields of sociology, law, medicine, nursing and social welfare". The Members were informed that "subject to its Terms of Reference, the Committee is to operate independently". Members of the Committee were:

**Herbert A. Allard**, B.A., B.S.W., Senior Judge, Family Division, the Provincial Court of Alberta.

**Denyse Fortin**, B.A., L.L.L., Director of Continuing Legal Education, Quebec Board of Notaries. Visiting Professor, Faculty of Law, University of Montreal. Member, Committee on the Operation of the Abortion Law, Government of Canada (1975-77).

**Paul-Marcel Gélinas**, B.A., M.S.W., Director General, Canadian Mental Health Association, Quebec Division. General Secretary, International Year of the Child (Quebec, 1979).

**Elizabeth S. Hillman**, M.D., F.R.C.P. (C.), Professor of Pediatrics, Faculty of Medicine, Memorial University. President, Medical Council of Canada (1981-82).\*

**Norma McCormick**, B.A., University of Manitoba. Director, Day Nursery, Health Sciences Centre, Winnipeg ( -1982). Child and Family Services Planner (1982-84). Administrator Manitoba Adolescent Treatment Centre (1984- ).

**Doris Ogilvie**, B.A., LL.B., LL.D., (Hon.), Former Deputy Judge of the Juvenile Court and Provincial Court of New Brunswick. Chairperson, International Year of the Child (1979). Member, Royal Commission on the Status of Women (1967-70).

**Lucie Pépin**, R.N., President, Canadian Advisory Council on the Status of Women. National Co-ordinator of Clinical Research, World Health Organization - Collaborating Centre, Canadian Committee for Fertility Research.

**Patricia M. Proudfoot**, B.A., LL.B., LL.D., (Hon.), The Supreme Court of British Columbia and Deputy Judge of the Supreme Court of the Yukon Territory. Commissioner, British Columbia Royal Commission on the Incarceration of Female Offenders (1978).

**Quentin A. Rae-Grant**, M.B., Ch.B., D.P.M., F.R.C. Psych., F.R.C.P.(C.), Psychiatrist-in-Chief, Hospital for Sick Children. Professor and Vice-Chairman, Department of Psychiatry, and Chairman, Division of Child Psychiatry, Faculty of Medicine, University of Toronto. President, Canadian Psychiatric Association (1982-83).

**Sylvia Sutherland**, Dipl. A.A., B.A., Commentator, CHEX Radio 98 TV 12, (Peterborough). Member, Canadian Delegation 35th General Assembly, United Nations (1980-81). Vice-President, United Nations Association of Canada (1982- ).

**Robin F. Badgley** (Chairman), Professor of Behavioural Science, Faculty of Medicine, (cross-appointed Professor of Sociology), University of Toronto. Member, Advisory Committee on Medical Research, World Health Organization/Pan American Health Organization (1977-84).

In undertaking its work, the Committee drew continuously on assistance provided by officials from the Department of National Health and Welfare and the Department of Justice. These colleagues who served respectively as Senior Medical Advisor and Senior Counsel to the Committee were:

**Robert H. Lennox**, M.D., D.T.M., M.P.H., F.R.C.P.(C), Chief, Child and Adult Health, Department of National Health and Welfare (1968-1982). Medical Advisor, International Health Affairs, Department of National Health and Welfare (1982- ).

**Bernard Starkman**, B.A., LL.B., Dip. de Dr. Comp., LL.M., of the Bars of Ontario and Manitoba. Special Advisor, Medical-Legal Policy, Policy Planning and Criminal Law Amendments, Department of Justice. Sessional Professor of Law, Faculty of Law (Common Law Section), University of Ottawa.

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\*Participated in the work of the Committee until October, 1982. Resigned to assume academic responsibilities in Uganda.

Dr. Lennox was instrumental in facilitating the development of the National Hospital Survey, co-ordinating the review of the classification of medical diagnoses and assembling information on sexually transmitted diseases. As Senior Counsel to the Committee, Mr. Starkman helped to ensure that, in relation to the Committee's Terms of Reference, the relevant legal issues were taken into account in the design of the research, in the collection of information and in the analysis of the research findings. At the Committee's request, he also made valuable contributions to the classification of offences and the analysis of matters related to consent. The Committee relied heavily upon the sound judgment and wise counsel of these two colleagues.

In conducting its research, the Committee received the support and assistance from a large number of persons and institutions. This co-operation came directly from many Canadians who provided information to the Committee in meetings, by the submission of briefs and through direct participation in the National Population Survey. The scope of the Committee's mandate required that it seek information concerning sexual offences against children from all parts of the country. In this regard, the Committee's work was directly supported by voluntary organizations, different federal, provincial and municipal public services, knowledgeable administrators and experienced professionals.

The nature of the remarkable contribution made by many persons and services is attested to by the comprehensive information which was made available to the Committee from many different sources. Without this valuable assistance, generously given, there is no doubt that the intent of the study could not have been realized.

### **Administrative Staff**

During each phase of its review, the Committee was assisted by a remarkably capable administrative and research staff. As Administrator to the Committee, Sandra Nahon effectively and efficiently co-ordinated each aspect of the complex and extensive research that was conducted. The dedicated work of this gracious and talented colleague constituted the linch-pin of the Committee's endeavour to undertake and complete its mandate. By the nature of her contribution, she effectively served as a Member of the Committee.

The Committee also warmly acknowledges the considerable contribution, personal concern and frequent voluntary overtime work of Mieko Ise and June Rilett, both of whom so capably contributed to the development, design and production of the Report.

**Mieko Ise**

**Sandra Nahon, Administrator**

**June Rilett**

## Research Associates

Representing several disciplines, the Senior Research Associates to the Committee were responsible for the mounting and undertaking of the major research studies conducted by the Committee. Their remarkable capacity to integrate empirical findings in relation to relevant legal and social issues, their meticulous scholarship and their unstinting diligence significantly molded the work undertaken by the Committee. There is no doubt that without their special experience and training, the work of the Committee could not have been accomplished.

**Kevin Chaisson**, (computer programming, statistical analysis).

**Elisabeth Hurd**, B.A., M.S.W., (National Child Protection Survey).

**Phyllis M. Jensen**, R.N., B.A., M.A. (computer programming, statistical analysis).

**Kristina J. Kijewski**, B.Sc., M.A. (National Hospital Survey and National Corrections Survey).

**Stephen J. Kloepfer**, B.A., LL.B., LL.M., Director of Legal Research. (legal review, design of legally pertinent questions in the national surveys, and legal analysis of the findings obtained).

**Wendy Leaver**, B.S.W. (National Police Force Survey and National Survey of Juvenile Prostitution. Sergeant, on leave of absence, Metropolitan Toronto Police Force).

**Brian M. Levine**, B.A. (National Child Protection Survey, National Surveys on the Production, Distribution, Importation and Seizures of Pornography and National Survey of Juvenile Prostitution).

**Peter Petruzzellis** (National Surveys on the Production, Distribution, Importation and Seizures of Pornography. Sergeant, on leave of absence, Metropolitan Toronto Police Force).

## Consultants

The scope of the Committee's review was substantially augmented by the direct contribution to the preparation of the Report given by several consultants having special knowledge and experience in relation to particular issues pertaining to child sexual abuse. Their significant contribution charted important dimensions of matters specified in the Committee's Terms of Reference. The Committee sincerely acknowledges its indebtedness to these consultants.

**John W. Ackroyd**, Chief of Police, Metropolitan Toronto Police Department.

**Cynthia Carver**, M.D., M.P.H., Assistant Medical Health Officer, Health Department, City of Regina.

**William G. French**, L.R.C.P. & S., L.R.F.P. & S., D.P.H., Executive Director, Medical Public Health, Manitoba Department of Public Health.

**Helen Haffey**, Director of Medical Records, The Hospital for Sick Children.

**C. M. Hatton**, Research Director, Canadian Gallup Poll Limited.

**Miriam Jones**, M.A., Department of English, York University.

**A. G. Jessamine**, M.B., Ch.B., Chief, Field Epidemiology Division, Bureau of Epidemiology Laboratory Centre for Disease Control, Department of National Health and Welfare.

**Shaun MacGrath**, Chairman, Ontario Police Commission.

**Patricia Matusko**, R.N., Program Co-ordinator, S.T.D. Control, Manitoba Department of Health.

**Paul Reed**, Ph.D., Director, Research and Analysis Division, Statistics Canada.

**Barbara Romanowski**, M.D., F.R.C.P.(C), Director, Social Hygiene Services, Alberta Social Services and Community Health.

**Elizabeth Taylor**, Head, Nosology Reference Centre, Health Division, Statistics Canada.

**Margaret W. Thompson**, Ph.D., Professor of Medical Genetics and Paediatrics, Faculty of Medicine, University of Toronto. Senior Staff Geneticist, Department of Genetics, The Hospital for Sick Children.

The Committee learned immeasurably from the experience and counsel of the many persons who facilitated or participated in different parts of the study. We consider ourselves fortunate to have been afforded the opportunity to have worked with these capable and concerned persons. It is with deeply felt appreciation that we acknowledge their contributions.

## The Committee's Approach to Research

Throughout his career, the legal philosopher Roscoe Pound distinguished between what he called '*the law in the books*' and '*the law in action*'. This distinction between what the law says and how the law actually operates is relevant to the Committee's work. Canadian law is at many points sufficiently elastic to allow for police, child protection, medical, prosecutorial and judicial discretion in dealing with sexual assailants and their victims. The exercise of this discretion is influenced by both social and legal considerations.

The challenge of research dealing with crime, in this instance sexual offences against children and youths, is two-fold. First, such research must seek to identify as objectively as possible those facts which, whether legally relevant in the formal sense or not, may influence the way in which the helping and enforcement services deal with the problem. The second challenge is to test, by means of collecting pertinent information, the validity of the assumptions on which particular legal doctrines appear to be based.

In undertaking its research, the Committee grounded its approach upon a number of assumptions about how information pertaining to its mandate could be most effectively and validly obtained. **Foremost among these assumptions**



**was the Committee's recognition of the need to anchor its research on the foundation of the law and to seek directly from primary sources information pertinent to these issues.** In seeking to learn about the experience of victims of sexual offences, the Committee believed that it was essential to obtain such information directly from persons who had experienced unwanted sexual acts. While recognizing that these are intensely personal concerns, the Committee believed that persons who had been victims would be willing to provide such information if given firm assurance about the confidentiality of the replies received. It was on the basis of this assumption that a national population survey was undertaken which sought to obtain information about the occurrence of sexual offences.

Children who are victims of sexual offences may turn or become known to a number of helping services, each of which provides important but different types of assistance. With respect to these services, the Committee assumed that no single source should be relied upon as the exclusive basis upon which to *derive general findings about the extent and nature of sexual offences against children.*

There is a paradox in relation to information about criminals and victims of crime in Canada. While there is little systematic documentation about their situation and experience, there are rich veins of potential information which have seldom been drawn upon in this regard. These largely untapped sources are the files and records of public services, notably, those of the police, hospitals, child protection and correctional services which contain detailed findings about child sexual abuse. Little of this information surfaces in the form of official agency or service statistics, with the result that it is often assumed that such information is not available or may not exist.

In order to draw directly upon the basic information available to these services and to provide a complementary assessment of the types of assistance and protection afforded victims, the Committee undertook several national surveys of cases of child sexual abuse known to public services. Despite the fact that the Committee was federally appointed, and in some instances was seeking information on matters largely under provincial jurisdiction, without exception in undertaking these surveys, the Committee received invaluable co-operation from each of the main public services involved across Canada.

**In considering the reform of the law concerning socially and legally complex issues, such as those set by the Committee's mandate, the Committee believes that it is not only feasible but mandatory to seek the full participation of the relevant public services within a firm framework of federal-provincial co-operation. Issues of this kind transcend institutional and political boundaries. If their dimensions are to be fully understood and acted upon in the provision of services and amendment to the law, then all pertinent resources must be marshalled to attain these purposes.**

Reflecting the multi-faceted dimensions of its Terms of Reference, each phase of the Committee's study was undertaken on the basis of an interdisciplinary perspective with respect to these issues. While the virtues of teamwork may be legion, its practice in relation to undertaking research involving the close collaboration of different disciplines may be a different matter. Each discipline has clothed certain words which are in general usage with special connotations and different ideas abound about the meaning and purpose of research.

In the Committee's experience, adapting to an interdisciplinary perspective involving close collaboration in undertaking research is neither easy nor readily accomplished. The integration of different perspectives in this study developed as a result of much patience and tolerance between Members with respect to how and why certain information should or should not be obtained. In retrospect, the Committee appreciates the unusual opportunity afforded its Members to work together and to debate, often staunchly, issues from different disciplinary perspectives. **One by-product of this work has been the Committee's realization, unanimously endorsed, that in undertaking the review of complex social and legal issues, such as those assigned in the Terms of Reference of this study, it is essential that these questions be considered from a balanced and integrated interdisciplinary perspective. No discipline, by itself, has the requisite scope of conceptual resources to encompass sufficiently the complex dimensions of such issues.**

In our judgment, failure to adopt an integrated interdisciplinary perspective is likely to result in a one-sided or partial consideration of issues and may lead to the formulation of proposals concerning the reform of services or of the law which will likely do little to redress the problems or deal with the fundamental issues at stake. Distrust in the efficacy of such proposals should be proportional to their speculative range. **On the basis of our experience, we believe that an integrated interdisciplinary approach is requisite when similar issues involving the reform of the law may be considered.**

Inherent in the Committee's approach to research was the assumption that basic information must be assembled on a uniform basis in each component of its work. Prevailing fashions concerning how research information is collected in one field may preclude the possibility of providing answers to questions which are pertinent to other disciplines. On the matter of the victim's age, for instance, questions having legal significance differ substantially from those having medical relevance and the concerns of social survey researchers often ignore those of both professions.

In the design of its research, the Committee strove to obtain and assemble basic information that would be amenable to address the concerns of different perspectives in relation to common issues. In relation to sexual offences, for instance, the Committee found that none of the existing classification systems used by different public services identified the exact nature of the sexual acts committed or was comparable. In this regard, in designing its research the Committee adopted a grounded approach based, where feasible, upon a

detailed specification of the types of sexual acts committed, the circumstances of the offences, the characteristics of victims and offenders and the types of services provided by public agencies.

With respect to issues concerning the possible reform of the law and of its administration, the Committee incorporated a number of basic questions in each national survey. Examples of these questions include:

**What are Circumstances of the Sexual Act?**

Who sexually assaults or exploits young persons? What is the breakdown of these offenders by age and sex? In what manner are they related to their victims, if at all, whether legally or socially? What sorts of employment are they engaged in?

Who are the child victims of sexual assaults or exploitation? What is the breakdown of these child victims by age and sex? In what manner are they related to their assailants, if at all, whether legally or socially?

What kinds of sexual acts are engaged in between the offender and the child? How does the offender sexually touch or assault the child? Conversely, how does the offender seek to be touched by the child?

How does the sexual touching occur? By force, threats or inducements of some kind? How often are weapons used or threatened to be used? How often is the child physically or emotionally injured by the assault? How often is the act genuinely consensual between the parties?

Where does the act take place? How often is either the offender, the victim, or both, under the influence of alcohol or drugs at the time of the offence?

**What Happens After the Sexual Act Takes Place?**

To whom does the victim turn for help? How much time elapses before the victim tells someone about the incident? If the offence is otherwise disclosed, how did it happen to be disclosed? What length of time elapses before the police, a physician or a child protection agency are notified?

Does the victim seek or receive medical or other forms of treatment?

Is the offender charged with a criminal offence? If not, why not? If so, with what offences is he or she charged?

Is there a child protection proceeding or intervention as a result of the incident? If not, why not? If so, what is the eventual result for the child and the offender?

Is there a criminal court trial as a result of the incident? If not, why not? If so, is the offender convicted? With what offence is the offender convicted?

What sentence does the offender receive? What considerations influence the severity of that sentence? Does the offender, as part of his or her sentence, receive any medical, psychiatric or other form of treatment? Does he or she at some point get paroled, or placed on mandatory supervision?

If the offender is sent to prison for a sexual offence against a young person, is that his or her first conviction for a sexual offence? If not, what was his or her previous criminal record in this regard? Does it disclose other sexual offences against children? If so, what sorts of sentences did he or she

receive on those earlier occasions? To what extent does his or her later sentence take into account that he or she has failed either to be "rehabilitated" or to be deterred from again offending sexually against a child?

More generally, who makes the key institutional decisions at various stages? How are they held accountable and by whom?

In adopting this approach, the Committee sought to obtain both basic and applied types of information. The listing of comparable questions in each of the national surveys served as a common denominator which permitted a comparison to be made on a uniform basis between the findings obtained from different sources.

The research approach adopted by the Committee which sought to assemble comprehensive and detailed information stands in sharp contrast with that followed by a number of major proposals for reform of sexual offences against young persons and adults which have typically proceeded in the face of a conspicuous lack of empirical documentation. In the Committee's judgment, firm empirical documentation is a prerequisite to both the reform of the law and to affording better protection for the victims of crime of all ages.

**By describing the wide variety of sexual behaviours which occur, the Committee believes that legislation can be drafted which is more sensitive to the realities of child sexual abuse and to its varying degrees of seriousness for the child and for society. By identifying the practical problems in law enforcement and in the delivery of social and health services, the Committee is convinced that improvements in practice and procedure can be implemented. By determining the nature and extent of child sexual abuse and the effectiveness with which our legal and social institutions react to it, the Committee believes that there is reasonable justification to hope that Canadian children can be better protected.**

## Research Undertaken

The details of each study undertaken by the Committee given in this synopsis are cited more fully in the pertinent sections of the Report preceding the presentation of findings.

## Legislative and Advisory Reports

The reports received by the Government of Canada from legislative and advisory bodies with respect to neglected and abused children constitute an earnest of the Government's long-standing concern with the need to afford better protection for these children. The Committee's review of these official documents served to highlight a number of issues warranting special consideration and further documentation.

## Legal Review

The Terms of Reference established for the Committee required both the collection of empirical research and review of an extensive body of legislation. The dimensions of the latter encompassed a review of:

- Relevant laws enacted at the federal, provincial and municipal levels of government;
- The interpretation of these laws by Canadian courts, as evidenced in reported and unreported legal cases;
- Scholarly commentary in the legal periodical literature on topics pertinent to the Committee's mandate; and
- The operation of these laws from the standpoint of the officials charged with administering them and the persons variously affected by them.

Listed below are the main components of the legal review undertaken by the Committee in relation to sexual offences against children and youths.

*Major Sexual Offences.* A review was undertaken of the origins and legislative histories of the major sexual offences in the *Criminal Code*, tracing the evolution of each offence from its origins in English law, its status under the criminal law of the pre-Confederation provinces, its first introduction into federal criminal law after Confederation and the manner in which it has been amended since that time.

*Parliamentary Debates.* Selected Canadian parliamentary debates (reported in *Hansard*) on proposed criminal law amendments were canvassed in order to gain insights into the motivating forces behind significant legislative amendments. This review included:

- The parliamentary debates preceding the criminal law amendments introduced in 1890;
- The parliamentary debates preceding the first enactment of the *Criminal Code* in 1892; and
- The deliberations of the Standing Committee on Justice and Legal Affairs in 1978, 1981 and 1982 concerning the amendments to the criminal law of sexual offences proposed in Bill C-53.

*Historical Crime Statistics.* At the Committee's request, a special review of Canadian historical crime statistics was undertaken by the Director of the Research and Analysis Division, Statistics Canada. The provision of this information permitted the first detailed historical review to be undertaken of sexual offences against Canadian children and youths. Crime statistics have been assembled on a continuous basis for the period between 1876 and 1973. In relation to charges laid and convictions for sexual offences, these statistics provide an historical perspective concerning changes in: the rate of charges laid; the ratio of convictions to charges; the types and lengths of sentences; conviction rates among different provinces; and the rates of charges and convictions for specific types of sexual offences in which children were victims.

*Provincial Crime Statistics.* Each provincial and territorial Department of the Attorney General was requested to provide the Committee with provincial annual statistics for 1980 and subsequent years on charges, convictions, and sentences handed down with respect to specified offences within the Committee's mandate.

*Major Legal Decisions.* The major legal decisions were reviewed that have interpreted the scope and meaning of:

- *Criminal Code* provisions relating to sexual offences, prostitution and obscenity;
- *Juvenile Delinquents Act* offences relating to juvenile delinquency and contributing to juvenile delinquency;
- Relevant provisions of the *Canada Evidence Act*; and
- Obscenity-related provisions in the *Customs Act*, the *Customs Tariff* and the *Canada Post Corporation Act*.

*Proposed Federal Legislation.* Proposed federal legislation in the area of sexual offences [Bill C-53; young offenders (*Young Offenders Act*); and the law of evidence (Bill C-33, the proposed *Canada Evidence Act, 1982*)] was studied in order to ascertain government initiatives directly relevant to the Committee's Terms of Reference.

*Legal Status of the Child.* Provincial, territorial and federal statutory provisions relating to young persons were reviewed, with particular reference to the different ages at which children attract certain legal rights and capacities.

*Canadian Charter of Rights and Freedoms.* The *Canadian Charter of Rights and Freedoms* and the major judicial decisions reported prior to September 1, 1983 that interpret its broad constitutional provisions were examined with respect to their potential implications for the Committee's legal recommendations.

*Criminal Injuries Compensation Boards.* Each provincial Criminal Injuries Compensation Board was requested to provide the Committee with annual statistics for 1980 and subsequent years concerning the extent to which compensation was sought by, and awarded to, young victims of sexual offences.

*Publicity.* The Committee investigated the extent to which young victims of sexual offences are protected from having their identities publicized once their cases come to the attention of the legal system. Research was conducted with respect to two avenues by which the identities of young sexual complainants might be publicized: newspapers and legal reporting services. With the assistance of Information Services, Department of Justice, the Committee examined 2806 stories concerning sexual offence cases and related matters appearing in 34 Canadian newspapers from May, 1982 to May, 1983.

With respect to the naming of young sexual complainants in official and commercial reporting services, the Committee examined reported cases for the

major sexual offences, looking for instances in which the names of complainants or information tending to identify these young persons were published. The Committee contacted the Chief Justices of each court level from every Canadian jurisdiction and requested a statement of the policy of that court with respect to the naming of young sexual complainants in judicial decisions. Similarly, the editors of the leading Canadian reporting services were contacted and requested to supply the Committee with their policies concerning the publication of the identities of young sexual complainants in their reports.

### Review of Previous Research

In order to draw upon the findings of completed studies, the Committee reviewed a considerable body of reports pertaining to various aspects of its mandate. In addition to the legal review, and in the absence of a comprehensive compendium listing such studies, the Committee conducted an extensive bibliographical search of the main criminological, corrections, medical and social science journals and reports. Notices were published in the journals of several professional and scholarly associations requesting information about relevant cases and studies.

Throughout the Report, the findings of a number of the main Canadian studies are cited in relation to specific issues being considered. The review of completed research provided a necessary baseline for the purposes of identifying issues, gaps in information and the nature of the methodological research problems entailed.

### National Population Survey

The Committee's mandate requested that it examine "the incidence and prevalence of sexual offences against children and youths. Where possible, comparisons are to be made with the incidence and prevalence of sexual offences in general". In this regard, the National Population Survey was undertaken to obtain information from a representative sample of Canadians concerning their experience of having been victims of sexual offences as children or adults. This survey also elicited information about the purchase of pornography and views concerning the display of pornographic materials.

The Survey's findings constitute a baseline for estimating the extent of sexual offences committed against Canadian children, youths and adults. The survey was undertaken in February, 1983 for the Committee by Canadian Gallup Poll which obtained information from a statistically representative sample of 2008 Canadians age 18 and older living in 210 communities across Canada.

## National Police Force Survey

In order to document the integral role of the police in the detection of sexual offences against children and in the enforcement of the civil and criminal law with respect to suspected offenders, the Committee undertook a National Police Force Survey in which 28 police forces from across Canada participated. In developing the design of the survey, the Committee received assistance from the Canadian Association of Chiefs of Police which informed its Members about the Committee's mandate and its request for assistance in documenting cases of sexual offences against children investigated by the police. The Committee also received a firm assurance of support for its work at the 1981 Meeting of the Provincial Commissioners of Police.

In undertaking the survey, the Committee was particularly indebted to the Metropolitan Toronto Police Force. In the development of the research protocol that was subsequently used to assemble information from the 'general occurrence forms' of other forces, the Metropolitan Toronto Police Force provided both counsel concerning the design of the protocol and gave the Committee permission to pretest it drawing upon its records. The Force also approved the seconding of an experienced police officer to the Research Staff of the Committee to facilitate the mounting of the national survey.

Enforcement services in each province were contacted in order to obtain an assessment of cases of sexual offences against children known to police forces across Canada. The extent of the co-operation received outstripped the resources available to the Committee for this component of its research. An even more extensive national survey of police forces could have been undertaken had time and resources permitted.

With the permission of the Ontario Police Commission, and acting upon its recommendation, the survey was extended to include a cross-section of police forces in cities and towns across Ontario. This extension of the survey permitted the collection of information from a number of smaller forces, some of which had developed special services for children and youths.

The primary source of information in the national survey was the 'general occurrence form' which contains the record of police investigation of a case. Although little of this information is subsequently transposed for purposes of assembling criminal statistics, the Committee found that the 'general occurrence forms' typically contained extensive and detailed accounts of the offences committed.

The forces participating in the National Police Force Survey were:

- St. John's
- Charlottetown
- Halifax
- Fredericton
- Quebec City
- Winnipeg
- Regina
- Edmonton



- Calgary
  - Vancouver
  - Yellowknife
- Ontario*
- Chatham
  - Collingwood
  - Haldimand-Norfolk
  - Hamilton
  - Hawkesbury
  - Kingston
- London
  - Nepean
  - Niagara Region
  - North Bay
  - Ottawa
  - Peel
  - Peterborough
  - Sudbury
  - Toronto
  - Waterloo
  - Windsor

For each participating Police Force, complete information was documented for the full calendar year 1981; in some instances, where a small number of cases was involved, findings were also obtained for 1980. A total of 6203 cases of sexual offences against children and youths investigated by these Police Forces was documented.

In the Committee's judgment, the strength of these findings lies in the unprecedented detail with which they describe the investigation of these offences by the police. It is upon this strong empirical base coupled with information obtained from other surveys that the Committee has grounded a number of its major recommendations for law reform concerning the issues specified in its mandate.

### Child Sexual Assault Homicides

The Homicide Statistics Program established by the Justice Statistics Division of Statistics Canada has assembled information since 1961 on all cases of murder, manslaughter and infanticide reported by enforcement authorities across Canada. At the Committee's request, Statistics Canada provided a special tabulation of 156 homicides having children as victims between 1961-80 that were listed as being sexually motivated or that had involved sexual assaults. On the basis of the information obtained, the Committee assessed the incidence of these homicides, the ages of the children involved, the means used to cause their deaths and compared the proportions of sexual assault homicides involving children and adults.

### Child Protection Services

Child Protection Services established by provincial legislation constitute a requisite and vital component in the provision of assessment, care and protection for sexually abused children. It was in recognition of these special responsibilities that the Committee reviewed several aspects of these services.

*Provincial Child Welfare Legislation.* A legal review was undertaken of provincial and territorial legislation pertaining to child protection and child welfare, and of the major legal decisions interpreting aspects of these laws. This review focussed on provincial statutory definitions of 'a child in need of protection', requirements concerning the duty to report and the establishment of child abuse registers. Provincial and territorial legislation concerning the rules of evidence in proceedings in each jurisdiction and major legal cases interpreting these provisions were also examined.

*Special Community and Social Services.* In the course of undertaking its general research and that concerning the provision of child protection services for sexually abused children, the Committee identified several innovative programs. Examples of these are cited in the Report.

*National Child Protection Survey.* With the co-operation of child protection services in all provinces and the Yukon, a National Child Protection Survey was undertaken in which information was obtained concerning 1438 cases of child sexual abuse. Assistance in undertaking the survey was provided by:

- Newfoundland Department of Social Services
- Prince Edward Island Department of Health and Social Services
- Nova Scotia Family and Child Welfare Association
- New Brunswick Department of Social Services
- Le Comité de la protection de la jeunesse
- Ontario Ministry of Community and Social Services
- The Children's Aid Society of Winnipeg and the Winnipeg Regional Office, Manitoba Department of Community Services and Corrections
- Saskatchewan Department of Social Services
- Alberta Department of Social Services and Community Health
- British Columbia Ministry of Human Resources
- Yukon Department of Health and Human Resources

The survey assembled information concerning sexually abused children and youths in relation to: their social and family circumstances; the offences committed; and the assessment, provision of care and assistance provided by child protection workers. The survey also obtained information concerning the duty to report, the use of child abuse registers and the operation of philosophically different intervention approaches with respect to providing assistance for these children.

The remarkable level of co-operation and assistance provided by provincial child protection services attests to the national recognition of the gravity of the problem and to the need for continuing and effective federal and provincial co-operation for offences whose dimensions and possible resolution transcend jurisdictional boundaries.

## Health Services

In recognition of the essential contribution of health services in the assessment, treatment and protection of sexually abused children, the Committee undertook several studies to obtain information concerning the medical assessment of the physical injuries and emotional harms sustained by victims and the provision of treatment for these children. Following its review of available research, the Committee undertook a National Hospital Survey, reviewed the medical classification of injuries associated with sexual offences, assessed the genetic risks of incest and obtained information concerning live births, abortions and sexually transmitted diseases contracted by children and youths.

*National Hospital Survey.* In each of the national surveys of the population, police forces and child protection services, the Committee sought to obtain information concerning the extent and types of injuries and harms sustained by children who had been victims of sexual offences. The National Hospital Survey, undertaken with the co-operation of 11 major hospitals in eight provinces, was developed to obtain detailed documentation of the medical assessment of sexually assaulted children and youths, the medical examination and treatment of these victims and to provide an assessment of the short and long-term consequences of the physical injuries and emotional harms incurred.

In developing the research protocol for the survey, the Committee received assistance from experienced experts in the field who reviewed the development and pretesting of the protocol and who facilitated the collection of information. The 11 hospitals participating in the survey were:

- Dr. Charles A. Janeway Child Health Centre (St. John's)
- The General Hospital Health Sciences Centre (St. John's)
- Izaak Walton Killam Hospital for Children (Halifax)
- Centre Hospitalier Sainte-Justine (Montreal)
- The Montreal Children's Hospital (Montreal)
- The Children's Hospital for Eastern Ontario (Ottawa)
- The Hospital for Sick Children (Toronto)
- The Children's Hospital of Winnipeg (Winnipeg)
- University Hospital (Saskatoon)
- University of Alberta Hospital (Edmonton)
- Vancouver General Hospital (Vancouver)

The National Hospital Survey obtained information on all reported cases of child sexual abuse which had been medically assessed and for which treatment had been provided at the 11 hospitals between January 1, 1981 and June 30, 1982. Information was obtained for 623 cases.

*Medical Classification of Sexual Assault.* As a component of the National Hospital Survey, the Committee obtained detailed information concerning the types of sexual acts committed, the injuries sustained by victims,

where these had occurred, and the medical diagnoses of the patients' conditions. Because classification systems that accurately identify these conditions are essential to the network of services affording protection for victims of these offences, the Committee reviewed the medical classification of children who had been sexually assaulted. This review was undertaken with the assistance of the Head of the Nosology Reference Centre, Statistics Canada and the Director of Medical Records, Hospital for Sick Children (Toronto).

*Genetic Risks of Incest.* With the assistance of an internationally respected geneticist, the Committee reviewed the genetic risks to children of incest with respect to the likelihood of their experiencing more hereditary disabilities than children born from other types of parents.

*Sexually Transmitted Diseases.* In order to assess the extent to which children who had been sexually assaulted were at risk of contracting a sexually transmitted disease, the Committee sought to obtain this type of information in its national surveys. The Chief, Field Epidemiology Division of the Bureau of Epidemiology, Department of National Health and Welfare provided the Committee with national statistics on the reported distribution of gonococcal infections among children and reviewed the findings obtained by the Committee.

The Committee also received assistance in this component of its research from Social Hygiene Services, Alberta Department of Social Services and Community Health, and the Sexually Transmitted Disease Control Program, Manitoba Department of Public Health. The latter Department provided the Committee with information for all children age 16 and younger who were reported to have been examined and/or treated with respect to sexually transmitted diseases.

## Convicted Offenders

*Sentencing of Offenders.* An examination was made of the sentencing provisions in the *Criminal Code* relating to offences of a sexual nature and of the special provisions pertaining to dangerous offenders, as well as of the judicial elaboration of the principles of sentencing. The key provisions and legal decisions were reviewed in relation to: the *Parole Act* and regulations; the *Penitentiary Act* and regulations; and the *Prisons and Reformatories Act*.

*National Corrections Survey.* With the co-operation of 10 correctional services, information was assembled about 703 convicted child sexual offenders who were in custody or under supervision on February, 1982. The services participating in the National Corrections Survey were:

- Newfoundland      Adult Corrections Division, Department of Justice
- Prince Edward  
Island                  Provincial Probation and Family Court Services, Department of Justice
- Nova Scotia            Department of Corrections, Research and Planning

- New Brunswick      Correctional Services Division, Research and Planning
- Ontario              Ministry of Correctional Services, Research and Planning
- Manitoba             Department of Community Services and Corrections
- Alberta               Ministry of Correctional Services Research and Planning
- British Columbia    Corrections Branch, Research Analysis Section, Ministry of the Attorney General
- Yukon                 Whitehorse Correctional Centre
- Government of Canada    Correctional Service Canada, Operational Information Services

Information concerning all known convicted child sexual offenders was obtained in seven jurisdictions and a substantial proportion of cases was documented in the remainder. The participating correctional services provided expert counsel, reviewed the research protocol and facilitated the collection of information.

On the basis of the information obtained in the National Corrections Survey, an assessment was made of the social backgrounds of these offenders, the circumstances of the sexual offences committed against children and youths and certain elements of the offences which may be considered on sentencing. For offenders for whom such information was available, findings were obtained concerning assessments of their mental state and the types of treatment and counselling received while in custody or under supervision.

The recidivism experience of the convicted child sexual offenders was considered in relation to all reported previous convictions and those having committed sexual offences. With the permission of Correctional Service Canada, information was obtained on all convicted child sexual offenders who had been found dangerous on sentencing. The situation and experience of these 62 offenders was considered in relation to similar findings obtained about other convicted child sexual offenders.

### Juvenile Prostitution

The Committee was asked to ascertain the extent of exploitation of children and youths by way of prostitution. "Juvenile prostitution" has no specific status in Canadian law. It is dealt with under more general legislation pertaining at the federal level to juvenile delinquency and the regulation of prostitution generally, and at the provincial level under the provisions of child welfare statutes.

In relation to prostitution involving young persons, the Committee reviewed the provisions of the *Criminal Code* pertaining to soliciting, procuring, living on the avails of prostitution and keeping a bawdy-house. In order to obtain information about the local regulation of prostitution, the City Clerks of

18 cities across Canada were requested to provide copies of any municipal by-law(s) enacted in relation to this issue. The cities contacted were:

- St. John's
- Hamilton
- Edmonton
- Charlottetown
- Ottawa
- Calgary
- Halifax
- Toronto
- Vancouver
- Fredericton
- Winnipeg
- Victoria
- Quebec City
- Regina
- Whitehorse
- Montreal
- Saskatoon
- Yellowknife

From these sources, the Committee learned of various local initiatives in these and other communities. The Committee reviewed several studies that had considered juvenile prostitution, but it found none had dealt with more than a small number of cases or had assessed the problem at the national level. In order to obtain such information, the Committee undertook a survey, both directly and in co-operation with a number of local services, in which indepth interviews were held with 229 juvenile prostitutes in eight cities across Canada.

Because of the nature of juvenile prostitution, the youths from whom this information was obtained did not constitute a sample. These interviews provided detailed information about their social background, the process whereby they had become prostitutes, how they customarily met their clients and the nature of their encounters with the police and social services.

### Child Pornography: Production and Accessibility

The Committee's Terms of Reference stipulated that it determine the incidence and prevalence of sexual exploitation of children by way of pornography, and to examine the question of access by children and youths to pornographic material. In relation to these provisions, the Committee obtained information in several of its national surveys (population, police force, child protection and corrections) concerning cases in which children were known to have been exposed to or involved in the production of pornography. In addition, surveys were conducted pertaining to the accessibility by children to pornography and seizures made in relation to the importation of sexually explicit depictions.

*Federal Legislation.* In its legal review of the Canadian law of obscenity, the Committee considered the existing network of federal laws which, taken together, regulate the different manifestations of child pornography. This review included the pertinent sections of the *Criminal Code*, statutes relating to the unlawful importation and seizure of unauthorized goods into Canada (*Customs Act*, *Customs Tariff* and *Canada Post Corporation Act*), and the federal *Broadcasting Act*. Case studies were assembled from a number of sources documenting the kinds of situations dealt with under the pertinent sections of these statutes.

*Provincial and Municipal Enforcement Practices and Guidelines.* On the basis of visits to provincial Departments of Attorneys General and major municipal police forces across Canada, information was obtained on official

provincial guidelines in relation to the distribution and sale of pornography, where these had been established, and on provincial and municipal enforcement policies and practices.

*Provincial Regulation and Classification of Films.* Eight provinces have enacted legislation to regulate the public exhibition of films. The Committee reviewed the legal mandate, nature, policy and practice of each of these provincial boards, and in relation to three films (Caligula, Pretty Baby and Beau Père) considered the classification practices and the setting of age restrictions with respect to different film depictions of explicit sexual behaviour.

*Municipal By-laws.* In relation to the enactment and operation of municipal by-laws intended to control the sale or viewing of sexually explicit matter, the Committee contacted 18 major cities across Canada requesting information on and copies of any by-law(s) passed in relation to these issues. The legal problems encountered in the enactment of by-laws of this kind were reviewed.

*Importation.* In addition to its legal review of the statutes relating to the unlawful importation of unauthorized goods into Canada, the Committee reviewed the administration and operation of agencies involved in this area of enforcement in relation to the detection and seizure of child pornography (Revenue Canada Customs and Excise Division, R.C.M.P. Customs and Excise Section, and provincial and municipal police forces).

*National Survey of Seizures.* With the assistance of an experienced police officer seconded from Project "P", a Special Task Force jointly operated by the Ontario Provincial Police and the Metropolitan Toronto Police Force, the Committee undertook a survey to obtain information about the importation of immoral or indecent materials, including child pornography, into Canada. In the National Survey of Seizures, visits were made to all Regional Customs Offices and information was also derived from the central files of the R.C.M.P. Customs and Excise Section and the Revenue Canada Customs and Excise Division. The survey assembled findings with respect to 26,357 seizures of all kinds of obscene and pornographic matter, including child pornography, between 1979 and 1981. This source provides a basis upon which to assess the amount of child pornography in relation to other types of pornography detected by enforcement authorities which persons had illegally attempted to bring into the country during the three year period.

*Production of Child Pornography.* An assessment was made of the production of child pornography in Canada which drew upon information provided by: National Police Force Survey; National Population Survey; National Accessibility Survey; Provincial Attorneys-General; R.C.M.P. Customs and Excise Section; Revenue Canada Customs and Excise Division; and major legal decisions pertaining to obscenity.

*Contents of Pornography.* In order to determine the types of sexually explicit depictions contained in pornographic magazines, a content analysis was undertaken for June, 1983 of 11 magazines which are readily accessible in

retail outlets across Canada. The listing of the types of sexual acts depicted in these magazines, which had an audited circulation of over 14 million copies in Canada in 1981, was based on the classification used in the analysis of sexual offences against children adopted in the Committee's other surveys. This classification was also used as the basis for the review of the text, editorials, letters and advertisements contained in the magazines.

*Circulation Statistics.* In the National Accessibility Survey of Retail Outlets, the Committee identified that a total of 540 different "adult" magazine titles were available across Canada between 1982 and 1983. With the co-operation of the Audit Bureau of Circulation, information was obtained concerning the audited circulation of a number of major publications which permitted an analysis of national and provincial *per capita* sales and the sales value of these publications. Circulation trends for magazines audited by the Bureau were documented for the period from 1965 to 1981.

*National Accessibility Survey of Retail Outlets.* With the co-operation of a number of volunteers (persons, committees, colleges and universities), a survey was undertaken concerning the display of pornographic material in 1091 retail outlets across Canada. In this regard, information was obtained about the type of retail outlet selling pornography, the location and number of materials displayed, their height from the floor, whether they were displayed separately or with other magazines and the extent to which covers were exposed to view or were shielded.

*Purchase of Pornography.* In the National Population Survey, information was obtained concerning: the age at which pornography had first been purchased; the types of pornographic matter purchased; views concerning the display of pornography in retail outlets and concerning the setting of age limits in relation to the purchase of pornography; whether persons had experienced unwanted exposure to pornography; and whether they or persons whom they knew had been harmed by pornography.

The findings of the National Population Survey provide the basis to determine the proportion of persons who had first bought pornography when they were children or youths, their usual current buying habits, and the views of a representative sample of Canadians concerning the display of pornography and the setting of age limits with respect to its purchase.

*Associated Harms.* On the basis of findings obtained in the national surveys of the population and police forces, the Committee obtained information on incidents in which children had been exposed to pornography and subsequently had also been sexually assaulted by the same person.

## Briefs and Submissions

Following the announcement of its appointment, the Committee received a number of letters from individuals and briefs from professional associations



and interested groups. The Committee was also contacted at various times by representatives of the news media and the reports subsequently carried regionally and nationally by these sources fostered the submission of an additional number of briefs to the Committee. As a means of directly seeking information from concerned individuals and groups, the Committee published a notice in 23 major daily newspapers across Canada. These newspapers, selected on the basis of those having the largest regional and/or national circulation were estimated to have had an audience of 3.7 million readers. Following the listing of the Committee's Terms of Reference, the notice requested:

"We welcome letters and briefs from children and youths who have been sexually abused, as well as from adults and associations concerned with these problems. We also welcome recommendations on how better protection can be provided."

As a result of the various announcements and accounts carried by the media about its assignment, the Committee held meetings with several dozen individuals and representatives of groups and received a total of 253 written submissions. The concerns and issues raised in these submissions varied considerably depending upon whether they came from individuals, professionals or voluntary groups and associations.

Letters from individuals constituted about half of the submissions (49.4 per cent); these were about evenly distributed among persons who had been victims of child sexual abuse, who had known victims, or who were concerned about these problems. About two in five persons respectively had been victims or had known victims. A third of the former group (33.3 per cent) identified fear, ignorance and stigma as the reasons why victims did not seek assistance or were reluctant to do so. Almost an equal number (29.3 per cent) cited as a problem the disbelief of those who had been turned to for assistance that the incidents had actually happened.

Few victims or persons who had known victims (13.3 per cent) adopted a punitive approach towards child sexual offenders. About one in three (35.7 per cent) called for counselling for victims, family members and offenders. There was little concern among this group about the need to amend legislation or how the helping services might be better organized or co-ordinated. Only a few individuals who wrote to the Committee commented either about juvenile prostitution (4.0 per cent) or pornography (5.3 per cent).

Professional workers and associations submitted about a third (30.9 per cent) of the submissions. The primary emphasis of their briefs (65.9 per cent) revolved about the need to improve the training of professionals with respect to child sexual abuse and the more effective co-ordination of the services of other professional groups involved in providing assistance. Two in five of the professional briefs (38.6 per cent) condemned the law as obstructive to the effective provision of care and harsh in its consequences for the victims of child sexual abuse. About half of these briefs (47.7 per cent) recommended the treatment of victims, their families and offenders as an option that was preferable to the intrusion of the law.

About a fifth of the briefs from professional workers and associations referred to the issues of the access by children to pornography (18.2 per cent) and children involved in the production of pornography (18.2 per cent). About one in nine (11.4 per cent) addressed the issue of juvenile pornography. Their recommendations in this regard included: the need to provide counselling that was trusted; the provision of temporary accommodation for transient youths; and the legal authority to apprehend youths known to be juvenile prostitutes.

About one in five briefs (19.7 per cent) received by the Committee was submitted by voluntary associations and community groups. Seven in 10 (70.6 per cent) of these briefs identified the early access by children to pornography as a problem about which more public education was required and about which government should take prompt action. Six in 10 of these briefs (58.8 per cent) condemned the production and sale of child pornography. The briefs called for a clear and specific definition of obscenity in the law.

While six in 10 briefs from associations (58.8 per cent) referred to child sexual abuse, there was no central theme in relation to the issues dealt with or the recommendations made. About one in six briefs (17.6 per cent) addressed the issue of juvenile prostitution. The recommendations made included the need to provide for greater protection for them and the imposition of stiff penalties on clients.

**The types of concerns raised in the briefs differed sharply depending upon whether they had been submitted by individuals, professionals or voluntary associations. Except for the persons who themselves had been victims of child sexual abuse, it was evident from the briefs that no single group stood clearly apart as a representative spokesman for their concerns. On the basis of its review of the briefs submitted, the Committee concluded that when sensitive issues involving much fear, stigma and ignorance are being considered, seeking comprehensive and representative information by means of public notices or hearings is an inappropriate avenue to follow. Adopting these means serves other valuable purposes with respect to identifying issues, the alerting of concerns and the submission of important recommendations. This approach taken by itself, however, is not a substitute for obtaining information directly from persons who have been sexually assaulted, who report that they have been harmed by exposure to pornography or who have been juvenile prostitutes. Except in rare instances, these are not issues that persons who have experienced these situations are willing to speak openly about, except where there is a trusted assurance that the confidentiality of their accounts will be honoured.**

The letters and briefs received by the Committee raised many significant issues and alerted its Members to problems requiring full consideration and documentation. The major recommendations made identified the need to provide education for Canadian children with respect to protection from unwanted sexual acts, proposed ways that the helping services should be strengthened in the provision of care and called for the amendment of the law of obscenity. The

Committee acknowledges the assistance given by persons and groups submitting these briefs, many of which contained extensive documentation about the issues raised. The evidence and recommendations contained in the briefs received by the Committee were given careful consideration in relation to the issues studied and the framing of recommendations.

## Chapter 2

# Child Sexual Abuse in Canada: An Overview

Persons who have been sexually abused as children and youths have told us of their anguish and sense of helplessness, feelings intensified by their not knowing how they might have sought appropriate help. Resulting from our work, we have been profoundly moved by their betrayed hopes and their suffering. Many of these victims have been scarred for life with uncertainty, fear and despair. They have asked clearly "Can you help?". Canadians cannot evade this appeal nor think wishfully that this situation will somehow right itself without direct and constructive action being taken. These experiences represent an intolerable situation. It is one which must not be allowed to continue.

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, and even within communities.

Our Report raises issues which until recently have seldom been discussed candidly and incisively. While child sexual abuse is only one of many problems facing Canadians, it cuts across many facets of the nation's legal framework and the public and private services. There are no simple or instant solutions. We believe that none can be realized without a strong commitment to develop a comprehensive and co-ordinated national approach involving all levels of government and non-governmental agencies.

### The National Concern

Canadians are deeply concerned about the need to provide better protection for sexually abused and exploited children and youths. This strongly held concern is national in scope. It cuts across all social, religious and political

boundaries. It encompasses all forms of sexual abuse of the child, whether this involves sexual assault, juvenile prostitution or the making of child pornography.

In response to these concerns, we believe that changes can — and must — be made. In submitting our recommendations, which are based on an extensive review of child sexual abuse in Canada, we have sought to lay an integrated foundation upon which rational social and penal policies can be developed and implemented.

## The Role of the Law

The existing laws, both criminal and civil, lack a central purpose and rationale with respect to affording protection for children against sexual offences. Many of these statutes are worded in archaic and imprecise language. They have been separately amended at different times without reference to their impact on related legal provisions and do not correspond to the types of sexual acts actually committed against children.

The Canadian legal system has established in the civil and the criminal law two distinct means of responding to harmful actions committed against children and youths. Either or both of these approaches may be followed in incidents involving child sexual abuse. Under the provisions of provincial child welfare legislation, the state has the authority to intervene, or if the need is shown, to remove a child where it is deemed that he or she is being abused or neglected. In contrast, the criminal law provides the basis for the laying of charges against suspected offenders and for their punishment after conviction.

A crucial weakness inherent in the existing legal framework is that, in practice, there are no clearcut procedures establishing when either or both of these two contrasting forms of state intervention should be used. These important decisions, having critical consequences for the well-being of the child, are largely left to the discretion of attending helping and enforcement workers. As a result, instances occur that constitute grave negligence either because there is insufficient assessment of the child's need or because there is inadequate follow-up to assure that the child is fully protected from the risk of further sexual abuse.

Child sexual abuse differs in several important respects from sexual offences committed against adults. Historically, Canadian criminal law has failed to recognize that child sexual abuse is a complex phenomenon, one that encompasses many different forms of unacceptable sexual behaviours. Many of the terms now used in the law obscure the nature of the conduct being prohibited, making it virtually impossible in some cases to know whether adequate protection is in fact being provided for children.

A central purpose of the criminal law is to prevent persons from harming others and to punish those who do so. Some observers have contended that

since these purposes are not being realized by certain sexual offences, these offences should be repealed. Their argument rests on the contention that certain forms of sexual conduct which they believe are not harmful to others are prohibited by the criminal law. It has been suggested, for instance, in a number of widely cited reports completed abroad, that since few children are seriously harmed by sexual offenders, the provisions relating to these offences serve no useful purpose. These commentators have noted that sexually abused children are more likely to be harmed by the bitter reactions of their parents or the harsh exposure to legal proceedings than by having been victims of sexual abuse. From this perspective, child sexual molesters are typically portrayed as harmless, timid and inadequate persons who need compassion and treatment rather than being held accountable for their actions.

While we concur that many provisions in the criminal law of sexual offences are out-dated, our findings clearly indicate that there is no basis for the alleged "harmlessness" of unwanted sexual acts committed against children or for the belief that most of the offenders are "harmless" individuals. We have found that many young victims were encouraged, seduced and intimidated by sexual offenders. Some of these children sustained physical injuries. Many more experienced enduring emotional and social harms. Our findings clearly show that these children have special needs and vulnerabilities which must be recognized and protected by the criminal law and that existing provisions do not adequately accomplish these purposes.

In order to provide better protection, our proposals are based upon five principles involving the clear specification of: the nature of the sexual acts committed; the age of the child who was the victim of the offence; the child's lack of consent; the type of legal or social relationship between the child and the offender; and the injuries and harms incurred by the young victim. Our proposals are complementary to the sexual assault offences which became law in January, 1983 and are compatible with the criminal law amendments tabled in February, 1984.

We believe that our proposed reforms would provide better protection for children and youths. These reforms would clearly and unmistakably identify those types of sexual conduct committed against young persons which Canadians regard as unacceptable. On the basis of our proposed legal framework, there would be no doubt about the specific nature of the offences for which offenders would be liable to punishment. The changes we propose would directly assist in the enforcement of the law by providing the police and the Crown with specific and objective facts upon which to obtain evidence.

Our proposed reforms derive from the extensive research we have conducted. This has clearly identified a wide range of different types of child sexual abuse and exploitation that cannot be adequately dealt with by the general and vague offences set out in the *Criminal Code*. We believe that the framework we propose would provide a more realistic and rational basis for penal policy with respect to sexual offences against children and youths. At the present time, no such clearly enunciated policy exists.

Just as the sexual offences in the criminal law fail to recognize the many different types of child sexual abuse, there is likewise no rational sentencing policy in regard to sexual offences committed against young persons. The same behaviour may be charged under several different sections of the *Criminal Code*, each carrying a different maximum penalty and having different evidentiary requirements. Our research clearly documents that this situation has resulted in confusion in the laying of charges and the sentencing of offenders. For example, offenders who had committed more serious sexual acts were consistently given proportionately lighter sentences than those who had committed more minor offences.

The assumption is made in some quarters that the sentences imposed by courts are logically and directly related to the types of acts proscribed in the offences. On the basis of this assumption which has not been empirically documented, it has been advocated that a separate section of the *Code* be established in regard to the sentencing of offenders.

Our research findings indicate that these assumptions are invalid in relation to sexual offences committed against children and youths. For many of the existing offences, there is only a partial congruence between the nature of the sexual acts committed and the charges laid or the sentences imposed. Instead of developing a separate section of the *Code* dealing with sentencing, we recommend that the sexual offences against children and youths should be realigned to accord with the specific sexual acts committed and that the sentences imposed be related rationally to this re-structuring of the criminal law.

## The Child's Evidence

In addition to the reform of the criminal law of sexual offences against children and youths, we believe that a fundamental change is needed in the law to permit children to speak directly for themselves at legal proceedings. While recently the truthfulness of victims of sexual offences has been regarded with less scepticism than in the past, the law still regards children's evidence with suspicion.

We believe that there should be no special rules with respect to the child's legal competence to give evidence in court. We recommend that a child's evidence should be received and considered in the same light as that of adults. Our research indicates that the assumptions about the untrustworthiness of young children and their inability to recall events with respect to sexual offences are largely unfounded.

## The Helping Services

While all nations seek to prevent lawless behaviour, it is apparent that any legal system is insufficient by itself to realize these purposes. Other conditions

have to be present if a society's children are to be safe. These necessary conditions include an ingrained respect for the dignity of the person, a system of education that informs children and parents about risks and the means of protection which may be sought and the provision of services of high quality to meet the needs of victims.

There is a bewildering variety of public and private programs across Canada that are available to provide assistance and protection for sexually abused children. These functions are divided between federal, provincial and local levels of government and include a broad assortment of national, community and voluntary associations. Each service or program typically draws upon the skills, specialized knowledge and practical experience of workers trained in different specialties.

What stands out sharply in the work of these different services is the immense lopsidedness of the services provided. Too often, decisions to assist the sexually abused child are made in relative isolation; the policies affecting the care of these children are frequently established by professional workers without a full and open consideration of their propriety or for the short and long-term consequences for the children being served.

There is much 'balkanized' rivalry between these services, some of which have assumed such distinctive identities of their own that they are relatively independent of or impervious to the main concerns of the public. In many instances, agencies have developed services which are believed to meet the needs of sexually abused children, but which in fact fail to do so adequately or effectively. These shortcomings in the provision of services are guarded by strong institutional defences. The arguments most commonly heard here are that the services do not have enough resources and facilities or that other services are insensitive to the needs of children and are incompetent to help them.

Those who hold these views tend to advocate a rigid and narrow specialization in the field of child sexual abuse, namely, that their programs are the only ones appropriate to make critical decisions about the needs of these children and the types of assistance that should be provided for them. They also have correspondingly rigid attitudes to support this perspective.

As a result, critical lines of tension have developed which involve competing strategies regarding the optimal provision of care for the young victims of sexual offences. It is evident in light of our findings that the relative strength with which these ideas are held directly affects both the type and adequacy of what is undertaken on behalf of these children.

Historically, each of the main helping services has developed somewhat different concepts of child protection, different means for assessing and investigating the needs of young victims, different standards in determining how assistance can best be provided and different ways of providing such help. Our research indicates that as a result of these different perspectives, many sexually abused children either received no assessment or that their needs were only



partially and inadequately considered. Many were left in positions of continuing risk with insufficient follow-up to ascertain that their safety was fully assured.

In each of the main public services, there is much latitude in the discretionary decisions that may be made about the management of sexually abused children. These critical decisions include: whether the incident is reported to the police or not reported; whether some acts are considered minor or serious; whether assessment — none, partial or complete — is made of the child's situation and needs; and whether care and assessment are provided exclusively by that agency or whether other services are contacted and consulted.

The making of discretionary decisions is an inherent and essential feature of all forms of professional work. However, in the absence of clearly enunciated and monitored standards, there is the risk and reality that decisions may be made which result in an incomplete assessment of the child's needs.

Our findings leave no doubt that these deficiencies occur. It is evident that, to the extent that each helping service adheres to the principle of preserving its institutional and professional autonomy to the exclusion of seeking external counsel and assistance, it may correspondingly fail to provide these children with needed comprehensive assessment, care and protection.

There is also an enormous difference of opinion in providing these services as to whether the child welfare laws or the criminal law should be invoked. In practice, this dichotomy has resulted in the development of different intervention approaches having sharply different consequences in identifying the needs of sexually assaulted children and in affording them adequate protection. It is evident from our findings that, whichever of the main intervention approaches is adopted, what is often missing is an adequate assessment and investigation undertaken on behalf of the child.

Our findings show that the provisions of provincial child welfare legislation are frequently not operating on the basis intended by legislators. In practice, child protection services are neither turned to extensively by young victims or their families, nor do they receive many referrals of such cases from other helping services.

While encompassing a wide range of situations in which the child warrants protection, provincial child welfare statutes provide no guidance concerning whether these provisions or those of the *Criminal Code* are to be invoked. Even within specific jurisdictions, it is evident that policies which are said to have been established are inconsistently followed. Likewise, the provincial child welfare statutes do not specify what is to be undertaken when the situation and needs of a sexually abused child are being assessed. With respect to these issues, we believe that all provincial child welfare statutes should be reviewed and, where required, amended to provide more clearcut guidance concerning what is to be undertaken in the assessment of sexually abused children and in

specifying the review procedures to be followed to assure that these standards are being met.

## Principles of Practice

To provide care and protection for sexually abused children, we strongly adhere to the principles that:

1. Effective educational programs must be developed that inform children and their parents about the risks of child sexual abuse and ways to obtain assistance.
2. Appropriate, available resources must be more effectively co-ordinated.
3. Rigorous attention must be given to assuring that these services are provided in accordance with established and assessed standards.
4. There should be full, continuous and independently reviewed documentation of what is being done on behalf of the child.

We recognize that there are important unresolved issues concerning the provision of certain aspects of *sexual education and health promotion* for Canadian children. Even so, we believe that there is an urgent need to provide children and youths with practical training in recognizing the danger signals of sexual abuse and exploitation and how to protect themselves from the risks of unwanted sexual conduct. In addition to affording better protection against child sexual abuse by the reform of the child welfare laws and the criminal law, and the strengthening of the helping services, the development of sensitive and effective educational programs made available for all Canadian children and their parents would, we believe, have a powerful effect in directly protecting children and informing them about what they should do when such incidents occur.

With respect to the need for an *effective and integrated co-ordination of the several helping services*, we reject the notion that adequate protection for the child can only be provided by means of a single approach. There are many different means whereby these purposes may be realized; it is apparent in some parts of Canada that a number of programs are evolving which recognize the need to bring helping services having common objectives more closely together.

The experiences of these special programs — still few in number — should become better known. It is an anomaly that the existing programs in Canada have been largely ignored or remain unknown, while the experience of foreign programs which cannot be readily replicated in this country have been widely acclaimed. We believe that the special programs that have been established in Canada should be fully documented and that their efforts to provide comprehensive assessment, care and protection for young victims of sexual abuse should be considerably strengthened. These programs are providing a leadership which could serve to foster a broader network of services providing a high quality of assistance for sexually abused children across Canada.

A third principle which we believe must be firmly established in practice and in legislation is the *formulation and application of standards* to ensure that the needs of sexually abused children are being adequately met. Not only do our findings show that there is an unequal provision of needed services for these children, but that we are also making poor use of available resources with the result that the adequacy of the services rendered fluctuates widely. In the absence of standards, or of sufficient steps taken to ensure that existing standards are being applied, our findings indicate that there have been regrettable errors of judgment resulting in children being insufficiently assessed concerning the harms they may have sustained and inadequate investigations concerning their continuing risk of further abuse.

Instead of these critical decisions being reached informally, there is a clear need to establish explicit standards for the assessment of sexually abused children. In some quarters, this view may be challenged on the grounds that such standards are unnecessary, that they have already been established, or that their introduction would constitute an infringement of professional judgment and autonomy. With the exception of certain programs, we found little evidence that standards existed which were being consistently or rigorously followed, and where they have been established, of their being reviewed to ensure that they were being observed. Those who may choose to dispense with agreed and applied standards have the responsibility to propose other workable alternatives. We believe there are none that are not subject to the real possibility of serious errors of judgment.

In our view, the setting of standards, which are widely recognized and applied, performs an essential, if not always a welcome job. Such standards should be grounded in the judgment of experienced persons having different perspectives of these problems. Their application should be independently reviewed and documented, and they should be periodically revised and strengthened. In light of our findings, there can be no doubt about the need to improve the quality of the assessment and care that are being afforded these children.

Our fourth principle, the *need for adequate information* concerning the operation of existing programs, constitutes a requisite foundation if more effective services are to be developed. Existing official information systems are virtually worthless in serving to identify the reported occurrence and circumstances of child sexual abuse.

Without exception, all of these systems are so seriously flawed that they fail to provide even rudimentary information about the victims of sexual offences, whether they are children, youths or adults. Although this information is available in the front-line reports of investigations, there are no provincial or national statistics of how many sexual offences against children have been investigated by the police. Accurate statistics in this regard are virtually non-existent among child protection services. The system of medical classification of injuries fails to identify the major types of sexual assaults committed against victims. The available statistics on sentencing prevent judges from

being able to assess the efficacy of their decisions imposed upon convicted child sexual offenders. Official reporting systems also contain significant omissions about those offenders who are deemed to be among the most dangerous criminals in the country, many of whom have been convicted of sexual offences against children.

In light of these deficiencies, it is hardly surprising that at the present time we have a very imperfect understanding of the officially known occurrence of sexual offences against children. It is significant that none of the existing systems provides for an accurate listing of information in accord with the sexual offences in the *Criminal Code*, let alone information about who the victims of these offences are. The absence of comprehensive and accurate information, which it would be readily feasible to obtain, effectively precludes the documentation of the nature and adequacy of the protection afforded by existing sexual offences or of the benefits that may be gained by amendments to these provisions in the *Criminal Code*.

The state of research on these issues is at about the same level as that of official information systems. While over the years considerable public resources have been assigned to support research, many of the studies in the fields reviewed by the Committee have been severely limited in their design and scope. Most of the available research reports have failed to take into account the circumstances of victims, the basic elements of the offences committed or the wide range of relevant legal issues.

In relation to both official information systems and research, it appears that in the past there has been little in the way of informed direction given by the various levels of government in order to ascertain the extent of sexual offences committed against Canadians of all ages. Insofar as government fails to identify these problems by fact, and not by inference, it must assume a major part of the responsibility for not providing leadership in affording better protection for the victims of sexual offences. It is intolerable that knowledge about the provision of the main helping services provided for sexually abused victims of all ages should be blind-folded by the absence of essential and obtainable information. These are instruments which are clearly within the authority of government to amend, in order to make them an efficient means of affording better protection.

## Needed Legislative Action

Our review indicates that what is now lacking is any widely agreed upon policy providing for an orderly, comprehensive and rational development and provision of services for the assistance and care of sexually abused children. We believe that the needs of the sexually abused child are too varied and complex to be adequately served by a single helping service. To understand their needs and the harms that they may have sustained requires the complementary provision of a broad range of services. In saying this, however, we believe that

the direct care of the child should be provided by as few persons as possible. Such a step is not incompatible with drawing upon a full range of professional experience and depth of judgment which should be marshalled to assist those persons who work directly with the child.

The obstacles that now hinder the achievement of better protection for sexually abused children are not insurmountable. While in the short run they represent serious barriers to realizing this aim, we have no doubt that many of these problems can be resolved by an energetic and joint endeavour involving all levels of government working in full co-operation with non-governmental organizations.

**Parliament and the legislatures of the nation are essential anvils in shaping compelling priorities and in providing leadership concerning the direction to be taken in achieving them. In relation to the problem of child sexual abuse, we believe it is the proper responsibility of government to establish clear social and penal policies whereby better protection can be provided and which through time may serve to reduce the occurrence of these offences. It is clear that these policies cannot be developed in isolation by any one level of government. Their success will require leadership, co-ordination and a firm political commitment to assign sufficient resources.**

Our work has shown us the complex dimensions of this deeply rooted tragedy. We know that they are — and will be — difficult to resolve. We know that adequate assistance and protection have not yet been achieved. And we know that we must do better and that as a nation we have the means to do so.

The answer to the appeal "Can you help?" must be to seek to serve in exemplary fashion the special needs and vulnerabilities of sexually abused children. We believe that it is only by joint and continued endeavour that Canadians will be able to ensure the dignity and worth of our children who are victims of sexual offences and to fulfill our unshakable purpose of preserving that dignity.

## Chapter 3

# Recommendations

During a period of over a century following Confederation in 1867, there was no major revision of the complete legal framework of the Canadian criminal law of sexual offences. Since the beginning of the 1980s, however, several significant legislative amendments and proposals have been brought forward in response to a growing public concern about the need to provide better protection against these crimes.

It was in the context of these important legal reforms that the Committee was appointed to deal directly with how a comprehensive and rational legal and social framework could be provided in order to afford needed assistance and protection for the young victims of child sexual abuse. In light of its extensive findings, the Committee strongly believes that advantage should be taken of the momentum of recent legislative reforms to extend all necessary protection to Canadian children and youths against sexual offences.

The Committee's mandate was to determine the adequacy of the laws and other means used by the community in providing protection for children against sexual offences and to make recommendations for improving their protection. On the basis of our findings about some 10,000 cases of sexual offences against children and youths, our principal conclusions are that these crimes occur extensively and that the protection now afforded these young victims by the law and the public services is inadequate. The law is inequitable in its application. Sharp inequalities exist, often occurring in the same community, in the provision of assistance and protection for the victims of these offences.

In undertaking its assignment, the Committee's main concern was with how the well-being and interests of the child could best be served with respect to affording protection from sexual offences. Because of the child's vulnerability and special need for protection and security, we believe that assuring these purposes must be a paramount objective of the civil and criminal law, different levels of government, and the helping professions and non-governmental agencies. The changes that are required to achieve these purposes will entail a fundamental shift in the values of Canadian society, the diminution of pride of separate jurisdictional authority and institutional prerogatives, and a firm spirit of co-operation between different levels of government and between the different helping professions.

The Committee is aware that the required changes will not be easily or readily realized. But there can be no doubt on the basis of our findings that vital ameliorative changes must be made and that assuring these purposes must be the unswerving objective of those concerned with the reform of the law and of upholding the traditional ethics of the helping professions.

In reaching our conclusions, we have done so on the basis of a review of the Canadian law on sexual offences which has been coupled with an empirical assessment of the present situation of the sexually abused child. It is in light of this assessment that each of our major recommendations rests upon a substantial body of evidence. With respect to the substance of our main findings, the Committee believes that their significance is generally clear and unequivocal. We know of no other source for Canada that provides comparable comprehensive information assessed at a national level.

Presented under nine major categories, our recommendations specify the social and legal reforms we believe are required in order to provide better assistance for sexually abused children and to afford young persons better protection from becoming victims of sexual offences and exploitation.

1. **Office of the Commissioner** (Recommendation 1);
2. **Education for Protection** (Recommendation 2);
3. **Reform of the Sexual Offences** (Recommendations 3-17);
4. **Principles of Evidence** (Recommendations 18-27);
5. **Strengthening the Provision of Services** (Recommendations 28-34);
6. **Information Systems** (Recommendations 35-38);
7. **Research** (Recommendations 39-40);
8. **Juvenile Prostitution** (Recommendations 41-48);
9. **Pornography** (Recommendations 49-52).

We believe that the actions we propose are essential and that they are feasible to implement. Several of the changes we call for require the reform of the law and a restructuring of services. By themselves, such changes, if acted upon, will not assure complete protection for all sexually abused children. Their implementation, however, will serve to lessen or remove many of the serious deficiencies that now exist.

**In submitting our recommendations, we do so unanimously.**

## Office of the Commissioner

By focussing on sexual offences against children, the Committee has been able to obtain extensive and detailed information on the relevant legal issues as well as on the wider issues that concern the helping services. The Committee believes that because of its usefulness in putting a wide variety of behaviours under examination, this focus should be retained in the federal government's response to the Committee's findings and recommendations which should be reflected by the involvement of all interested departments and non-governmental organizations.

The Committee acknowledges the indispensable contribution of community and voluntary agencies in affording assistance and protection for sexually abused children. There can be no doubt that in the development and implementation of measures required to afford better protection for these children, the full participation of these services at the local and national levels is required at each stage of the work to be done in carrying out the initiatives for reform which the Committee recommends.

Although the federal government is responsible for the *Criminal Code*, the provincial Attorneys-General are responsible for enforcing its provisions. The federal government provides financial assistance to the provinces for the operation of social and health services and the provincial governments have extensive jurisdictional authority over these services which provide protection for children and youths. Without full co-operation and assistance from provincial and municipal as well as federal government departments, much of the information collected in this Report would not have been obtained. Because of their deep concern with these issues and their jurisdictional responsibilities, it is essential that provincial governments take an active part in responding to the Committee's findings and recommendations.

The problem of child sexual abuse in Canada is so pervasive and deep-rooted that in its response to our recommendations, we believe that the Government of Canada must establish a means to deal adequately and on a co-ordinated basis with these issues. We believe that the problems identified and documented in the Report are too far-reaching and complex to be dealt with exclusively or effectively by one or two federal departments or by one level of government alone. What is required to achieve what must be done is an administrative mechanism which retains the perspective of all dimensions of the problem and which can actively initiate and co-ordinate the reforms that are required. In our judgment, it is unlikely that this work can be achieved within the existing organization of public services.

In the course of its review, the Committee found numerous instances in relation to the occurrence of sexual offences where important recommendations made by distinguished advisory commissions had never been implemented. Over a period of several decades, federally appointed commissions have



advocated major reforms in the assembling of criminal statistics and that comprehensive national research be mounted in relation to sexual recidivism and the management and treatment of convicted sexual offenders. Such proposals were cogently presented in the 1938 *Report of the Royal Commission to Investigate the Penal System of Canada* (Archambault Report).<sup>1</sup> They were subsequently reiterated in: the 1956 *Report of a Committee Appointed to Inquire into the Principles and Procedures followed in the Remission Service of the Department of Justice* (Fauteux Report);<sup>2</sup> the 1958 *Report of the Royal Commission on the Criminal Law Relating to Criminal Sexual Psychopaths* (McRuer Report);<sup>3</sup> and the 1969 *Report of the Canadian Committee on Corrections* (Ouimet Report).<sup>4</sup>

None of the recommendations of these advisory bodies pertaining to reform of criminal statistics involving the listing of sexual offences or the undertaking of comprehensive long-term research on sexual recidivism, the treatment of sexual offenders and the efficacy of different sentencing practices was subsequently acted upon. Consequently, there is now no information available at the national level concerning the ages and sexes of victims of sexual offences. Likewise, it is unknown how many reported cases there are of girls and women who have been sexually assaulted or who have been the victims of buggery or incest. While the 1938 Report of the *Archambault Commission* and those of later inquiries called for research on sexual recidivism, prior to the appointment of this Committee, no such studies had been published providing information assembled from federal and provincial correctional services.

In submitting their recommendations, it appears that previous federal inquiries assumed that the existing structure of government services had the requisite capacity to respond effectively to the initiatives being proposed. For whatever reasons, it is evident that this has not been the case. In relation to numerous significant issues pertaining to sexual offences, many of the recommendations of these earlier inquiries have consistently been shelved, forgotten or ignored. Without venturing to act upon specific recommendations, it has on occasion been concluded that it is not feasible to do so. The Committee's research on sexual offences against children and sexual recidivism, amongst other issues studied, does not support this assumption.

The work of government is compartmentalized into departments, each having its own priorities, its limited scope of authority and its resources assigned to fulfill specific activities. As noted in the 1969 *Ouimet Report*, the organization of government services functions to constrain severely the capacity of particular departments operating at one level of government in dealing effectively with complex social problems whose potential resolution requires close and continuous co-operation within and between different levels of government and with non-governmental agencies. In this regard, there may be a mismatching between the duties which particular departments may be properly expected to fulfill and their actual capacity to be able to respond effectively to problems for which they have partial authority to deal with and limited resources to do adequately what is required. The 1969 *Ouimet Report*

concluded that, in some instances, action on the recommendations of advisory bodies may not be taken, since to have done so, would have provided information critical of the operation of existing services.

In the Committee's view, the pride of jurisdiction should not take precedence over the need to implement reforms which, were they acted upon, might afford better protection against sexual offences for Canadian children and youths. Accordingly, we believe that the Government of Canada should establish an Office of the Commissioner, reporting directly to the Office of the Prime Minister, having the assigned authority to review the recommendations of this Report, and serving as the means of initiating and co-ordinating the reforms which are called for. Assigned its own budgetary allocation for these purposes, the Office of the Commissioner would function to initiate and co-ordinate the work of various federal departments, work in conjunction with related departments at the provincial level, and establish the means requisite to assure the full participation of non-governmental agencies in these activities.

Where special needs have been recognized in the past, the Government of Canada has established special bodies which are assigned responsibility to respond to these issues. On the basis of our findings, there can be no doubt that the establishment of an Office of the Commissioner is warranted in order to initiate and marshal the efforts of all levels of government and non-governmental agencies, having as their common purpose, the provision of services required to reduce and prevent child sexual abuse.

#### **Recommendation 1**

**The Committee recommends that, in order to provide an effective network of services for the assistance and protection of sexually abused children and youths, the Government of Canada establish an Office of the Commissioner reporting directly to the Office of the Prime Minister having assigned responsibility:**

- 1. To implement the Committee's proposals for social and legal reform.**
- 2. To establish, in conjunction with non-government agencies and the provinces, the most useful mechanism for co-ordinating and integrating public and private efforts for providing these services.**

## **Education for Protection**

Sexual offences are committed so frequently and against so many young Canadian children that there is an evident and urgent need to afford victims better protection. The Committee's findings show the compelling nature of the fears and stigma associated with having been a victim of sexual assault. Many young children do not know where to turn for help, particularly when the offence is committed by a family member or someone whom they know.

In accounts received by the Committee from persons who had been sexually abused as children, an eloquent appeal was made that children in the

future should know better how to protect themselves from these risks. In order for a child to seek help or give evidence, pre-requisites are the recognition that an act was wrong and the strength to overcome the fears and shame involved in telling others about these acts. The Committee believes that as part of a broader program of education, children and youths should be better informed about the risks, and that this educational program should also be undertaken as a preventive measure intended to educate and dissuade potential sexual offenders from committing these acts.

In the recommendations that follow, the Committee calls for changes in legislation intended to provide an essential legal framework to afford better protection for children and youths. Taken by themselves, these measures, however, would be insufficient to contain this widespread problem.

#### **Recommendation 2**

**The Committee recommends that one of the principal responsibilities of the program that is established in conjunction with the Office of the Commissioner co-ordinating federal, provincial and non-governmental agencies' initiatives be concerned with the development and implementation of a continuing national program of public education and health promotion focussing specifically on the needs of young children and youths in relation to the prevention of sexual offences and affording better protection for children, youths and adults who are victims.**

In developing a national program of public education and health promotion focussing on the needs of sexually abused children and youths and the means whereby they may be better protected, the Committee believes that the Office of the Commissioner, in conjunction with federal and provincial ministries and non-governmental agencies, should actively seek the co-operation of the media, the National Film Board of Canada, and provincial educational radio and television services, amongst others, in order to develop programs pertaining to these issues which can be widely disseminated across the country. Few such resources are now available that are geared to serve these purposes.

## **Reform of the Sexual Offences**

Early in the Committee's work, it became apparent that a reformulation of the sexual offences in the *Criminal Code* was required in order to provide young persons with more effective protection against sexual abuse and exploitation. Although the Committee's proposed reformulation has drawn upon aspects of the former and existing law, it constitutes a major departure from the traditional classification of sexual offences as they relate to children and youths. That young persons are particularly vulnerable to sexual abuse and exploitation makes the adoption of a special legal framework in this context both necessary and desirable. As one commentator has observed:

The development of human sexuality is a gradual process. Its full realization presupposes the achievement of an equilibrium between body and spirit, between physical growth and mental and emotional maturation. Our society believes, and justly so, that the law must protect those who have not yet attained full sexual autonomy or who have not yet achieved this equilibrium. Children must therefore be protected from sexual exploitation and corruption until they have arrived at a degree of maturity which will enable them to foresee the consequences of their acts and take important personal decisions with full and clear appreciation of the facts, or at least until they come to the age at which that degree of maturity should be presumed.<sup>5</sup>

The various sexual offences in the *Criminal Code* and their deficiencies from the standpoint of child protection are extensively reviewed in the Report. The Committee's recommendations for the reform of this area of the law, summarized in Table 3.1, seek to redress these deficiencies and provide a legal framework which, in the Committee's judgment, is clearly and rationally related to the protective ends that the criminal law should serve. In proposing reforms to the criminal law of sexual offences against young persons, two basic questions present themselves: What conduct should be made criminal?; and What sentences should be available against persons who commit these crimes?<sup>6</sup> The characteristics of sexual acts involving young persons which make such acts unacceptable, and thus properly the function of the criminal law to denounce and punish when the offender is of the age of criminal responsibility, fall into five broad (and often overlapping) categories:<sup>7</sup>

- *The nature of the sexual act engaged in*, for example, buggery with a 14 year-old;
- *The age of the child with whom the sexual act is engaged in*, for example, sexual touching of an eight-year old's genitals;
- *The young person's lack of consent to the sexual act*, for example, the sexual assault of a 17 year- old girl;
- *The legal or social relationship between the offender and the young person*, for example, acts of oral sex involving a teacher and an 11 year-old pupil; and
- *The harms which may be incurred by the child as a result of the sexual conduct*, for example, physical and emotional injuries, pregnancy and the risk of contracting a sexually transmitted disease.

The Committee's proposed reformulation is grounded on an assessment of these five considerations, in relation both to the types of sexual conduct involving young persons that should be proscribed, and the maximum sentence that should be available depending on the offence committed. The Committee believes that the appropriateness of providing legal defences for an accused must be viewed in relation to the seriousness of his or her conduct. Where an accused's conduct (for example, sexual intercourse by a 16 year-old male with a 14 year-old girl) may result in substantial physical and emotional harms to his sexual partner, it is not appropriate to exempt him completely from the prohibition against this conduct, either because of his age or because of his mistaken perception of his partner's age. These facts should be taken into account in sentencing.

**Table 3.1**  
**Committee's Recommendations Concerning the Major Sexual Offences**

Committee's Recommendations	Current Criminal Code Provision
1. Repeal one year limitation on prosecutions (section 141 and section 168(2)).	Section 141 affects sections 151 (seduction of female 16 or 17), 152 (seduction under promise of marriage), 153(1)(b) (sexual intercourse with female employee under 21), 166 (parent or guardian procuring defilement), 167 (owner or manager of premises permitting defilement of female under 18), 168 (corrupting children). Section 168(2) affects only section 168.
2. Reduce maximum sentence 146(1) offence to less than 14 years.	Sexual intercourse with a female under 14. Maximum sentence life imprisonment.
3. Repeal sections 146(2)(b) and 146(3).	146(2) sexual intercourse with female 14 and under 16.  146(2)(b) female must be of previously chaste character.  146(3) court may find accused not guilty if he is not more to blame.
4. Amend section 140 to provide consent by person under 16 not a defence.	Consent by person under 14 not a defence to a charge under section 146 (sexual intercourse with female under 14, and with female 14 and under 16).
5. Repeal section 147.	No male person under 14 deemed to commit section 146 (sexual intercourse with female under 14, and with female 14 and under 16) or section 150 (incest) offence.
6. Amend section 150 to provide section does not apply to victim.	Section 150(3) provides court not required to impose punishment on female victim convicted of incest.
7. Repeal section 151.	Seduction of female 16 or 17. Maximum sentence 2 years' imprisonment.
8. Repeal section 152.	Seduction under promise of marriage. Maximum sentence 2 years' imprisonment.
9. Repeal section 153(1)(a) and replace with abuse of position of trust offence.	Sexual intercourse with step-daughter, foster daughter, or female ward.
10. Repeal section 153(1)(b) and replace with abuse of position of trust offence.	Sexual intercourse with female employee under 21.

**Table 3.1 (continued)**

**Committee's Recommendations Concerning the Major Sexual Offences**

Committee's Recommendations	Current Criminal Code Provision
11. Repeal section 154.	Seduction of female passenger on board a vessel.
12. Amend buggery offence (section 155) to apply only where female complainant under 18 not wife of accused, and where male complainant under 18. Maximum sentence imprisonment for less than 14 years if complainant under 14, 5 years if complainant 14 and under 18.	Buggery applicable to all ages except for consensual acts in private between husband and wife or any two persons aged 21 or over. Maximum sentence imprisonment for 14 years.
13. Make bestiality (section 155) a summary conviction offence. Create new offence of compelling another person to engage in bestiality, and engaging in bestiality in presence of or with another person under 18. Maximum sentence imprisonment for less than 14 years.	Maximum sentence 14 years.
14. Repeal section 157.	Gross indecency. Maximum sentence 5 years' imprisonment.
15. Repeal section 158.	Exception to sections 155 (buggery) and 157 (gross indecency) re consensual acts in private between husband and wife or any two persons aged 21 or over.
16. Repeal section 175(1)(e) and create separate offence of person convicted of any sexual offence found loitering near school ground, etc. Summary conviction offence.	Vagrancy (convicted sexual offender loitering near school ground, etc.). Summary conviction offence.
17. Repeal less than 3 years older exception in section 246.1(2).	Consent by complainant under 14 not a defence to sexual assault offences unless accused less than 3 years older than complainant.
18. Repeal Section 253.	Communicating venereal disease.
19. Create new offence of abuse of position of trust by sexual touching of person under 18. Maximum sentence 10 years' imprisonment.	

**Table 3.1 (concluded)**

**Committee's Recommendations Concerning the Major Sexual Offences**

Committee's Recommendations	Current Criminal Code Provision
20. Create new offence of touching persons under 16 in the genital or anal region for a sexual purpose. Maximum sentence imprisonment for less than 14 years if complainant under 14, 10 years if complainant 14 and under 16.	
21. Create new offence of inviting, for a sexual purpose, the touching of another by a person under 14. Maximum sentence 5 years' imprisonment.	
22. Create new offence of exposing genitals to person under 16 for a sexual purpose. Summary conviction offence.	

Vague offences have had the undesirable result that the same behaviour can be charged under three or four different sections of the *Criminal Code*, each with a different maximum sentence and different evidentiary requirements. This situation has resulted in confusion and unnecessary complexity in an area of the law which, to the greatest extent possible, should be clear and straightforward.

The 1983 Report on *Sentencing Practices and Trends in Canada* commissioned by the federal Department of Justice makes the assumption that the sentences imposed are logically related to the behaviours subsumed in the offences.\* The Committee's findings, documented in the National Police Force Survey and the National Corrections Survey, clearly indicate that, in relation to sexual offences against children and youths resulting in charges being laid and sentences imposed, this assumption is invalid.

The Committee believes that the answer is not to develop a separate sentencing section of the *Criminal Code*. The evidence given in this Report leaves no doubt that the existing provisions in the *Criminal Code* must be restructured based on a rationale that accounts for the specific sexual acts committed and that connects the offences and sentences in a rational manner. The existing system of penalties is both irrational in its structure and in its application.

In the Committee's judgment, treating children differently from adults and, more specifically, treating some sexual acts with children differently from other, dissimilar sexual acts, would have a number of real advantages for child protection. First, it would better educate the public about the seriousness with

which the law regards inappropriate sexual behaviour with children by identifying more explicitly those behaviours that are completely unacceptable and, if perpetrated, will render the offender liable to severe punishment. It would thus sharpen the deterrent edge of the criminal law. Second, such an approach would assist the police and the Crown in their charging practices, by giving them objective facts to look for and to garner evidence on, for example, the age of the child and the sexual act engaged in, rather than requiring them (as at present) to make subjective value judgments, such as whether the act was "grossly indecent". Third, it would provide a more coherent and streamlined criminal law, a criminal law based on sound policy and reflecting an appreciation of the wide range of qualitatively different behaviours which are subsumed within the vague label, "child sexual abuse and exploitation".

The Committee's proposed reforms are complementary to the sexual assault offences which became law in January, 1983. These new offences deal primarily with incidents in which one of the parties did not consent to the sexual touching, or in which the offender used threats or violence in perpetrating a sexual assault. They do not, however, adequately address the wide range of sexual behaviours involving young persons which should be proscribed for reasons independent of the victim's lack of consent or the offender's use of threats or violence. The absence of the victim's consent is only one of several policy bases for prohibiting certain forms of sexual conduct involving a young person. The offences proposed by the Committee proscribe behaviours with children and youths which are unacceptable for reasons largely independent of the issues of "consent" and "assault", namely, the age of the young person; the nature of the sexual act engaged in; the abuse of a position of legal or social trust by the offender; and the harms which may be incurred by the young person as a consequence of the sexual act.

### Sexual Intercourse with Girls Under the Age of 16

Under current Canadian law, there is an absolute prohibition against a male person having sexual intercourse with a female person who is not his wife and who is under the age of 14 years. It is no defence that the accused believes that she is 14 or older and an accused found guilty of this offence is liable to imprisonment for life.<sup>9</sup> Consensual sexual intercourse involving girls 14 or 15 is, however, subject only to a qualified form of prohibition: the prohibition applies only where the female is "of previously chaste character", and the court may find the accused not guilty if the evidence does not show that the accused was more to blame than the female for the sexual behaviour.<sup>10</sup> Obviously, the qualification largely defeats the purpose of this offence.<sup>11</sup>

The substantial risks of contracting a sexually transmitted disease incurred by girls who engage in sexual intercourse with their partners, and the associated medical complications, are extensively reviewed in the Report. The findings indicate that young girls who become pregnant are recognized to be in



a high risk category and require specialized care and medical attention. These girls are subject to greater medical hazards throughout their pregnancy than are pregnant women, and are more likely to deliver prematurely and to have babies who are themselves in a high risk category. Moreover, therapeutic abortions performed on young girls carry a higher than normal risk of complication at all stages of gestation.

In light of these considerations, the Committee strongly considers that the absolute prohibition against a male person having sexual intercourse with a female person who is not his wife and who is under the age 14 years (currently contained in section 146(1) of the *Criminal Code*) should be retained. The Committee also concludes on the basis of its findings and pending more complete information on the attendant health risks of sexual intercourse for young females that the prohibition in section 146(2) against sexual intercourse with female persons who are 14 or 15 years of age should also be retained. The provisions in section 146(2)(b) (complainant must be of previously chaste character) and section 146(3) (court may find accused not guilty if he is not more to blame) are, in the Committee's judgment, inappropriate to the offence and should be repealed. Section 140 should be amended accordingly by substituting the age of 16 years for the age of 14 years.

The Committee agrees with the following statement of the English *Policy Advisory Committee on Sexual Offences*:

We do not think that any advantage would be gained if the law disabled itself from dealing with all young men below a certain age or near in age to the girl involved . . . [W]hether young men should be prosecuted for the offence and, if convicted, how they should be disposed of, are more appropriately regarded as matters for the exercise of discretion, of the police on the one hand and of the trial judge on the other.<sup>12</sup>

The Committee's findings obtained in the National Police Force Survey and its review of sentencing practices strongly suggest that, in general, this police, prosecutorial and judicial discretion is being appropriately exercised in Canada.

The Committee is strongly of the opinion that the principal means of providing protection is through the provision of information necessary to make young persons and their parents thoroughly familiar with the higher risk involved in the pregnancy of young girls and with the possible consequences of sexually transmitted disease. Without the effective delivery of this information, full use will not be made of the deterrent value of section 146. On the other hand, in the judgment of the Committee, removing the criminal law prohibition against sexual intercourse with young girls from a substantial proportion of their partners who are close in age (which is proposed in Bill C-53 and in the "Working Paper") would do nothing to protect these girls from the medical risks of pregnancy and sexually transmitted disease, and may even have the unintended result of encouraging their exploitation. It is for these reasons that we believe that special statutory protection is warranted in the case of young girls. There will seemingly always be men, young and old, who do not accept

that it is a wrong to have sexual intercourse with young girls. For these men, detection and prosecution may act as a deterrent.<sup>13</sup>

With respect to the maximum sentence for these offences, the Committee considers that a maximum sentence of less than 14 years' imprisonment is an adequate sanction in relation to the section 146(1) offence, and that the current maximum of five years' imprisonment in relation to the section 146(2) offence should be retained. These sentencing maxima would give the sentencing judge the option of imposing a discharge pursuant to section 662.1 of the *Criminal Code*, where the judge "considers it to be in the best interests of the accused and not contrary to the public interest" in all the circumstances of the case.

### **Recommendation 3**

**The Committee recommends that:**

- 1. Section 146(1) of the *Criminal Code* be retained, and that the maximum punishment for this offence be changed to a sentence of less than 14 years' imprisonment.**
- 2. Section 146(2) be retained, but that sections 146(2)(b) and 146(3) of the *Criminal Code* be repealed.**
- 3. Section 140 of the *Criminal Code* be amended to specify the age of 16 years instead of the present age of 14 years.**
- 4. Section 147 of the *Criminal Code*, which states that no male person shall be deemed to commit an offence under section 146 while he is under the age of 14 years, should be repealed. This provision is a legal anachronism and no longer serves any useful purpose. The relevant age should be the general age of criminal responsibility, which is set at 12 in the *Young Offenders Act*.**

## **Incest**

The Committee's extensive survey findings on incest and its study of the genetic risks to the off-spring of incestuous unions are presented in the Report. These findings do not support the contention<sup>14</sup> that the offence of incest should be removed from the *Criminal Code*. That there are considerable genetic risks to the off-spring of incestuous unions is a contributing, though not the principal, reason for retaining this offence.

The Committee's research findings on incest in Canada, particularly in relation to father-daughter incestuous unions, strongly bear out the conclusions of English researchers in this context:

We are satisfied from the evidence that we have examined . . . that incest can have ill-effects of a psychological and social kind on the immediate parties and on other members of the family. This is particularly so in the case of incest between father and dependent daughter, which most people would consider to be an abuse of parental relationship. In particular, children may as a

result of incestuous relationships find their capacity to form normal emotional and social relationships impaired. We do not believe that evidence of such ill-effects is inconsistent with the view that incest tends to occur where the familial relationships are already unsatisfactory, or is vitiated by evidence that some children suffer no apparent harm from an incestuous relationship. If it is granted that incest may result in this kind of harm, the problem is to know how best to prevent or minimize it.<sup>15</sup>

The Committee acknowledges that difficulties may be encountered by the affected family where the father is prosecuted for incest. It should be emphasized, however, that criminal prosecutions for incest constitute only a small proportion of all legal proceedings relating to incest, most of which take place in the context of civil, child welfare proceedings. The criminal law typically is used only as a last resort, and as a decisive means of ending the incestuous relationship and of protecting other family members who may be at risk. The incest offence in the *Criminal Code* plays an important part in the efforts by social agencies to secure the safety and well-being of young incest victims; the repeal of this offence would make their work more difficult. Closer co-operation between the police, the Crown and child welfare authorities will help to ensure that prosecuting a father for incest is genuinely in the best interests of the victimized child and her family. In the Committee's judgment, the question is not whether such an option should be available, but rather, in what circumstances this option should be pursued. This latter question is best left to the informed and collective judgment of child welfare authorities, the police and the Crown, taking into account all the circumstances of the particular case.

With respect to sexual intercourse between adults who are within the prohibited degrees of consanguinity specified in section 150 of the *Criminal Code*, the almost barren judicial record in Canada in this respect indicates that police forces and Crown attorneys are aware of the inappropriateness of bringing prosecutions in all cases of incest between genuinely consenting adults. It should be noted, however, that justified prosecutions for incest involving adult parties have occurred in Canada, and this fact buttresses the argument for retaining the incest offence in its current form. In one prosecution for incest, the complainant was the accused's 33 year-old daughter; the evidence clearly disclosed that the accused father had selfishly used his parental ascendancy over his daughter in order to gratify his sexual urges. The incestuous relationship was ended as a result of police intervention, at the anxious request of the daughter.

The Committee is not prepared to declare, as the *Law Reform Commission of Canada* has suggested,<sup>16</sup> that, "on principle", incest between "consenting" adults "ought no longer to fall within the purview of criminal justice".<sup>17</sup> On the contrary, the Committee's extensive research findings on father-daughter, brother-sister and grandfather-granddaughter incest compel the opposite conclusion. With respect to the elements of the incest offence, the Committee considers that the offence should be restricted, as at present, to acts of sexual intercourse between persons within the prohibited degrees of consanguinity specified in section 150 of the *Criminal Code*. The Committee is also of the

view that the term “incest” should be retained, since by it the nature of the prohibited conduct is generally understood by the community, which is concerned to take effective measures to stop it.<sup>18</sup>

#### **Recommendation 4**

##### **The Committee recommends that:**

- 1. The offence of incest in section 150 of the *Criminal Code* should be retained, with section 150(3) to be amended to provide that section 150 does not apply to any person who has sexual intercourse under restraint, duress or fear of the person with whom he or she has the sexual intercourse.**
- 2. Section 147, which states that no male person shall be deemed to commit an offence under section 150 while he is under the age of 14 years, should be repealed. The relevant age should be the general age of criminal responsibility.**

#### **Age of Sexual Autonomy**

Under current Canadian law, two persons must be 21 or older to be assured that, apart from incest, none of their private consensual sexual conduct constitutes a criminal offence. Buggery (sexual intercourse *per anum* by a male person with a male or a female person) is currently prohibited by section 155 of the *Criminal Code*, and gross indecency (a wide range of homosexual and heterosexual behaviours) with another person is prohibited by section 157. Section 158 provides that the above offences do not apply to any consensual act committed in private between a husband and his wife, or any two persons, each of whom is 21 or older. In light of developments since 1969 when the exception from criminal liability in section 158 was introduced, the Committee considers that 18 would be a more appropriate age of autonomy for these types of conduct. The Committee’s conclusion is supported by two important considerations:

1. The age of 18 is the age of legal majority in most Canadian provinces. The Committee considers this an important factor in determining at what age the criminal law should cease to regulate private, consensual sexual acts between persons. In the view of the Committee, a person who is deemed to be an adult for many important social and legal purposes should be able to engage in private consensual sex with another adult, without fear of incurring a criminal sanction.
2. The Committee’s findings from the National Police Force Survey indicate that, if the age of “full consent” to heterosexual or homosexual behaviour were lowered from 21 to 18, this would not affect police charging practices to any appreciable extent. The Committee found that, where parties to a private, consensual homosexual or heterosexual encounter were 18 or older but not yet 21, the police were very seldom called upon to intervene.

There is considerable medical opinion that sexual orientation is settled by age 16. There is also opinion to the contrary. The Committee is concerned that

legal protection be retained where it may be useful to young persons. The Committee would therefore not reduce the age of sexual autonomy to 16 in the absence of persuasive evidence that such a reduction would pose no risk to developing sexual behaviour.

Should the new act-specific offences against children recommended by the Committee be implemented, it would not be necessary to retain the offence of gross indecency for persons under 18. Nor would it be necessary in the case of persons 18 or older, since the offence of indecent act in section 169 of the *Criminal Code* would apply to indecent behaviours in a public place in the presence of one or more persons, and in any place, with intent thereby to insult or offend any person.

The Committee considers that an act of buggery on a person under 18, even with that person's consent, is a sufficiently serious and distinctive behaviour to warrant a separate section in the *Criminal Code*. However, the Committee would continue the present exception where the act is between a husband and his wife with her consent. The Committee recommends that a sentence of imprisonment for less than 14 years be available in cases of buggery where the act is committed on a person under the age of 14. Where the act is committed on a person who is 14 years of age or more and under 18, the maximum punishment should be imprisonment for five years. Non-consensual buggery, including acts committed by a husband on his wife or between persons 18 years of age or older can be charged as sexual assaults under section 246.1, section 246.2, or section 246.3 of the *Criminal Code*, depending on the circumstances. The present buggery offence in section 155 of the *Criminal Code* would be repealed, and so would section 158 (exception for consensual acts in private between husband and wife or any two persons aged 21 or older).

#### **Recommendation 5**

**The Committee recommends that section 155 of the *Criminal Code* be amended to provide that:**

- 1. Every male person who performs an act of buggery on a female person who is not his wife and who is under the age of 18, or on a male person who is under the age of 18, is guilty of an indictable offence and is liable to:**
  - (i) imprisonment for less than 14 years, if the person on whom the act is committed is under the age of 14, or**
  - (ii) imprisonment for 5 years, if the person on whom the act is committed is 14 years of age or more, and is under the age of 18 years.**
- 2. It is no defence to a charge under this section that the person on whom the act was committed consented to the act, or that the accused believed such person to be 18 years of age or older.**

## Bestiality

The Committee considers that the offence of bestiality (sexual intercourse by a male or female person in any manner with an animal) should be retained in the *Criminal Code*,<sup>19</sup> particularly as such conduct may involve the induced or coerced participation of another person.<sup>20</sup>

In the National Corrections Survey, one in 100 convicted child sexual offenders had involved victims in acts of this kind. Where an act of bestiality occurs in the absence of other aggravating factors, a maximum sentence of six months' imprisonment is an adequate sanction. Where, however, a person is induced or coerced to participate in an act of bestiality, or an act of bestiality involving another person takes place in the presence of a young person, the Committee considers that a maximum sentence of 14 years' imprisonment (which is the current maximum for this offence<sup>21</sup>) should be available.

### Recommendation 6

The Committee recommends that the *Criminal Code* be amended to provide that:

1. Every one who commits bestiality is guilty of an offence punishable on summary conviction.
2. Notwithstanding section (1) above, every one who
  - (i) incites, counsels, procures or compels another person to engage in an act of bestiality, or
  - (ii) engages in an act of bestiality in the presence of, or with the participation of, another person who is under the age of 18 years, is guilty of an indictable offence and is liable to imprisonment for less than 14 years.
3. It is no defence to a charge under this section that the accused believed the person to be 18 years of age or older.

## Genital and Anal Acts Involving Persons Under the Age of 16

Under the criminal law reforms recommended by the Committee:

Children under the age of 14 would receive absolute legal protection against any form of sexual touching by another person. This would result from the Committee's recommendation (discussed later) that section 246.1 of the *Criminal Code* be amended to provide that the consent of a person under 14 will not, under any circumstances, be a defence for an accused charged with a "sexual assault" offence in respect of such young person;

Girls under the age of 16 would receive absolute legal protection against acts of vaginal sexual intercourse with a male person; and

Young persons of both sexes under the age of 18 would receive absolute legal protection against acts of buggery (anal intercourse) committed on them by a male person.

Accordingly, in the absence of special legal provisions, a young person of 14 years of age or older is capable of giving a valid consent to some forms of sexual conduct with another person. In the judgment of the Committee, the most serious forms of genital and anal sex involving a person under the age of 16 years warrant special attention, and should be excluded from the class of sexual conduct to which a young person under 16 is capable of giving a valid legal consent. Most Canadian provinces and territories allow young persons who are age 16 (and even younger) to marry with parental consent. It would therefore be anomalous to make such a prohibition applicable to young persons 16 or older. In certain circumstances, such conduct involving a person 16 or 17 years of age would be caught by the offence of "abuse of a position of trust", an offence the Committee recommends later. On the other hand, where such conduct is clearly non-consensual, it would of course constitute a "sexual assault" under sections 246.1, 246.2 or 246.3 of the *Criminal Code*, depending on the circumstances.

Such an offence would cover such acts as fellatio, cunnilingus and vaginal or anal penetration with a finger or object where they are committed on a young person under the age of 16, and which go beyond normal adolescent "petting". In the Committee's opinion, it would constitute a more effective and easily understood prohibition than the current offence of "gross indecency", which should be repealed. Depending on the circumstances, the Crown could charge either this offence or one of the "sexual assault" offences in sections 246.1, 246.2, and 246.3 of the *Criminal Code*.

#### **Recommendation 7**

**The Committee recommends that the *Criminal Code* be amended to provide that:**

- 1. Every one who, for a sexual purpose, touches a young person in the genital or anal region with any part of his or her body or with any object, is guilty of an indictable offence and is liable to:**
  - (i) imprisonment for less than 14 years, if the complainant is under the age of 14 years; or**
  - (ii) imprisonment for 10 years, if the complainant is 14 years of age or older, and is less than 16 years of age.**
- 2. In this section, "young person" means a person who is under the age of 16 years.**
- 3. It is no defence to a charge under this section that the young person consented to the activity that forms the subject matter of the charge, or that the accused believed that the young person to be 16 years of age or older.**

#### **Invitation Cases**

In Chapter 12, *The Sexual Offences*, it is noted that the legal concept of an "assault" causes difficulty where an accused, for a sexual purpose, invites a child to touch him or her (for example, to masturbate him or her), but neither

touches nor threatens to touch the child in return. In these circumstances, Canadian courts have held that, since there is no assault, the question of indecent or sexual assault does not arise.<sup>22</sup> In the Committee's judgment, offensive sexual conduct of this kind which involves children under the age of 14 years should be specifically prohibited in the *Criminal Code*.<sup>23</sup>

#### **Recommendation 8**

**The Committee recommends that the *Criminal Code* be amended to provide that:**

- 1. Every person who, for a sexual purpose, invites, counsels, incites or causes a child:**
  - (i) to touch any part of such person's body; or**
  - (ii) to touch any part of another person's body;****is guilty of an indictable offence and is liable to imprisonment for 5 years.**
- 2. In this section,**
  - (i) "child" means a person under the age of 14 years;**
  - (ii) "to touch" includes both direct and indirect physical contact.**
- 3. It is no defence to a charge under this section that the accused believed the child to be 14 years of age or older.**

#### **Abuse of Position of Trust**

The Committee's findings from the National Population Survey and the National Police Force Survey indicate that (excluding acts of genital exposure) about 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. Offenders in this group comprised a wide range of persons in a typical child's life: fathers, legal guardians, brothers, uncles, other blood relatives, boarders, baby-sitters, teachers, employers and youth group leaders. The common denominator linking these different classes of offenders was that, by reason of their biological, legal or social relationship to their young victims:

1. Their opportunities for sexually abusing the children "at hand" were greater than ordinary.
2. Correspondingly, their young victims were particularly vulnerable to them.
3. By so acting, these offenders breached the vital position of trust reposed in them due to their special relationship to their young victims.

The criminal law has an important role to play in punishing and, it is hoped, deterring violations of these familial and trust relationships. In the Committee's judgment, this role must be made more explicit in relation both to the sentencing of sexual offenders who abused a position of trust in committing



an offence against a young person, and to the substantive sexual offences in the *Criminal Code*.

*Sentencing Considerations.* Just as the youthful age of a sexual offender should, in general, be regarded as a mitigating factor in sentencing, the violation of a position of familial or social trust in perpetrating a sexual offence against a young person should, in the Committee's judgment, be considered an aggravating factor at the sentencing stage. The principles of specific and general deterrence are particularly relevant to the sentencing of persons who have the greatest opportunities for offending and who selfishly exploit those opportunities. In the context of sexual offences against young persons, these principles have become an accepted part of Canadian sentencing practice.<sup>24</sup> The Committee strongly endorses this development in Canadian sentencing law and the vital social policy it serves to underscore.

*Abuse of Position of Trust.* Implicit in the recommendations put forward is the Committee's belief that normal adolescent "petting" should not be the subject of criminal sanctions. Nor does the Committee consider that, for example, sexual intercourse between a 17 year-old and his 16 year-old girlfriend should be made a criminal offence, in the absence of exploitative or assaultive circumstances.

The situation is quite different, however, where a 40 year-old teacher induces his 17 year-old pupil to engage in sexual intercourse with him, or where a 30 year-old male engages in acts of oral sex with his 16 year-old nephew. In circumstances such as these, the Committee considers that the application of criminal sanctions against such adults is fully warranted. The vital policy served by such an offence is deterrence: the deterrence of those who are in a special position of social trust towards children and who selfishly exploit that position of trust for the purposes of gratifying their own sexual appetites. A classic example of the criminal law's response to abuses of trust is the offence of incest. The incest offence, however, is restricted to persons who are related by blood and applies only where an act of sexual intercourse takes place between specified blood relations (for example, sexual intercourse between a father and his daughter).

The findings presented in this Report reveal that young persons are particularly vulnerable to a wide range of persons in their lives (for example, uncles, teachers, baby-sitters, youth group leaders) and that this vulnerability is not explicitly recognized by the criminal law. In place of the under-inclusive and haphazard provisions directed at step-fathers, foster fathers and male guardians (section 153(1)(a)), employers (section 153(1)(b)) and "owners or masters of vessels" (section 154), the Committee considers that more comprehensive protection must be provided against such abuses of trust, protection more in keeping with the realities of modern social life. We believe that this protection must apply both to a wider range of relationships than has traditionally been recognized and to abuses of trust that involve either sexual intercourse or other forms of sexual touching.

In the judgment of the Committee, only by recognizing and re-affirming the total unacceptability of these abuses of trust can the criminal law provide optimal protection for young persons against those persons to whom they are most vulnerable.

#### **Recommendation 9**

**The Committee recommends that the *Criminal Code* be amended to provide that:**

- 1. Every one who is in a position of trust towards a young person and who commits a sexual touching with, on, or against such young person is guilty of an indictable offence and is liable to imprisonment for 10 years.**
- 2. In this section, “young person” means a person under the age of 18 years.**
- 3. In this section, “a sexual touching” includes both direct and indirect physical contact.**
- 4. It is no defence to a charge under this section that the young person consented to the activity that forms the subject-matter of the charge, or that the accused believed the young person to be 18 years of age or older.**
- 5. Without restricting the generality of the phrase “position of trust”, where the accused, at the time of the offence, stood in any of the following relationships to the young person, he or she shall be conclusively deemed to have been in a position of trust towards such young person:**
  - parent
  - grandparent
  - step-parent
  - uncle, aunt
  - adoptive parent
  - boarder in young person's home
  - foster parent
  - teacher
  - legal guardian
  - baby-sitter
  - common-law partner of child's parent, step-parent, adoptive parent, foster parent, or legal guardian
  - group home worker
  - youth group worker
  - employer

#### **Acts of Genital Exposure**

Given the sheer prevalence of acts of genital exposure against children documented in the national surveys, the Committee considers that this form of offensive behaviour should be classified separately and distinctly in the *Criminal Code*. Acts of exposure constitute the largest single category of all types of sexual offences committed against children and youths. In the National Population Survey, one in five females and one in 11 males reported that they had been victims of acts of exposure, and of sexual offences known to the police,

where girls were victims, about two in five had experienced acts of exposure, while in incidents involving boys, about one in seven had been exposed to by another male.

Where such an act is preceded or accompanied by an assault on another person, the offender might be liable to separate and cumulative criminal charges. Other forms of social nuisance or public indecency would be covered separately by section 169 of the *Criminal Code*.

#### **Recommendation 10**

**The Committee recommends that section 169 of the *Criminal Code* be retained and that the *Criminal Code* be amended to provide that:**

- 1. Every one who, for a sexual purpose, exposes his or her genitals to a young person is guilty of an offence punishable on summary conviction.**
- 2. In this section, "young person" means a person who is or, in the absence of evidence to the contrary, appears to be under the age of 16 years.**

#### **Loitering by Convicted Sexual Offender**

Introduced into Canadian criminal law in 1951, section 175(1)(e) of the *Criminal Code* is a vagrancy offence that was intended to provide a sanction against convicted sexual offenders found loitering or wandering in or near places frequented by children (school ground, playground, public park or bathing area). Due, however, to a drafting error in the most recent re-enactment of this section, the wording in the section does not refer to any sexual offence, and this offence cannot be charged. The Committee believes that the prohibition in section 175(1)(e) should constitute an offence quite separate from any vagrancy offence.

#### **Recommendation 11**

**The Committee recommends that the *Criminal Code* be amended to provide that:**

**Every one who having at any time been convicted of any sexual offence under the *Criminal Code* is found loitering or wandering in or near a school ground, playground, public park, or bathing area is guilty of an offence punishable on summary conviction.**

#### **Consent by Children**

The review of consent in Chapter 12, *The Sexual Offences*, emphasizes the need to amend the *Criminal Code* to include certain general principles relating to consent by children to sexual offences. One is that conduct not involving force, threats or fear of the application of force, fraud or the exercise of authority may nevertheless vitiate the consent of a child under the age of 14

to the commission of any sexual offence. Another is that while provision may be made for a higher age, consent by a child under 14 to the commission of any sexual offence is never a defence to a charge. More particular provisions regarding consent to sexual offences are more appropriate in relation to specific offences and defences. For example, section 140 of the *Criminal Code* provides that consent is not a defence where an accused is charged under section 146 with sexual intercourse with a female under 14, and the Committee has recommended that this protection be extended to include females under the age of 16.

The *Law Reform Commission of Canada's* 1982 Working Paper on criminal law entitled *The General Part: Liability and Defences* states that "the General Part of criminal law provides those general rules and principles relating to the scope and applicability of the detailed criminal laws found in the Special Part", but concludes that "consent has strictly nothing to do with the General Part. On the contrary it finds its context in the Special Part."<sup>25</sup> The examples given above show that consent belongs in both parts: the general principles in the General Part, and the more particular provisions in relation to specific offences and defences in the Special Part. This seems to have been the approach of Sir James Fitzjames Stephen, who included a group of seven consent provisions in his 1877 *Digest of the Criminal Law*<sup>26</sup> [the fourth edition (1887) is one of the sources of our *Criminal Code*], in addition to provisions in relation to specific offences.

The Working Paper's reasons for assigning consent to the Special Part are that non-consent is an element of certain offences such as assault, and that absence of consent, which the prosecution must prove, is not really a defence at all.<sup>27</sup> But the two consent provisions retained from Stephen's *Digest*<sup>28</sup> appeared in Part III of the English *Draft Code* of 1879 (another source of our *Criminal Code*), which "deals with matters of justification and excuse for acts which would otherwise be indictable offences."<sup>29</sup> It is in this less technical sense that defences, including consent, are usually considered.<sup>30</sup> This wider classification included provisions relating to the criminal responsibility of children,<sup>31</sup> and these also appear in the General Part of our *Criminal Code*,<sup>32</sup> together with the consent provisions from the *Draft Code*.<sup>33</sup> The Working Paper would include principles of criminal responsibility regarding children in the General Part of the *Criminal Code*,<sup>34</sup> and it is desirable that the necessary principles relating to consent by children to sexual offences, which are also related to the status of the child, should be included in the same Part.

#### **Recommendation 12**

**The Committee recommends that in order to provide additional protection for children, the General Part of the *Criminal Code* be amended to provide that:**

- 1. Conduct not involving force, threats or fear of the application of force, fraud, or the exercise of authority may nevertheless vitiate the consent of a person under the age of 14 years to the commission of any sexual offence.**

2. While provision may be made for a higher age, consent by a person under 14 to the commission of any sexual offence is never a defence to a charge.

### Amendments Introduced in January, 1983

For the reasons extensively documented in the Report, the Committee considers that a legal defence based on the closeness in age of the accused to the complainant, whether in relation to acts of sexual intercourse or in relation to other sexual behaviours, would remove protection from young persons and may even have the unintended result of encouraging their exploitation.

The Committee is strongly of the view that the existing "closeness in age" defence in section 246.1(2) of the *Criminal Code* should be repealed.

#### Recommendation 13

**The Committee recommends that section 246.1(2) of the *Criminal Code* be repealed, and that the following provision be substituted in its place:**

**Where an accused is charged with an offence under sub-section(1) or section 246.2 or 246.3 in respect of a person under the age of 14 years, it is not a defence that the complainant consented to the activity that forms the subject-matter of the charge.**

### Repeal of Out-dated Provisions

In furtherance of the Committee's objective of promoting a rational framework of sexual offences which is clearly related to the protective ends the criminal law should serve, the Committee recommends the repeal of several existing sexual offences. Some of these have become outmoded (for example, the offences of "gross indecency" and "seduction under promise of marriage"); others have been extensively reformulated by the Committee in order to provide greater protection for young persons (for example, the offences of buggery and bestiality). The Committee remains unconvinced that the offence of "contributing to juvenile delinquency" in section 33 of the *Juvenile Delinquents Act* does not play a useful role in the protection of young persons. However, the Committee does not consider that, in view of its other recommendations, a new offence based on this offence is either necessary or desirable as a means of regulating sexual misconduct by adults with young persons.

In the Committee's opinion, the implementation of its criminal law recommendations will result in a much more reasonable and economical legal framework for dealing with sexual offences against young persons.

#### **Recommendation 14**

The Committee recommends that the following sections of the *Criminal Code* be repealed:

*Sections 141 and 168(2)*

One year limitation period in which to prosecute certain sexual offences. These sections are no longer applicable in light of the Committee's recommendations, and the Committee is opposed to any limitation period on prosecutions for sexual offences against children.

*Section 147*

Provision that no male person under 14 shall be deemed to commit an offence under section 146 or section 150.

*Section 151*

Seduction of female between 16 and 18 years of age.

*Section 152*

Seduction under promise of marriage.

*Section 153*

Illicit sexual intercourse with step-daughter, foster daughter or female ward, or with female employee. These behaviours would be prohibited by the Committee's "abuse of position of trust" offence.

*Section 154*

Seduction of female passenger on board a vessel.

*Section 155*

Buggery or bestiality. This section has been reformulated by the Committee.

*Section 157*

Gross indecency.

*Section 158*

Exception concerning private consensual sexual conduct. This section is no longer necessary in light of the Committee's reformulation of section 155 and recommendation for repeal of section 157.

#### **Sexually Transmitted Diseases**

With respect to the elements specified in the section 253 offence in the *Criminal Code*, it appears on clinical grounds that a considerable proportion of persons having sexually transmitted diseases may in fact be unaware that they are infected. In many instances either information is not volunteered by patients concerning the identities of their partners or, where this information is known, it is not listed in clinical records. According to the communicable disease specialists consulted by the Committee, the major obstacle in identifying sexually transmitted diseases is the reluctance by physicians to report these

cases and, in many instances, the provision of treatment without the benefit of laboratory examination of specimen cultures. These non-reporting practices have become so widespread that the enforcement of section 253 of the *Criminal Code* has effectively ceased.

The evidence available to the Committee concerning sexually transmitted diseases contracted by children and youths indicates the serious nature of the health risks associated with these conditions. However, in light of the entrenched and pervasive social and professional forces which militate against the effective application of this law, the Committee recommends that section 253 be repealed. In its place, we recommend: that provincial health regulations and statutes be sharply strengthened; that more effective surveillance and diagnostic criteria be developed; that extensive research be undertaken to obtain necessary information; and that information about the health risks of these diseases be incorporated in the national programs of public education and health promotion recommended by the Committee.

Present provincial regulations and statutes concerning venereal disease control are inadequate. Two of the diseases currently listed, syphilis and gonorrhoea, are of serious public health significance. Others constituting serious risks to the health of young children and youths are not considered, for instance, non-gonococcal urethritis and genital infections, genital herpes and certain complications of these (e.g., neo-natal herpes).

To establish a more accurate estimate of the actual magnitude of the problems of sexually transmitted diseases in Canada, the Committee recommends that a national program be undertaken to define and validate diagnostic criteria for all sexually transmitted infections, to document their prevalence, particularly among young persons, and to assess which of this group are serious in their implications and therefore should be reported. Once this list is established, the Provincial Colleges of Physicians and Surgeons and their equivalents in each province and professional medical associations should be enlisted to support compliance in reporting of the selected listed conditions.

As a result of the potential long-term complications or disabilities associated with sexually transmitted diseases, it is imperative in the Committee's judgment that more comprehensive and detailed information be obtained with respect to: the knowledge by children and youths about the signs of sexually transmitted diseases; the number of children and youths who report that they have contracted these infections, and the age and sex of their partners; the steps taken to seek and obtain medical attention; and the identification of the long-term harms resulting from these diseases. The information obtained should constitute the basis of a national program of public education and health promotion.

#### **Recommendation 15**

**The Committee recommends that section 253 of the *Criminal Code* be repealed.**

#### Recommendation 16

The Committee recommends, in connection with the repeal of section 253 of the *Criminal Code*, that the Office of the Commissioner, in conjunction with the Department of Justice and the Department of National Health and Welfare in consultation with the provinces and non-governmental agencies appoint an expert interdisciplinary advisory committee having assigned responsibilities:

1. To conduct comprehensive research at a national level to document the known prevalence of sexually transmitted diseases contracted by children and youths and to assess the health risks involved.
2. To develop ways of collecting information in a standard fashion across jurisdictions with regard to the occurrence of sexually transmitted disease, for children and youths under the age of 16 years.
3. To advise on the updating of the group of sexually transmitted disease protocols of standard and expected treatment practice, and separately advise on which of these diseases should be made reportable in relation to cases involving children and youths under the relevant provincial statutes and regulations, and in this regard, the full participation and co-operation of the Provincial Colleges of Physicians and Surgeons, and their equivalents, be sought to take an active role to encourage compliance in reporting.
4. To review the classification of sexually transmitted diseases and to make recommendations in relation to the modernization of the existing categories used in medical and hospital information systems across Canada.
5. To undertake a national survey of the experience and knowledge of children, youths and adults about sexually transmitted diseases and pregnancy, and to make recommendations with respect to the development of programs of public education and health promotion focussing upon the more effective provision of preventive and treatment services.

#### Dangerous Offenders

Part XXI of the *Criminal Code* contains the statutory provisions authorizing the preventive detention, for an indeterminate period, of offenders, whose conduct meets the criteria specified in that part. Central to these provisions relating to dangerous offenders is: that these persons have been shown to have committed a 'serious personal injury offence'. Additional necessary grounds which, when established, permit a court to find the convicted persons to be dangerous offenders include conduct in any sexual matter by which they have shown a failure to control their sexual impulses and a likelihood of their causing injury, pain or other evil to other persons in the future.

The Committee obtained documentation from Correctional Service Canada for all persons in custody or under supervision who had been found to be dangerous and who had committed sexual offences against children and



youths. When this information was obtained, these 62 dangerous child sexual offenders constituted over half (54.4 per cent) of all offenders for Canada designated as being dangerous and three in four (73.8 per cent) of all dangerous sexual offenders.

When the circumstances of the sexual offences committed by dangerous child sexual offenders are compared to those committed by other convicted male child sexual offenders, it was found that the main dimensions of the conduct involved in the offences committed by both groups were remarkably similar. The two groups did not differ substantially with respect to the use of threats or physical force against victims. While there was a trend towards more serious acts having been perpetrated by dangerous child sexual offenders, these differences were relatively small. A sizeable proportion of convicted offenders who were not designated 'dangerous' had committed similar sexual acts against victims. While double the proportion of the victims of dangerous child sexual offenders had been physically injured compared to the victims of other convicted child sexual offenders, four in five victims in the former group were not reported to have been physically harmed. While one in five dangerous offenders had long criminal records, the rate of recidivism for four in five dangerous offenders was similar to the record of other convicted child sexual offenders having previous convictions.

In light of the findings of the National Corrections Survey, there can be no doubt that the application of the legal provisions pertaining to dangerous offenders, in instances where sexual offences against children and youths had been committed, is not made on a consistent and uniform basis. In 1969, the *Ouimet Report* documented that there was an uneven application of the then existing provisions. Despite amendments made to this legislation in recent years, the Committee's findings clearly show that sharp regional disparities still persist in this regard.

Many offenders convicted of having committed serious acts are not designated as 'dangerous' offenders; and of those so classified, many appear to have committed offences which are no graver than those perpetrated by other convicted child sexual offenders.

In the Committee's judgment, the options with respect to these provisions, which are now inequitably applied, are clear in relation to persons convicted of sexual offences against children and youths. Either the provisions should be amended, or new separate legislation should be introduced to provide added protection for children against sexual offences.

#### **Recommendation 17**

##### **The Committee recommends that:**

- 1. The provisions in Part XXI of the *Criminal Code* relating to dangerous offenders convicted of sexual offences against children and youths be amended to:**

- (i) specify the major sexual offences in the definition of “serious personal injury offence”;
  - (ii) specify the conduct by which a sexual offender shows his disregard for others, and in particular, for children; and
  - (iii) indicate clearly that physical or mental harm is not a requirement in the case of child victims of sexual offences.
2. In keeping with the above amendments, which focus on specific conduct and offences, any mention of the prediction of future behaviour be deleted from dangerous offender legislation.
  3. If the above amendments are not enacted, new legislation, separate from the dangerous offender provisions and meeting the proposed requirements, should be enacted to provide added protection for children against sexual offences.

## Principles of Evidence

### Evidence of Children

The Committee is strongly of the view that Canadian children cannot fully enjoy the protection the law seeks to afford them unless they are allowed to speak effectively on their own behalf at legal proceedings arising from allegations of sexual abuse. The Committee recommends that there be no special rules of testimonial competency with respect to children; a young person's testimony should be heard and weighed by the trier of fact in the same manner as the testimony of any other witness in the proceedings. Given the generally private nature of child sexual abuse, the overarching legal principle that all relevant evidence should be admissible in court takes on added significance.

The Committee draws support for its approach to children's testimony from the following grounds.

To make a child's testimonial competency contingent upon or influenced by the child's age fails to take into account the cognitive and developmental differences among children of the same age and, in the Committee's view, is wrong in principle.

The legal tests for the reception of children's evidence either upon oath (sworn) or not upon oath (unsworn) have become very close together in practice, notwithstanding that the corroboration requirements are completely different depending on whether the child gives sworn or unsworn evidence. The Committee considers that the subtle practical distinction between these two tests is too tenuous a basis upon which to attach a legal distinction.

The Committee's research findings indicate that the conventional assumptions about the veracity and powers of recall and articulation of young children are largely unfounded and, in any event, vary significantly among different children, as they do among adults.

Permitting the trier of fact to determine the weight that should be accorded a child's testimony and generally to assess the child's credibility, without "qualifying" the child witness beforehand, is by no means unprecedented in common law jurisdictions.

The approach to children's evidence advocated by the Committee finds additional support in the *Evidence Code* proposed by the *Law Reform Commission of Canada*.

#### **Recommendation 18**

**The Committee recommends that the *Canada Evidence Act*, the *Young Offenders Act* and each provincial and territorial evidence act be amended to provide that:**

- 1. Every child is competent to testify in court and the child's evidence is admissible. The cogency of the child's testimony would be a matter of weight to be determined by the trier of fact, not a matter of admissibility.**
- 2. A child who does not have the verbal capacity to reply to simply framed questions could be precluded from testifying.**
- 3. The court shall instruct the trier of fact on the need for caution in any case in which it considers that an instruction is necessary.**

In the Committee's view, these reforms would help to ensure that Canadian children receive the full benefit of the protection the law seeks to afford them.

#### **Corroboration**

The Committee considers that the current state of the law with respect to the corroboration of an "unsworn" child witness's testimony is unacceptable. This conclusion is based on the following reasons.

The legal tests for the reception of children's evidence either sworn or unsworn have come very close together in practice, notwithstanding that the corroboration requirements are completely different depending on whether the child gives sworn or unsworn evidence. The Committee considers this an arbitrary distinction.

With respect to the unsworn evidence of a child, the wording of section 586 of the *Criminal Code* is different from the wording of section 16(2) of the *Canada Evidence Act* and section 61(2) of the *Young Offenders Act*, in the absence of any indication whether the corroboration required by these provisions differs depending on the legal context in which the issue of corroboration arises. Section 61(2) of the *Young Offenders Act* is similar to section 16(2) of the *Canada Evidence Act*.

The Committee's research findings indicate that the assumptions on which the special requirement of corroboration for young children's evidence are based, are largely unfounded.

#### **Recommendation 19**

##### **The Committee recommends:**

- 1. That there be no statutory requirement for the corroboration of an "unsworn" child's evidence. The implementation of this recommendation would involve the repeal of section 586 of the *Criminal Code*, section 16(2) of the *Canada Evidence Act*, and section 61(2) of the *Young Offenders Act*, and corresponding sections of provincial evidence acts.**
- 2. That the statutory corroboration requirements in sections 195(3) [procuring] and 253(3) [communicating a venereal disease] of the *Criminal Code* be repealed.**
- 3. For greater certainty, that the *Criminal Code* be amended to provide that the "corroboration not required" provision in section 246.4 of the *Criminal Code* applies to all sexual offences, and not only to those offences currently listed in section 246.4.**

These reforms would place the testimony of a child in no better or worse position than that of an adult, which the Committee believes is the correct legal approach in principle. The cogency of a given child's testimony would be a matter of weight to be determined by the trier of fact, not a matter of admissibility or presumed unreliability, as is currently the case. The reforms recommended by the Committee would be consistent with the accused's right to make a full answer and defence to the charges against him or her. The accused retains his or her traditional rights of cross-examination and of address to the jury. Further, the Crown bears the strict onus of proving its case beyond a reasonable doubt.

#### **Complaints by Victims**

Although the Committee agrees with the abrogation of the "recent complaint" doctrine effected in 1983, it should be noted that section 246.5 of the *Criminal Code* states only that the "rules relating to evidence of recent complaint in sexual assault cases are hereby abrogated". On its face, the section would appear to abrogate the recent complaint doctrine only with respect to the "sexual assault" offences in sections 246.1, 246.2 and 246.3 of the *Criminal Code*. At common law, however, the doctrine of recent complaint applied to all sexual offences, whether or not the complainant's consent was in issue. Further, a number of sexual offences against young persons do not require that the child be "assaulted" in the legal sense, for example, incest, gross indecency, and the unlawful sexual intercourse offences. The credibility of a child victim of one of these offences may, accordingly, still be impugned under the recent complaint doctrine if the child does not complain of the incident at what the

court considers to be the first reasonable opportunity. The Committee considers this to be wholly unsatisfactory.

The Committee considers that the remarks the child or young person makes on reporting the incident often constitute the most cogent possible evidence and should not be excluded from the trier of fact's consideration. In the Committee's judgment, this form of evidence should be admissible on the basis of a statutory exception to the hearsay rule.

**Recommendation 20**

**The Committee recommends that section 246.5 of the *Criminal Code* be amended to provide that:**

**The rules relating to evidence of recent complaint are abrogated with respect to *all* sexual offences.**

## Hearsay

Hearsay evidence is dealt with extensively in Bill S-33 and, in general, the Committee considers that the treatment of hearsay evidence in this proposed legislation is adequate. However, there is one form of crucially relevant evidence in the context of child sexual abuse for which these proposals do not explicitly provide. An out-of-court statement made by a young child which indicates that the child may have been sexually abused is inadmissible hearsay unless the circumstances of the statement fall within one of the established exceptions to the hearsay rule. Given the nature of sexual abuse of young children, however, such statements typically will not fall within any of the established or proposed hearsay exceptions. In the Committee's view, neither the exceptions to the hearsay rule at common law, nor the statutory proposals of Bill S-33, offer sufficient opportunities for the out-of-court statements of young children to be admitted in evidence for the purpose of proving that the matters asserted in those statements are true.

The exceptions to the hearsay rule at common law have traditionally been justified on the dual bases of necessity and presumed trustworthiness. That the admission into evidence of a young child's express or implied allegation of sexual abuse is necessary in order to reach a proper and just legal determination can scarcely be doubted. Where the child has made such a statement but is deemed legally incompetent to testify in court, the trier of fact will often be precluded from hearing potentially the most relevant evidence in the case, namely, the content of the child's statement. Alternatively, where the child is competent to testify, several considerations combine to justify, in appropriate cases, the narration of the child's statement by the person who received it. Further, where the child does testify in court, his or her perceived credibility as a witness will be a critical factor in the outcome. Allowing the recipient of the child's statement to testify concerning its content would enable the trier of fact to assess the child's credibility on a more realistic basis.

In the Committee's view, whether a child's previous statements relating to his or her sexual abuse should be admitted in evidence as an exception to the hearsay rule is best approached on a case-by-case basis. An inflexible rule, whether inclusionary or exclusionary, would fail to take into account the wide variability of circumstances from one case to the next and would be wrong in principle.

#### **Recommendation 21**

**The Committee recommends that the *Canada Evidence Act*, each provincial and territorial evidence act, and the *Quebec Code of Civil Procedure* be amended in order to provide that:**

- 1. A previous statement made by a child when under the age of 14 which describes or refers to any sexual act performed with, on, or in the presence of the child by another person.**
- 2. Is admissible to prove the truth of the matters asserted in the statement.**
- 3. Whether or not the child testifies at the proceedings.**
- 4. Provided that the court considers, after a hearing conducted in the absence of the jury, that the time, content and circumstances of the statement afford sufficient indicia of reliability.**
- 5. "Statement" means an oral or a recorded assertion and includes conduct that could reasonably be taken to be intended as an assertion.**

The Committee considers that such a provision would strike an appropriate balance between the dictates of necessity and testimonial trustworthiness.

### **Sexual Conduct of the Complainant with Persons Other Than the Accused**

The Committee considers that the amendments introduced in 1983 provide sufficient safeguards against unjustified inquiries into the complainant's past sexual conduct or sexual reputation, where the accused is charged with a form of "sexual assault". These amendments take into account the need to protect the complainant and preserve the accused's fundamental right of making a full answer and defence to the sexual assault charge against him or her.

These reforms, however, fail to provide any additional protection at all to young persons who are victims of a sexual offence other than a form of sexual assault, for example, incest, gross indecency and sexual intercourse with a female under age 14. In trials concerning the latter offences, the common law assumption that an unchaste young person is more likely to be untruthful will continue to operate. Consequently, insinuations concerning a young complainant's sexual history may still be admissible simply to impeach his or her credibility as a witness. In the Committee's view, this state of affairs is unacceptable.

### **Recommendation 22**

**The Committee recommends that the *Criminal Code* be amended to provide that:**

- 1. Sections 246.6 (1)(a) and 246.6 (1)(b), and the corollary provisions in sections 246.6 (3) through 246.6 (6), apply to *all* sexual offences.**
- 2. Section 246.7 applies to *all* sexual offences.**

These amendments would ensure that the complainant's past sexual conduct would be inadmissible merely to impeach his or her credibility as a witness, and would finally extinguish the dubious common law assumption that there is a direct correspondence between chastity and veracity. Since the Committee also recommends that the concepts of "previously chaste character" and "more to blame" be extinguished from Canadian criminal law, there would be no inconsistency between these recommendations and the Committee's recommendations concerning amendments to the substantive criminal law of sexual offences.

### **Evidence of an Accused's Spouse**

Recent years have witnessed an expansion of the kinds of offences for which the victim spouse will be considered competent to testify against the offending spouse. This development has been broadened to include offences directed, not only against the spouse of the offender, but also against a child of the family. As a consequence of the amendments to section 4 of the *Canada Evidence Act* introduced in 1983, the wife or husband of a person charged with virtually any sexual offence against a young person is a competent and compellable witness for the Crown, and this applies also to other assaultive offences where the offending spouse's victim is under the age of 14.

The rules of evidence relating to spouses in child welfare proceedings are governed by provisions of the various provincial "child welfare" laws, or by provincial evidence acts, or by both. There is uncertainty in a number of jurisdictions about whether a spouse who is compellable at a child welfare proceeding may also be compelled to disclose relevant communications made to him or her by the other spouse during their marriage.

The Committee considers that, in cases of alleged sexual or physical abuse of a young person, the social importance of making available to the court all probative evidence far exceeds that of ostensibly protecting a marital relationship. That the sexual abuse of young persons, by its very nature, is difficult to prove makes it even more crucial that all potentially relevant testimony, whether elicited from the offender's spouse or from an other party, should be accessible to the judicial process. Public policy and children's safety alike require that probative evidence should not be withheld.

### **Recommendation 23**

**The Committee recommends that:**

1. The *Canada Evidence Act* be amended to provide explicitly that, where a spouse is competent and compellable pursuant either to section 4(2) or 4(3.1) of that Act, the privilege of non-disclosure contained in section 4(3) may *not* be claimed by that spouse.
2. Each provincial and territorial evidence act, and the *Quebec Code of Civil Procedure*, be amended to provide explicitly that, where a spouse is otherwise competent and compellable at a child welfare proceeding, such spouse may not claim any privilege of non-disclosure relating to inter-spousal communications.

### **Similar Acts**

The doctrine of similar fact evidence tends to afford protection for sexually abused young persons. It allows the previous sexual behaviour of the accused with the same child or with others to be used to show that the accused may be guilty of the sexual offence charged, while safeguarding the accused against far-fetched inculpatory inferences based on his or her prior behaviour.

In light of these considerations, the Committee recommends that this evidentiary doctrine be retained. Further, the Committee considers that the "similar acts" exception to the character evidence rule should not be codified, and in this respect, agrees with the *Federal/Provincial Task Force on Uniform Rules of Evidence* and with the legislative proposals of Bill S-33.

Evidence of past incidents of child abuse by parents (evidence of "past parenting") has an important role to play in child welfare proceedings, in determining whether a child is in need of protection from a particular person or persons and, if so, the most appropriate legal disposition vis-a-vis the child. The Committee considers that the court should have before it all relevant evidence in making these determinations.

### **Recommendation 24**

**With respect to provincial child welfare legislation, the Committee recommends that a provision similar to section 28(4) of the Ontario *Child Welfare Act* be enacted in each province and territory. Section 28(4) of that Act provides:**

**Notwithstanding any privilege or protection afforded under the *Evidence Act*, before making a decision that has the effect of placing a child in or returning a child to the care or custody of any person other than a society, the court may consider the past conduct of that person towards any child who is or has at any time been in the person's care, and any statement or report**



**whether oral or written, including any transcript, exhibit or finding in a prior proceeding whether civil or criminal that the court considers relevant to such consideration and upon such proof as the court may require, is admissible in evidence.**

## Public Access to Hearings

The Committee acknowledges the vital importance of keeping criminal trials open to public scrutiny. In the Committee's view, the limited exceptions to this principle sanctioned by section 442(1) of the *Criminal Code* and by section 39 of the *Young Offenders Act* are both appropriate on policy grounds and sufficiently narrow to be defensible on constitutional grounds. However, the Committee concludes that, for the sake of greater clarity, these provisions should be amended in order to facilitate obtaining the full and spontaneous account of the child's evidence.

Where, for example, the presence of a public "gallery" in the courtroom would prevent a child or other young witness from giving as clear, full and spontaneous an account of his or her evidence as would be possible if his or her evidence was heard *in camera*, there should be express statutory authority for excluding the public.

The question of public access to child welfare proceedings is grounded in somewhat different considerations. Canadian provinces and territories have taken widely varying positions on this question, in accordance with their differing views about the most workable model for resolving child welfare controversies and the most appropriate set-off between public scrutiny and institutional effectiveness. In light of the Committee's research findings that most children are not considered to be harmed by participating in criminal or child welfare proceedings, whether open or closed, the Committee considers it inadvisable to recommend a single, uniform approach to this issue in the context of child welfare proceedings.

### **Recommendation 25**

**The Committee recommends that the *Criminal Code*, the *Young Offenders Act* and each child welfare act or equivalent contain a provision authorizing a judge to proceed *in camera* where such a course is required in order to obtain a full and candid presentation of a child's testimony. The proper administration of justice requires that the "best evidence" of all parties be accessible to the judicial process.**

In the Committee's view, an emphatic change of attitude towards young sexual victims and young witnesses generally would do much to reduce the anxiety of the courtroom experience for children, for example:

1. The inculcation of a strong presumption on the part of parents, teachers, doctors, police officers, social workers, Crown attorneys and others that a

child's allegation of sexual abuse is true, and that it warrants immediate investigation and follow-up.

2. The employment of police officers and social workers specially trained in the management of cases of child sexual abuse and in child interviewing techniques, and the continued support from such persons throughout the investigative and judicial stages.
3. The training of Crown attorneys in the special social and legal issues of child sexual abuse, and the use of such attorneys in all contemplated child sexual abuse prosecutions.
4. The thorough preparation of child witnesses for the courtroom experience, in a manner appropriate to the child's intellectual and emotional development.
5. Where possible, and consistent with the accused's procedural and constitutional rights, the provision of special court facilities enabling a young child's testimony to be elicited in a more informal legal atmosphere.

These steps, as well as others advocated by the Committee, would materially improve the opportunities for children to speak effectively in their own behalf.

### Publication of Victims' Names

In its review of the policies and practices concerning the publication of the names of children and youths who were victims of sexual offences, the Committee monitored news articles concerning sexual offences published for a year in 34 newspapers across Canada; undertook a review of legal judgments reported by major legal reporting services; and requested the editor of each of these reporting services, and the Chief Justice or Chief Judge of every Canadian court having criminal jurisdiction to provide information concerning its policy in this regard.

Of the 2806 news articles reviewed in 34 newspapers, information was given in 11 reports (0.4 per cent) that tended to identify complainants who were children or youths. The Committee found that the practice of Canadian newspapers with respect to restricting the publication of information which might serve to identify young victims of sexual offences was one of commendable restraint. With few exceptions, the identities of young victims were not reported.

In its review of cases published by legal reporting services and the transcripts of court decisions, the Committee found 189 instances in which the identities of children and youths who had been victims of sexual offences had been disclosed. This number is a conservative estimate. Between 1970 and 1982, there were 111 cases in which young complainants were named, over two-thirds of which involved decisions by provincial Courts of Appeal. With

respect to the likelihood of being named, the young complainants of sexual offences are at greater risk of being identified in published accounts of legal reporting services and the transcripts of court decisions than they are of such disclosures being made in the nation's newspapers.

In the Committee's judgment, this practice which may be harmful to children is an unacceptable invasion of their privacy. It should cease.

Although the commercial reporting of legal decisions involves both the courts and the legal reporting services, the responsibility for ensuring that the identities of victims of sexual offences are not disclosed lies, in the Committee's opinion, primarily with the courts and with their administrative personnel. If appropriate deletions are made "at the source", there is no possibility that sexual victims will subsequently be identified in commercially published legal reports, which are dependent on this source. In the Committee's view, this responsibility of the courts should be given express statutory force by way of immediate amendments to the *Criminal Code*.

The Committee's research findings indicate that the record of provincial family courts, acting under express statutory guidelines in provincial enactments, is exemplary in this regard; it is not unreasonable to assume that Canadian courts of criminal jurisdiction would be equally attentive in the face of a clear directive from Parliament.

#### **Recommendation 26**

**The Committee recommends that the *Criminal Code* be amended to provide that:**

- 1. In relation to any sexual offence contained in Part IV, Part V, or Part VI of the *Criminal Code*, no one shall publish any report in which the Christian name or surname of the child, or in which any information serving to identify the child, is disclosed.**
- 2. "Information serving to identify the child" includes, but is not restricted to:**
  - (i) the name of the offender, where the offender is biologically or legally related to the child, or has the same name as the child;**
  - (ii) the address of the accused or the child;**
  - (iii) the school that the child attends, or the child's place of employment;**
  - (iv) the address or location where the offence is alleged to have been committed; and**
  - (v) the names of any witnesses whose relationship to the child or to the accused might give an indication of the child's identity.**
- 3. The prohibition referred to in point (1) above is automatic, and does *not* require an application by the complainant, the Crown or the accused.**
- 4. The prohibition attaches immediately upon either the laying of an information against the accused, the preferring of an indictment against the accused, or the arrest of the accused, whichever occurs first.**

5. The prohibition is of indefinite duration, and attaches to all stages of the proceedings.
6. The prohibition extends to the print media, the electronic media, published court transcripts and the legal reporting services.
7. Any one who fails to comply with this provision is guilty of an offence punishable on summary conviction.

(Implementation of these recommendations will require consequential amendments to sections 246.6, 261, 442, 457.2, and 467 of the *Criminal Code*, and to sections 38 and 16 of the *Young Offenders Act*).

#### **Recommendation 27**

**The Committee further recommends that each court having criminal jurisdiction in Canada designate an officer whose responsibility it is to ensure that these provisions are complied with, and that each legal reporting service in Canada do likewise.**

In the judgment of the Committee, prompt implementation of these recommendations will help to ensure that children and youths who have been victims of sexual offences are treated by the legal system with the respect and consideration that is due to them.

## **Strengthening the Provision of Services**

The problems and harms experienced by sexually abused children and youths require sensitive and caring attention given by as few persons as possible whose efforts are strongly complemented by other services to ensure that their needs are provided for and that their protection is assured. In relation to providing assistance for these children, the Committee found that there was a broad spectrum with respect to the range, comprehensiveness and quality of the services provided. In each of the main services — police, hospitals and child protection agencies — a number of special programs have been developed which seek to provide a full range of services to meet the needs of young victims. These special programs, however, are the exception. The deficiencies documented in the Committee's research frequently included: inadequate assessment and investigation; omission of referrals that were warranted; and insufficient follow-up in order to assure the long-term safety and well-being of the child.

To redress these deficiencies, the Committee believes that a combination of measures is required, including: publicizing widely the work of special programs; adoption of common minimum standards between services for the assessment, investigation and treatment of sexually abused children; significant changes in provincial child welfare legislation and the current operation of the child abuse registers; development of medical examination protocols; and realignment of medical payment schedules in accordance with the responsibilities involved.

## Special Programs

Special programs for child sexual abuse which provide for comprehensive assessment, investigation and treatment have been developed by a number of police forces, hospitals and child protection services across Canada. However, because most of these programs have been developed in recent years, the Committee found that there was virtually no published documentation for Canada in relation to any of the main services providing care for sexually abused children.

As a means of better informing the public and other professional workers about these special programs, the Committee believes that national conferences should be held at which the experience of the major services would be presented and with the reports being published and widely disseminated.

### **Recommendation 28**

**The Committee recommends that the Office of the Commissioner in conjunction with the Department of Justice, the Department of National Health and Welfare, the provinces and non-governmental agencies convene national conferences pertaining to child sexual abuse with the reports being published and widely disseminated, including:**

- 1. Special Youth Programs of Police Forces.**
- 2. Special Medical and Hospital Programs.**
- 3. Special Child Protection Programs.**
- 4. Special Community and Voluntary Association Programs.**

## Uniform Minimum Procedures for Services Provided

A major deficiency in the provision of services for sexually abused children is the absence of any consistent practice in how services are provided by the public agencies. While regional variation and flexibility may be hallmarks in the provision of social, medical and police services across Canada, their consequences for sexually abused children mean that a child in one province receives very different services and protection than a child in another province. The provision of these services is unco-ordinated; it lacks reasonable uniformity. These children must be better protected and more equitably served.

At a time when resources for all types of public services are limited and becoming scarcer in relation to meeting potentially infinite service needs, no single group can reasonably expect that it will be assigned its full requested quota of funding and personnel. There is a more important issue, namely, that involving the need for more effective co-ordination of efforts between public agencies providing complementary services to sexually abused children. There can be no doubt in relation to these issues — more complete assessments, more complete investigations and more effective continuing follow-up of cases —

that the protection afforded these children must be strengthened and that this must be done promptly by each level of government. There is no agreement and few statements concerning what constitutes the minimum necessary level of assessment and care of sexually abused children.

#### **Recommendation 29**

**The Committee recommends that the Office of the Commissioner in conjunction with the Department of Justice, the Department of National Health and Welfare, Provincial Attorneys-General, Departments of Health and Child Protection Services and non-governmental agencies:**

- 1. Develop minimum standards of services to be provided by each of the main public services (police, medical and child protection services) in relation to the investigation, assessment and care of sexually abused children. These standards, pertaining to each service, should specify, among other considerations, that:**
  - (i) every one must report cases of child sexual abuse to the police and/or to child protection services;**
  - (ii) it be mandatory that all cases of child sexual abuse that constitute sexual offences under the *Criminal Code* be reported to the police;**
  - (iii) an initial assessment is to be made promptly and no later than 24 hours following notification;**
  - (iv) a medical assessment be made of the physical and mental state of all cases of child sexual abuse;**
  - (v) there be clear documentation of services provided and that long-term monitoring be undertaken to assure that the child is at no further risk of being harmed; and**
  - (vi) a procedure be established to review reports of child sexual abuse and ensure that the needs of the children are being adequately met.**
- 2. That legislation be enacted to specify these standards and to assure that they are being met in the assessment and care of these children.**

#### **Medical and Hospital Services**

While the Committee recognizes that matters relating to the provision of health care fall largely under the jurisdiction of the provinces, it believes that a national initiative is required in order to develop procedures and guidelines for the clinical assessment and treatment of sexually abused children. The Committee is also cognizant of the fact that a number of other legislative and advisory bodies have made somewhat comparable recommendations. The recommendations that the Committee proposes are both feasible and warranted.

### Recommendation 30

The Committee recommends that:

1. The Office of the Commissioner, in conjunction with the Department of Justice, the Department of National Health and Welfare, and Provincial Departments of Health and Provincial Departments of the Attorneys-General, establish on a short term basis an interdisciplinary expert advisory committee to develop a standard protocol for the collection of information, examinations to be conducted, findings to be recorded and other necessary procedures.
2. This protocol be made widely available, particularly to those likely to have the first contacts, (such as paediatricians, family practitioners and the staff of emergency departments), that regular in-service instruction be provided in its appropriate use, and that a reimbursement item be developed to compensate for the time required for the completion of the protocol.

The Committee believes that a national initiative along the lines recommended would be one means to strengthen the care and protection of sexually abused children by serving: to alert health professionals to the signs of these problems; to indicate the types of examinations and procedures it may be appropriate to consider and undertake for these children; to provide a basis for the clear specification of how these children may have been harmed and the follow-up required for their assessment and care by medical and social services; and to develop criteria that are both medically and legally specific in the collection and documentation of evidence.

### Provincial Child Welfare Statutes

The Committee obtained extensive findings from its several national surveys in relation to referrals involving child sexual abuse to child protection services. On the basis of these findings, the Committee reaches the inescapable conclusion that the process of referral envisioned by provincial legislators and relied upon by child protection services is operating randomly and inefficiently. It is evident that child protection services are neither extensively turned to directly by sexually assaulted victims nor do they receive referrals on a sizeable proportion of cases known to the police, hospitals or voluntary community agencies and services.

The provincial statutes are of little value in terms of providing any real guidance or practical assistance to officials responsible for child care and protection, or in specifying clearly the basis upon which decisions are to be made whether incidents of child sexual abuse are to be dealt with under the terms of child protection legislation or under the sexual offences in the *Criminal Code*. On the basis of its findings, the Committee concluded that it is the organiza-

tion of child protection services, and not only the specific wording of any particular provincial statute, that affects the provision of assistance to sexually abused children. In this regard, sharply contrasting approaches have evolved in the administration and operation of different child protection services which have markedly different consequences in relation to affording assistance and protection for sexually abused children.

The Committee considered whether the statutory authority under which child protection services function should specify child physical and sexual abusive assessment responsibility in addition to the broad concepts of neglect and protection. As documented in the Report, there can be no doubt that more adequate assessment of cases of child sexual abuse is required.

#### **Recommendation 31**

**The Committee recommends that Provincial Ministers responsible for Child Protection Services:**

- 1. Review provincial child welfare legislation to ensure the specification of assessment procedures to be undertaken on behalf of sexually abused children.**
- 2. Introduce any appropriate amendments to this effect.**
- 3. Develop a standard protocol for the collection of information, assessments to be conducted, findings to be recorded and other necessary procedures (e.g., reporting, referrals, etc.).**
- 4. Make this protocol widely available, particularly to those likely to have first contacts with sexually abused children and that instruction be provided in its appropriate use.**

### **Child Abuse Registers**

Registers, or analogous record-keeping systems, are authorized by the child welfare legislation of eight provinces. On the basis of its research findings concerning the use of child abuse registers, the Committee found that:

- A sizeable proportion of cases of child sexual abuse known to the police, physicians and child protection workers was not reported to child abuse registers.
- Reports to registers had only been made in one in three cases of previous instances of child sexual abuse of cases currently open.
- Proportionately more minor than serious sexual offences were reported.
- Child protection workers had consulted registers in relation to only one in five cases which were open.
- Procedures relating to the exchange of information between provinces were inconsistent and lacked formal structure.
- Several provinces having registers had no formal procedures with respect to the periodic review of cases listed in the files of registers.



In the Committee's view, in relation to the reporting of child sexual abuse, provincial child abuse registers are clearly not being used to the extent or in the manner intended by legislators. The utility of their functions appears also to be severely limited as case catalogues, research aids, or assessment tools.

#### **Recommendation 32**

**The Committee recommends with respect to the procedures and operation of child abuse registers concerning the notification of child sexual abuse in provinces where these reporting systems have been established that:**

- 1. The Annual Conference of Provincial Directors of Child Welfare review the operation of these registers.**
- 2. In each province, the Department of the Attorney General and the Department responsible for Child Protection Services review the legal aspects of procedures concerning the entry of names, notification, expungement and exchange of information between provincial registers.**
- 3. Provincial Child Abuse Registers be discontinued unless their use can be changed to provide an effective means of protection for sexually abused children and youths.**

The use of the registers is characterized by a selective reporting of cases, an infrequent consultation by workers and an absence of effective means of exchanging information between provinces. This system cannot be construed as one that is particularly helpful in affording protection to sexually abused children. What is required is a central source of pooled information for each province rather than the existing inefficient and inaccurate classification systems now in use which serve little useful purpose as means to protect sexually abused children.

In the Committee's judgment, the alternatives are clear: either the registers must become effective means of identifying child sexual abuse, or they must be scrapped in favour of more effective procedures to provide protection for these children. The current operation of the registers is both inefficient and ineffective and does little to assist and protect most children who are sexually abused.

#### **Criminal Injuries Compensation Boards**

In each province and territory (except Prince Edward Island), there is an administrative board whose function is to award compensation to innocent victims of violent crime. In recent years, about one in 22 of the compensation awards made by these boards has been to victims of sexual assaults. These payments are generally small and in some jurisdictions enduring emotional and psychological harms are considered non-compensable.

The Committee believes that the existence and purpose of criminal injuries compensation boards must become generally better known to Canadians

and, specifically in relation to child sexual abuse, that the main helping services must be better informed about the services offered by these boards as a means of providing assistance for young victims and their families.

The Committee's research has clearly documented that the principal risks to sexually abused and assaulted children are the emotional and psychological harms which may be sustained, in some instances, having serious long-term consequences for these young victims. In relation to the enabling legislation concerning criminal injuries compensation boards in each jurisdiction, we believe these provisions should be amended to provide explicitly that the pain and suffering experienced by victims of sexual abuse and assaults be recognized as a basis for awarding compensation and that the federal-provincial cost-sharing arrangements should also be amended with respect to providing funding for compensation of victims of sexual offences in the *Criminal Code*.

#### **Recommendation 33**

**In co-operation with the Department of Justice, the Department of National Health and Welfare and Provincial and Territorial Governments, the Committee recommends that the Office of the Commissioner:**

- 1. In conjunction with Recommendation 2 relating to the undertaking of a national program of public education and health promotion, launch a vigorous campaign to inform citizens of the existence and purpose of Criminal Injuries Compensation Boards. This campaign should involve both the communications media and the police, hospitals, child welfare agencies, and other helping services.**
- 2. Review the funding of criminal injuries compensation programs and, where appropriate, recommend that the federal and provincial levels of support be increased in order to provide a more appropriate level of compensation for victims of sexual offences.**

#### **Recommendation 34**

**In relation to the enabling provincial legislation for criminal injuries compensation boards in each jurisdiction, the Committee recommends that this legislation be amended to provide explicitly for compensation for physical and emotional pain and suffering to the victim, in order to ensure a more appropriate level of compensation for victims of sexual offences.**

## **Information Systems**

Much of the information reviewed by the Committee is based on the experience of sexually abused children known to various public services. In each of these surveys, more detailed information was obtained than that made available in the published statistics of these services. An obstacle inherent in

determining the officially reported occurrence of child sexual abuse in Canada is the absence of sufficiently precise information and reliance upon non-uniform systems of classification. Given even the lowest estimates of the extent of child sexual abuse in Canada, the problem is a matter of grave public concern. Until more reliable and comprehensive information is available on a continuing basis, it will remain a matter of conjecture how many Canadian children who are sexually assaulted are known to and served by public agencies.

The Committee believes that at the level of what is now known about these offences, it is crucial to understand why sexually assaulted children do or do not seek help, the nature of the harms done and the scope and adequacy of the services provided for their care and protection. Without such basic information being available, the public effort is effectively blindfolded concerning the dimensions of these problems and concerning the steps that it may be feasible to take in order to prevent and limit the occurrence of these acts.

#### Official Crime Statistics

The *Uniform Crime Report Statistics* assembled by Statistics Canada from police forces across the country do not give information about the victims of crimes or their ages. The actual counting of criminal acts in these statistics varies for offences involving property and offences against the person; no specific sexual offences are listed with these crimes being grouped under a few broad categories. The omission of information about victims in these statistics precludes the specific identification of those sex offences that specify the elements of these offences in relation to the age, sex and relationships of blood, marriage and positions of authority or trust. Because these fundamental types of information are missing in official crime statistics, this source can only be used as a baseline for documenting broad trends. It cannot be used as a basis to review the operation of existing sexual offences in the *Criminal Code*, or as a means to assess the potential impact of new legislative amendments.

On the basis of the Committee's review, it appears that current practices followed by the *Homicide Statistics Program* in the classification of related incidents and the relationships between victims and suspects may substantially under-report sexual assault child homicides. There is insufficient specification defining precisely what related acts were committed, over what period of time, or by whom relative to persons whom children knew or who were responsible for them. No annually updated and centrally maintained source of information is available for Canada about whether the persons who committed sexually related child homicides were involved after their release in committing further sexual offences against children.

There is no uniform system of *Corrections Statistics* for Canada. Each jurisdiction (federal, provincial and territorial) maintains its own means of assembling and classifying information about victims and offenders. Several provinces do not have central computerized systems permitting an efficient updating of the information available. Except by means of a direct manual

search of the files of convicted offenders, there is no procedure available in Canada whereby an assessment can be made of: the number of convicted child sexual offenders; the sentences they received; their prior criminal records in relation to the ages and sexes of victims; and sexual recidivism against children.

The absence of fundamental information in the Homicide Statistics and Correctional Statistics Programs constitutes a glaring omission about issues that deeply concern Canadians. If such information were annually collected on a systematic basis, it would permit an evaluation of the effectiveness of different sentencing practices, the benefits that may be gained from the various types of treatment provided for prisoners, and the efficacy of the different types of prison settings (minimum to maximum security) in which prisoners are housed.

In its research, the Committee found that vital information about the victims of sexual offences and the offenders committing these crimes is available in the records upon which these statistics are based. However, the collection of this type of information is precluded by the statistical systems that are now in place. In the Committee's opinion, it is mandatory that existing official crime statistics systems be revised to provide basic information about the victims of sexual offences and offenders with the results being published annually.

#### **Recommendation 35**

**The Committee recommends that the Office of the Commissioner in conjunction with federal and provincial departments (including the Department of Justice, Department of National Health and Welfare, Statistics Canada, Department of the Solicitor General, Correctional Service Canada and National Parole Board in co-operation with their provincial and territorial counterparts) and the Canadian Association of Chiefs of Police, establish an interagency body for the purpose of developing:**

- 1. Uniform System of Classification between existing systems of official crime statistics (Uniform Crime Report Statistics, Correctional Statistics, Homicide Statistics Program).**
- 2. Standard Core of Information with respect to sexual offences which as a minimum includes: age and sex of the victims; type of association (as defined by the *Criminal Code*) between victim and offender; injuries sustained by the victim; sexual offences committed as specified by the *Criminal Code* and in relation to specific sexual acts involved; and, the age and sex of the offender and the offender's prior criminal record.**
- 3. National Reporting System with respect to the Standard Core of Information with the results published annually.**
- 4. Biennial Review, in order to update and revise the National Reporting System.**

## Disease Classification System

Having a disease classification system that identifies with reasonable accuracy medically examined cases of suspected and/or confirmed sexual abuse is an essential component of the services required for the protection of victims of these offences. In the absence of such a system, it is not possible to determine the extent of these medically reported conditions and, of greater importance for the well-being of the child, to assess the physical injuries and emotional harms sustained and their long-term impact on the child's health.

The existing classification system for the identification of sexual behavioural and character disorders is inconsistent with respect to the inclusion of some categories, but the exclusion of other major types of sexual behaviour. In this regard, it is an anomaly that while certain types of sexual behaviour and disorders are identified, no specific reference is made to persons committing incest or sexual assaults. Most of the existing categories are loosely defined and do not permit a reasonably uniform and consistent identification of behaviours and disorders. In the Committee's view, most of these categories should be dropped and be replaced by a classification system which is inclusive with respect to the identification of the types of sexual acts for which persons may have a predisposition to commit and with respect to the acts committed. The main deficiency of the existing classification systems is that they do not permit the sufficient or complete identification of persons against whom sexual acts are committed and how they may be injured.

The Committee recognizes that a review of the *International Classification of Diseases* (Ninth Revision) is being undertaken by the World Health Organization. This review is scheduled to be completed before the end of the 1980s. The Committee believes that the Government of Canada should not postpone consideration of the classification scheme until the international review has been completed. There is no assurance that the international review will address the concerns identified by the Committee.

### Recommendation 36

**The Committee recommends that the Office of the Commissioner in consultation with the provinces, the Department of Justice, the Department of National Health and Welfare and Statistics Canada, appoint an expert advisory committee comprised of experts in nosology, paediatrics and the law to:**

- 1. Review the codes of the *International Classification of Diseases* (Ninth Revision) in order to determine how these do or do not permit the identification of diagnoses relating to persons, both children and adults, who have been sexually abused.**
- 2. Develop a revised classification with respect to the identification of physical injuries and emotional harms associated with sexual assault.**

3. Enlarge this system with respect to the identification of the events or persons associated with these assaults (e.g., incest), in relation to:
  - (i) the types of sexual acts committed;
  - (ii) the circumstances or events under which the acts were committed;
  - (iii) the type of association between the person committing the act and the patient; and
  - (iv) review and make recommendations with respect to the identification of sexual abuse within the framework of medical services provided to: hospital outpatients; and patients examined and treated by physicians in private medical practice.

#### **Recommendation 37**

On the basis of the review and recommendations provided by the expert advisory committee, the Committee recommends further that the Office of the Commissioner in co-operation with the Government of Canada should:

1. Implement the recommended revisions with respect to the classification by Statistics Canada of hospital morbidity and death statistics.
2. Consult with the provinces to review means whereby the classification of medical services provided on an ambulatory basis can be revised to identify statistically persons who have been sexually assaulted and injured.
3. Make representation to the international nosological review committee of the World Health Organization with respect to effecting amendments along these lines to be contained in the Tenth Revision of the *International Classification of Diseases*.

### **Classification of Sexually Transmitted Diseases**

The *International Classification of Diseases* (Ninth Revision) identifies diseases numerically and by title, and groups these diseases into a number of broad types of conditions. One of these categories, Infective and Parasitic Diseases, lists those conditions that are generally recognized as being communicable or transmissible, and within this category, the numerical identification is given for sexually transmitted diseases.

A number of different codes may be used with respect to the different manifestations of syphilis and gonorrhoea. From a perspective of prevention, emphasis is warranted on those diseases which can be transmitted between persons. With respect to nongonococcal urethritis, cervicitis and vaginitis, it is now

more feasible than it was a few years ago to make more accurate diagnoses in terms of the agents involved. For certain conditions which are believed to be more prevalent now than in the past (e.g., herpes, chlamydia, vaginitis), a more complete and detailed listing is required for the specific identification of these conditions. In addition, consideration is warranted in relation to the development of a consolidated and distinctive classificatory grouping that brings together all types of sexually transmitted diseases.

The Committee's recommendations concerning the modernization of existing classification systems pertaining to sexually transmitted diseases are given in Recommendation 16.

### Child Protection Services

In its review of the annual reports of provincial child protection services and in undertaking the collection of information in the National Child Protection Survey, the Committee found that the category 'child sexual abuse' was commonly used as an inclusive term which encompassed all forms of sexual offences committed against children and youths. This broad categorization is also used in provinces having central child abuse registers often without further specification in relation to the sexual acts committed.

As the Committee's findings indicate, the sexually abused children served by child protection workers range from those who have been victims of acts of exposure to those who have been raped. The existing classification systems preclude consideration of the gravity of the sexual acts committed, assessment of the harms sustained by victims of different sexual acts, or appraisal of which means of intervention may be more effective relative to the types of harms incurred.

The Committee believes that the more precise identification of the types of child sexual abuse known to child protection services would afford better protection for these children by means of more clearly specifying risks, indicating the scope of the assessments required, and providing a more effective basis upon which to determine the adoption of different intervention strategies.

#### **Recommendation 38**

**The Committee recommends that the Office of the Commissioner in conjunction with the Department of National Health and Welfare, Department of Justice and provincial and territorial child protection services review the classification of sexual offences against children and youths used by child protection services with a view to establishing a common core of information concerning: the age and sex of the victim; the sexual acts committed; the injuries sustained by the vic-**

**tim; the association between victim and offender; the age and sex of the offender; and the disposition of the case, among others.**

## Research

In its review of available Canadian research pertaining to the issues established by its Terms of Reference, the Committee found that most Canadian studies on sexual offences represented the work of single disciplines. This separation has led to distinctive, fragmented and unrelated bodies of research for police work, community associations, child protection services, school programs, medical services, the field of corrections and social science surveys, among others. While such research purports to deal with sexual offences, it is seldom accurately informed about many of the main social, medical and legal issues, even as these pertain to the ages and sexes of victims, the sexual acts committed, the injuries sustained or the types of association between victims and offenders. The manner in which much of this research has been conducted typically does not consider the salient dimensions of the sexual acts committed and, with respect to the sexual offences in the *Criminal Code*, precludes the use of the findings obtained as a basis upon which evaluation is feasible in relation to the operation of these laws, the impact of legislative amendments or of the efficacy of different intervention strategies.

In regard to the need for comprehensive, fact-finding research concerning all aspects of sexual offences committed against young children, youths and adults, the Committee reiterates concerns that have been raised by several earlier federal inquiries. Such research is warranted and is feasible to undertake. In the Committee's judgment, the research that has been undertaken has failed to provide sufficient or adequate documentation with respect to the important issues identified by these earlier inquiries.

The Committee unequivocally adheres to the principle of the right of scholarly and professional researchers to undertake research independent of intrusion by the state and that they should be able to publish findings freely, except with respect to honouring ethical research standards. This principle is not at issue.

In recent years, the Government of Canada has supported research on sexual offences by means of: direct research grants; contracts; block funding of services; federally established advisory bodies; and studies undertaken directly by federal departments. In the Committee's judgment, while the studies conducted by means of public funding may have served other purposes, their results have usually failed to provide a sufficient foundation upon which either to base the reform of the law or to mount the restructuring of needed services. In addition, it is clearly evident that a sizeable body of this research has been funded without benefit of sufficient and independent interdisciplinary review. As a result, the quality of much of the research work completed is wholly inadequate.



### **Recommendation 39**

**With respect to strengthening the research dealing with sexual abuse and sexual offences against children and youths in the *Criminal Code*, the Committee recommends that:**

- 1. The Office of the Commissioner be assigned responsibility to assess and make recommendations concerning research dealing with sexual abuse.**
- 2. The scope of the research to be reviewed by the Office of the Commissioner include all research funded by the Government of Canada by means of: grants; contract; block funding; federal advisory bodies; and federal departments.**
- 3. The Treasury Board be instructed not to approve funding for research dealing with these issues unless the general designs of the studies have been reviewed by the Office of the Commissioner.**

The Committee has made no assessment of the funds assigned in recent years by the Government of Canada in support of research relating to offences in the *Criminal Code*. In light of the studies dealing solely with sexual offences, there is no doubt that this commitment has been substantial. With respect to research pertaining to the operation of the criminal law, the Committee believes that rigorous research review procedures should be adopted in relation to studies pertaining to sexual offences. The Committee believes further that this principle could be effectively applied in other areas of research involving the operation of the criminal law.

In undertaking its research on sexual offences against children and youths, the Committee identified a number of significant issues pertaining to the protection of the child or the management of offenders that warrant priority in the prospective funding of research studies. These issues include: injuries to sexually abused children; harms resulting from contracting sexually transmitted diseases; harms resulting from exposure to pornography; the widespread occurrence of acts of exposure; the treatment of convicted child sexual offenders; and the efficacy of sentence practices in relation to reducing sexual recidivism. The justification for further research in relation to each of these issues is specified in the Report.

### **Recommendation 40**

**The Committee recommends that the Office of the Commissioner in conjunction with the Department of Justice and the Department of National Health and Welfare fund, directly or by other means, national research studies focussing on:**

- 1. Injuries to Sexually Abused Children, focussing on: the efficiency of different clinical programs in providing protection and optimum management for these children; the nature of long-term harms sexually assaulted children experience; and how they can most effectively be prevented, anticipated, detected and treated. The Committee regards this as a pri-**

ority area for research funding. Investigation should be undertaken in conjunction with major hospitals across Canada specializing in providing treatment for sexually abused children.

2. **Sexually Transmitted Diseases Contracted by Children, focussing on: the types of diseases contracted by children and the long-term risks likely to be sustained. This research should be undertaken by the Laboratory Centre for Disease Control, Department of National Health and Welfare in conjunction with provincial sexually transmitted disease control programs.**
3. **Long-term Effects of Exposure to Children of Pornography, focussing on: the immediate and long-term effects of exposure to pornography, including associated sexual assaults, particularly where it does and where it does not have subsequent negative effects and the factors that distinguish these situations.**
4. **Acts of Exposure, focussing on: acts of exposure which constitute the largest single category of sexual offences committed against children and youths. Research on these acts should be undertaken in co-operation with the Canadian Association of Chiefs of Police in which:**
  - (i) **persons reported to have exposed themselves to children and youths would be identified;**
  - (ii) **a monitoring of any subsequently reported offences would be established;**
  - (iii) **an evaluation be undertaken of the outcomes and effectiveness of different management procedures and sentencing practices in relation to reducing recidivism; and**
  - (iv) **the classification of these acts in Uniform Crime Report Statistics be revised in order to permit the accurate identification of these acts on an ongoing basis.**
5. **Treatment of Convicted Child Sexual Offenders, focussing on: the needs and treatment of convicted child sexual offenders. This study should include an assessment of the social, physical and mental health needs of these offenders and of all aspects of the treatment provided for them and the various outcomes. Research on a national basis should be undertaken by the Correctional Service Canada and provincial and territorial correctional services.**
6. **Recidivism of Convicted Child Sexual Offenders, focussing on: the long-term effects of different sentencing decisions and management practices. Research should be undertaken by the Department of Justice in conjunction with Correctional Service Canada and provincial and territorial correctional services.**

## Juvenile Prostitution

The ingrained pattern of exploitation, disease and violence in the daily lives of juvenile prostitutes is unmistakable from the Committee's research findings. These youths are the cast-offs of Canadian society. Many are early

drop-outs from school and have run away from home at an early age. About two in five of these youths had previously been found delinquent before a juvenile court, and while few had been charged or convicted of soliciting, a substantial proportion had been charged with other offences.

The Committee's findings leave no doubt that for many of these youths, their work as prostitutes introduces them to a criminal way of life in which they become progressively more entangled. They also face considerable risks of contracting serious diseases, of being severely physically injured and of being harshly exploited by pimps.

While most of these youths have at one time been in contact with social services or enforcement agencies, except for seeking assistance such as medical care which they deem essential to continuing to their work as prostitutes, few seek out other helping services. The programs which might assist them are largely mistrusted, regarded as useless or are ignored.

While the Committee is under no illusion that merely amending the law is an adequate or realistic response to juvenile prostitution, it does consider that the law has an important role to play in deterring and punishing those who sexually exploit young persons in this manner and in proclaiming the patent unacceptability of "sex for pay" where young persons are concerned.

### Education for Prevention

Education is potentially the most effective tool for stemming the spread of juvenile prostitution. The Committee's findings leave no doubt about the emotional and physical harms, the risks and the privations associated with street life. The findings constitute a clear warning to any youth who is considering either running away or turning to prostitution.

In its Second Recommendation, the Committee calls for a national program of public education and health promotion as an essential means of affording better protection for sexually abused children. We also believe that there is an urgent need for this national program to focus upon the risks — physical, health, emotional and social — involved for youths who become prostitutes. It is essential that both parents or guardians and youths be fully informed about the actual conditions and risks associated with the street life of young prostitutes.

#### **Recommendation 41**

**In conjunction with the national program of public education and health promotion specified in Recommendation 2, the Committee further recommends that special educational programs be developed drawing upon the findings of this Report documenting the conditions and risks associated with juvenile prostitution, and that these special educational programs be made available to parent-teacher associations and to schools, and by means of educational television.**

## Social Service Initiatives

There is no doubt that new and innovative programs directed primarily at those youths who have not yet become fully involved in street life must be developed and that these services must be securely and adequately funded. There are programs which have been tried that can form the basis for the development of services focussing upon the special needs of children and of those youths who are still experimenting with street life and who may still be amenable to assistance of a rehabilitative nature.

It is clear that no attempt to rehabilitate young prostitutes is likely to succeed unless it focusses attention on the need of these youths to alter their attitudes toward themselves and their way of living. Especially tailored helping programs are required having services designed to enhance the self-esteem and self-confidence of young prostitutes by imparting to them job or trade-related skills as well as conventional "life skills". Such programs, if successful, would also make it more financially feasible for these youths to get off the street. Programs having these objectives are vital prerequisites for the kind of action that is required to assist juvenile prostitutes to start a new life, one in which they have a perception of themselves as persons capable of living and working in a manner that is personally fulfilling, socially accepted and free of unacceptable risks to their health and safety.

The Committee's findings indicate that existing social services are ineffective in reaching many of these youths or in affording them adequate protection and assistance. In this respect, there can be no doubt in the Committee's judgment that special programs must be initiated and sufficiently funded to meet their needs. Despite the difficulties involved, the Committee believes that government at all levels has the unmistakable obligation to take positive steps in order to accomplish these objectives.

### **Recommendation 42**

**The Committee recommends that Provincial Child Protection Services develop special programs geared to serve the needs of young prostitutes and to identify the early warning signs of troubled home conditions warranting the provision of special services.**

### **Recommendation 43**

**The Committee recommends that the Office of the Commissioner in conjunction with other branches of the Government of Canada establish support for special multi-disciplinary demonstration programs (child protection, police, education, medical and youth job training services) for five years (renewable) designed to reach and serve the needs of these youths, focussing upon: affording immediate protection; counselling; and education and job training.**

## Strengthening Enforcement Services

In its meetings with senior police officers and on the basis of its research findings, the Committee learned of the difficulties entailed in laying charges against the customers of young prostitutes and the investigation and charging of pimps with whom these young prostitutes may associate. There is no doubt that existing legal provisions do not accord with the realities of juvenile prostitution and that the criminal law must be substantially amended to provide the nation's police forces with the necessary legal means to enable them to control and reduce the sexual exploitation of youths by means of prostitution.

In addition to amending the criminal law, a matter dealt with by the Committee's subsequent recommendations, it is evident that in light of their other enforcement responsibilities, most Canadian police forces have insufficient manpower to assign officers to the lengthy task of assembling the evidence requisite for the laying of charges against pimps. While such investigations are demonstrably feasible, each may entail several months of police investigation.

For these undertakings to be successful, it is essential to have police officers who are especially trained and experienced in regard to these investigations and who are given sufficient time to enable them to undertake adequately these assignments. In addition to the reform of the prostitution-related offences, the Committee believes that enforcement services must be considerably strengthened in order to permit them to succeed in laying charges against clients and pimps who exploit juvenile prostitutes.

### **Recommendation 44**

**The Committee recommends that the Office of the Commissioner in conjunction with the Department of Justice and the Department of the Solicitor General establish with the provinces a special federal-provincial cost-sharing program to provide specific support to municipalities enabling them to establish special police force units, having primary responsibilities for:**

- 1. Investigation and laying of charges against the clients of young prostitutes.**
- 2. Investigation and charging of pimps working with young prostitutes.**

## Soliciting for the Purpose of Prostitution

The amelioration of the tragic plight of juvenile prostitutes lies, in the Committee's opinion, chiefly in the implementation of social rather than legal initiatives. We believe that young prostitutes can be helped by more effective social intervention and by the development of programs aimed at reintegrating them into the mainstream of society. However, such social initiatives are most frequently rendered useless because they are not sought out by these youths and because viable means of intervention are currently lacking.

There are no effective means either in federal or provincial legislation of holding these children and youths. There are no effective means of bringing these children and youths into situations where they can receive guidance. There are no effective means of stopping the demonstrated harms that these children and youths are bringing upon themselves.

For these reasons, the Committee believes that the implementation of criminal sanctions against these children and youths must be made a legal possibility by creating an offence in order that social intervention can take place.

In reaching this conclusion, and reflecting divided opinions in the field, there was strong disagreement by some Members of the Committee that a criminal sanction against juvenile prostitutes was either desirable or likely to be effective, and indeed, a concern that such a prohibition would detract from the primary emphases upon prevention, early identification and early intervention.

In recognizing these important concerns, there is no desire on the part of the Committee to affix a criminal label to any juvenile prostitute. The Committee concluded, however, that in order to bring these children and youths into situations where they can receive guidance and assistance, it is first necessary to hold them and the only effective means of doing this is through the criminal process. Accordingly, the Committee reluctantly concludes that it is necessary to have a specific criminal sanction prohibiting children and youths engaging in prostitution. This sanction is a complementary prohibition to that recommended by the Committee against the customers of juvenile prostitutes. Together, these sanctions would constitute a clear legislative commitment that juvenile prostitution has no place in Canadian society.

#### **Recommendation 45**

**The Committee recommends that the *Criminal Code* be amended to provide that:**

- 1. Every young person who offers, provides, attempts or agrees to offer or provide for money or other consideration to engage in a sexual act with another person is guilty of a summary conviction offence.**
- 2. For the purpose of this section, "young person" means a person who is under 18 years of age.**

The findings from the National Juvenile Prostitution Survey indicate that the current offence of soliciting for the purpose of prostitution in section 195.1 of the *Criminal Code* is not effective either in deterring young prostitutes from working on the streets, or in deterring tricks from seeking out their services. Of the young prostitutes interviewed, only one in 10 had ever been convicted of this offence. The reason is clear: juvenile prostitutes do not find it necessary to be "pressing or persistent" in order to secure clients for their services. Most of

the prostitutes interviewed said that they would only take the risk of actively propositioning prospective clients when they had yet to attain their daily quota.

From the standpoint of criminal policy, the Committee's findings concerning the public nuisance aspect of prostitution (to which section 195.1 of the *Criminal Code* is primarily addressed) are particularly relevant. Slightly less than half of the young prostitutes interviewed stated that, at one time or another, they had approached and propositioned someone who was not seeking the services of a prostitute. Even more significant are the Committee's findings concerning the solicitation by tricks of women who were not prostitutes. Almost two-thirds of the juvenile prostitutes interviewed stated that they had witnessed such an occurrence. The reported reactions of the women thus importuned ranged from insult and disgust, shock and anxiety, to fear, anger and, in a few instances, minor acts of violence. Sometimes the tricks verbally abused these women, persisted in their solicitations, and followed and grabbed at them.

The Committee's findings indicate that the clients of prostitutes pose at least an equal if not a greater public nuisance than do the prostitutes themselves. While many tricks attempt to solicit the services of young prostitutes from within the confines of a motor vehicle, the law, as presently constituted, does not take this fact into account. In light of its research findings, the Committee endorses the legislative proposals of the *Criminal Law Reform Act*, 1984 (Bill C-19) which would make the "soliciting" offence in section 195.1 applicable to tricks as well as to prostitutes and would widen the definition of "public place" to include a motor vehicle located in or on a public place.

In the Committee's judgment, a separate criminal offence is needed to deter persons who seek out and use young prostitutes. As noted earlier, section 195.1 of the *Criminal Code* requires that an accused be "pressing or persistent" in his or her solicitations and that the solicitation occur in a "public place". While these requirements are relevant to the public nuisance aspect of prostitution, they are clearly irrelevant to society's more compelling interest in deterring and punishing the exploitation of young persons by way of prostitution. Furthermore, the substantial harms incurred by young persons who engage in prostitution are independent of whether a prospective customer actively solicits their services in a public or private place. The Committee does not consider that adults who exploit the sexual vulnerability of young persons should be considered any less culpable because they agree to pay for the sexual act with a young person than if they were to threaten or coerce sexually a child or youth without payment.

The tragic consequences of a life of prostitution for young persons are extensively documented in this Report. These serious harms justify the imposition of a criminal sanction against the customers of young prostitutes. Depending on the age of the young person and the nature of the sexual act engaged in, the customer of a young prostitute could also be charged with one of the sexual offences against children in the *Criminal Code*.

#### **Recommendation 46**

**The Committee recommends that the *Criminal Code* be amended to provide for a separate offence in the following terms:**

- 1. Every one who offers, provides, attempts or agrees to offer or provide, money or other consideration to a young person for the purpose of engaging in a sexual act with, against, or upon such young person, is guilty of an indictable offence and is liable to imprisonment for two years.**
- 2. For the purpose of this section, "young person" means a person who is under 18 years of age.**
- 3. It is no defence to a charge under this section that the accused believed the person to be 18 years of age or older.**

#### **Publicizing Clients' Names**

In general, the law does not prohibit the public identification of persons convicted of crime, including those who are convicted of soliciting the services of young prostitutes. On the basis of its review of reports published for one year in 34 newspapers across Canada, the Committee found that in practice while the names of persons convicted of other crimes, such as robbery or theft, were given prominence in the media, this was seldom done in relation to persons convicted of soliciting prostitutes.

In addition to the imposition of criminal sanctions against customers of juvenile prostitutes, the Committee believes that social sanctions must be invoked as a powerful means of deterring persons who sexually exploit young persons by means of prostitution. The information given to the Committee by these youths leaves no doubt that most of their customers would not wish to have their identities known publicly as persons who had used the services of juvenile prostitutes. The prospect of public exposure and humiliation and the resultant loss of reputation, family, friends and even, in some instances, of business, would suffice in many instances to dissuade these persons from availing themselves of the sexual services of young prostitutes.

The Committee believes that the publishing of the names of persons convicted of soliciting young prostitutes would serve as a contributory deterrent to persons inclined to seek the sexual services of juvenile prostitutes.

#### **Recommendation 47**

**The Committee recommends that the Office of the Commissioner in conjunction with the national and provincial associations for the public media mount a program of giving prominent publicity to the names of persons convicted of soliciting juvenile prostitutes who are under age 18.**



## Procuring and Living on the Avails of Prostitution

The role played by pimps in introducing and coercing young females into a life of prostitution, and of locking them into this life by way of drugs, violence, and threats of violence, is clearly documented in the Committee's research. In the Committee's opinion, the parasitic relationship between pimps and the young prostitutes in their employ is an intolerable form of child abuse. It warrants the application of effective legal sanctions against these exploiters of the young. The pimp cultivates and exploits the prostitute's vulnerabilities — her low self-esteem, her loneliness on the street, her need for love and protection. The oppressive social environment in which young prostitutes are compelled to work, and which the pimp actively engenders, robs these young persons of their human dignity and of opportunities for pursuing a more healthful and constructive way of life. In the Committee's view, the response of the criminal law to this egregious exploitation of the young must be certain and severe.

The Committee's research has unearthed a number of social facts about juvenile prostitution which can serve as a basis for strengthening the protection afforded to young persons by the offences of "procuring" and "living on the avails of prostitution" in section 195 of the *Criminal Code*. Although some of the procuring offences in section 195 apply only to the procuring of a person to have illicit sexual intercourse with another person, the Committee's research reveals that the act of sexual intercourse is only one of many sexual acts which young prostitutes are procured to perform. The Committee recommends that section 195 of the *Criminal Code* be amended accordingly.

Further, in light of the Committee's finding that some pimps have only one prostitute working for them (and, in many cases, living with them), the Committee recommends that the presumption in section 195(2) be widened to provide that evidence that a person lives with or is habitually in the company of a prostitute or prostitutes is, in the absence of evidence to the contrary, proof that the person lives on the avails of prostitution. These reforms would materially strengthen the impact of the *Criminal Code* in this context and would better correspond to the modern realities of juvenile prostitution in Canada.

In the Committee's judgment, the limitation period for prosecution in section 195(4) of the *Criminal Code*, and the corroboration requirement in section 195(3) relating to the offences of "procuring", are neither necessary nor appropriate in the modern context of juvenile prostitution. The Committee sees no reason for requiring a prosecution under section 195 to be commenced within one year after the time the offence is alleged to have been committed. Limitation periods for the prosecution of indictable offences are highly exceptional in Canadian criminal law: the importance of society's interest in deterring and punishing this blatant exploitation of young persons argues strongly against any procedural limitation of this kind. In reference to section 195(3), the Committee adheres to its general principle that the credibility of a young victim of sexual abuse should be a matter of weight to be decided by the trier of fact, not a matter of presumed unreliability.

With respect to the sentences that should be available against individuals who procure young persons to engage in sexual acts with another person, or who live on the avails of the prostitution of young persons, the Committee considers that deterrence and denunciation must be the paramount sentencing considerations. The cold-blooded nature of the pimp's conduct, and its often life-destroying implications for the young prostitutes who do his bidding, should entail a mandatory sentence of imprisonment. The Committee can conceive of no factors which could possibly mitigate the severity of this form of exploitation of the young.

The conduct of the pimp towards young prostitutes is premeditated, persistent and often brutal; the consequences of this relationship for young prostitutes are invariably oppressive and dehumanizing. Parliament has seen fit to prescribe severe sanctions against persons convicted of grave sexual offences. In the Committee's judgment, it can scarcely be argued that the procurers of young prostitutes pose any less of a threat to the well-being of Canadian society or that the importance of deterring and denouncing the sexual procurement of young persons is any less compelling. The Committee therefore recommends that a sentence of 14 years' imprisonment, with a minimum mandatory sentence of two years' imprisonment, be prescribed for persons convicted of procuring or of living on the avails of the prostitution of a person who is under 18 years of age.

#### **Recommendation 48**

##### **The Committee recommends:**

1. That the phrase "illicit sexual intercourse" in section 195(1)(a), section 195(1)(b), and section 195(1)(i) of the *Criminal Code* be amended to read, "illicit sexual intercourse or any other sexual act".
2. That the phrase "habitually in the company of prostitutes" in section 195(2) of the *Criminal Code* be amended to read, "habitually in the company of a prostitute or prostitutes".
3. That section 195(3) of the *Criminal Code* be repealed.
4. That section 195(4) of the *Criminal Code* be repealed.
5. That section 195(1) of the *Criminal Code* be amended to provide for a sentence of 14 years' imprisonment, with a minimum mandatory sentence of two years' imprisonment, for an accused who is convicted of procuring or of living on the avails of the prostitution of a person who is under 18 years of age.

## **Reform of the Law Relating to Child Pornography and Access by Children to Pornographic Materials**

The Committee's Terms of Reference ask it to determine the incidence and prevalence of sexual exploitation of children by way of pornography and to examine the question of access by children to pornographic materials. As with

several other matters within the Committee's mandate, the legal regulation of these two areas has both federal and provincial aspects. The making, distribution, sale and importation of child pornography are matters which fall primarily within the legislative competence of Parliament. The question of access by children to pornographic materials is a matter which, to date, has been regulated through the operation of a small number of municipal by-laws authorized at the provincial level.

The federal *Criminal Code* does not contain a specific offence relating to making, distribution or sale of child pornography. This behaviour is, however, indirectly proscribed by the various sexual offences in the *Criminal Code* and by the *Criminal Code* provisions relating to obscene publications. The *Customs Tariff* prohibits the importation into Canada of books or visual representations of an "immoral or indecent" character and the *Customs Act* authorizes the seizure and forfeiture of any such materials that are unlawfully imported. These statutory powers are supplemented by provisions in the *Canada Post Corporation Act* pertaining to the use of the mails. In the area of electronic broadcasting, the Canadian Radio-television and Telecommunications Commission (C.R.T.C.) has been invested by Parliament with plenary regulatory authority over radio, television, cable television and pay television, and this includes the authority to establish limits on the kinds of sexually explicit representations that may legitimately be broadcast.

The provinces and territories have a complementary regulatory role in this context. The use of a child by his or her parent or guardian in the making of a pornographic depiction would almost certainly render the child "in need of protection" under the child welfare laws of each province and territory. With respect to the access by children and youths to pornographic materials, the provinces may regulate, by way of classification and other means, the public exhibition of films. A small number of municipalities have also enacted by-laws regulating the accessibility to children of pornographic materials in retail outlets, under provincial enabling legislation.

### The Making, Distribution, Sale and Importation of Child Pornography

Child pornography is a direct and palpable product of child sexual abuse. It comes into existence, and can only come into existence, through the base and coldly premeditated exploitation of a young person's sexual vulnerability. The justification for stringent legal regulation of child pornography is the state's transcendent interest in protecting and fostering the well-being of its children and in punishing and deterring criminal conduct which is inimical to their well-being.

In the Committee's judgment, the need for explicit and severe legal sanctions against persons involved in the making, distribution, sale or importation of child pornography is compelling for several reasons.

First, child pornography is produced directly through the sexual abuse of young persons. It is a manifestation of that abuse which is sufficiently distinct and unacceptable to warrant separate treatment by the criminal law.

Second, child pornography constitutes a permanent record of a child's sexual exploitation and the harm and humiliation to the child are exacerbated by the circulation, distribution or sale of such materials.

Third, materials which depict children engaged in sexual conduct are often solicited by adults who use the materials to persuade other children to engage in similar conduct or who are themselves child molesters. The Committee's findings in this regard bear out this fact. In particular, these findings buttress the argument for enacting express legal sanctions against the importation and possession of child pornography.

Fourth, the distribution network for child pornography must be shut down if the production of such materials, which itself requires the sexual exploitation of children, is to be effectively controlled. Legal sanctions directed at each link of the chain of distribution would help to curtail conduct which compounds the original crime of making child pornography and which exacerbates the harm and humiliation experienced by the young participants.

Fifth, the importation, circulation, distribution or sale of child pornography provides economic and other motives for the continued production of such materials and, in effect, guarantees additional child sexual abuse to that end. In the Committee's judgment, the only effective way to curtail the production of child pornography, and to eradicate it from the Canadian market entirely, is to attach criminal consequences to the conduct of each participant in the process, from the importer or maker of child pornography to the ultimate consumer of child pornography, and to all intermediate parties who are culpable.

Sixth, the existing *Criminal Code* framework relating to obscene publications is inadequate to deal with the special circumstances attending the making and distribution of child pornography. The general definition of obscenity does not reflect the state's particular and more compelling interest in prosecuting and punishing those who promote the sexual abuse of children in this manner. The definition of "obscene publication" in section 159(8) of the *Criminal Code* pertains to the overall content of the publication, rather than to the circumstances of its production. *In reference to child pornography, it is the circumstances of its production, namely, the sexual exploitation of young persons, which is a fundamental basis for proscription.* The availability of child pornography also constitutes a message to the consumers of this matter that children are available for these purposes. Where a young person has been used in the making of pornographic visual material, it is of course irrelevant whether some view the material as having literary, artistic or aesthetic value. Plainly, the offences relating to obscene publications are based on different policy considerations than those which operate in the context of child pornography.

The Committee had no difficulty in agreeing that legal sanctions at each link from production through importation, distribution and sale were required to increase the protection to children exploited in the preparation and depictions of pornographic activities. There was sharp disagreement, however, over whether this should extend to simple possession of such material.

Those Members who favoured this, argued it was the logical extension of the chain of legal sanctions. Those Members who opposed it reflected a major concern about intrusion into the privacy of the home, regressive moves towards more control of personal choice and life-style and an extension of censorship principles. The Committee's review of these issues reflects the divided opinions held by various groups in Canadian society.

The Committee's recommendations concerning child pornography are restricted to *visual* pornographic depictions of persons under the age of 18. Pedophilic literature and visual pornographic depictions involving persons 18 or older would be subject to the general obscenity provisions in sections 159 and 160 of the *Criminal Code*. In the Committee's judgment, a special child pornography prohibition attacks, not the legitimate expression of ideas, but rather a form of criminal conduct that is clearly inimical to the well-being of young children and youths.

#### **Recommendation 49**

**1. The Committee recommends that the *Criminal Code* be amended to include the following provisions:**

**(i) Every one who:**

**(a) uses, or who induces, incites, coerces, or agrees to use a person under 18 years of age to participate in any explicit sexual conduct for the purpose of producing, by any means, a visual representation of such conduct;**

**(b) participates in the production of a visual representation of a person under 18 years of age participating in explicit sexual conduct;**

**(c) makes, prints, reproduces, publishes, distributes, circulates, or has in his or her possession for the purposes of publication, distribution, or circulation a visual representation of a person under 18 years of age participating in explicit sexual conduct; or**

**(d) sells, offers to sell, receives for sale, advertises, exposes to public view, or has in his or her possession for the purpose of sale a visual representation of a person under 18 years of age participating in explicit sexual conduct.**

**is guilty of an indictable offence and is liable to imprisonment for 10 years.**

**(ii) Every one who knowingly, without lawful justification or excuse, has in his or her possession a visual representation of a person under 18**

years of age participating in explicit sexual conduct, is guilty of an indictable offence punishable on summary conviction.

(iii) For the purpose of sections (i) and (ii) above,

(a) a person who at any material time appears to be under 18 years of age shall, in the absence of evidence to the contrary, be deemed to be under 18 years of age;

(b) "explicit sexual conduct" includes any conduct in which vaginal, oral or anal intercourse, bestiality, masturbation, sado-masochistic behaviour, lewd touching of the breasts or the genital parts of the body, or the lewd exhibition of the genitals occurs or is depicted;

(c) "visual representation" includes any representation that can be seen by any means, whether or not it involves the use of any special apparatus.

(iv) In any proceeding under this Part, where a court is satisfied that a matter or thing is a visual representation referred to in section (i) or (ii), the court shall order the matter or thing and any copies thereof to be forfeited to Her Majesty in right of the province in which the proceedings take place, for disposal as the Attorney General may direct.

2. The Committee recommends that the relevant definitional, seizure and forfeiture provisions in the *Customs Tariff, Customs Act*, and *Canada Post Corporation Act* be amended to conform with the *Criminal Code* prohibitions against visual representations of explicit sexual conduct involving persons under 18 years of age.
3. The Committee recommends that the *Broadcasting Act*, and regulations made thereunder, be amended to conform with the *Criminal Code* prohibitions against visual representations of explicit sexual conduct involving persons under 18 years of age.
4. The Committee recommends that the provincial Departments of the Attorney General, in conjunction with the federal Department of Justice, develop criteria for film and video classification which conform with the *Criminal Code* prohibitions against visual representations of explicit sexual conduct involving persons under 18 years of age.

### Strengthening Federal Enforcement Services

In addition to amendments to the law, it is evident from the Committee's research that there is also a need to restructure and strengthen the capacity of federal enforcement services to detect and seize the child pornography that is brought illegally into Canada. A central computerized information system has

been established by Revenue Canada Customs and Excise Headquarters for the purpose of storing information on seizures of pornographic and obscene matter. The Committee found that information concerning only about two in five seizures made at customs' entry points had been reported to this central registry. In order to obtain information with respect to seizures that are not entered on the central registry, it would be necessary to undertake a direct manual search of the seized records retained at the Regional Offices of Revenue Canada.

Since the central computerized system does not provide documentation of all seizures, it fails to serve effectively as a means of identifying persons who may be habitual smugglers of child pornography. This failure is significant: the Committee's findings indicate that persons who sexually molest children are also likely to purchase and possess child pornography and to seek to involve children and youths in the making of visual representations of explicit sexual conduct.

#### **Recommendation 50**

**The Committee recommends that, in conjunction with the Office of the Commissioner, the federal Department of Justice in consultation with Revenue Canada and the Department of the Solicitor General review the operation of the central registry of Customs seizures with a view to assuring its efficient operation as a means of identifying the importers of child pornography.**

On the basis of information assembled by the Committee, it is evident that customer mailing lists of distributors of child pornography which are routinely seized by foreign enforcement agencies is an even more effective method of identifying persons who illegally import child pornography. Seized mailing lists instantly identify the persons whose use of the postal system may warrant official scrutiny.

The Committee recognizes that prudence and discretion must be exercised by law enforcement officers before they undertake to search a citizen's home or place of business. Legal safeguards have been enacted in federal statutes and in the *Canadian Charter of Rights and Freedoms* to prevent abuse of the authority of the police to conduct searches and seizures. In the Committee's judgment, however, an active search and seizure policy is warranted where it will serve to identify the consumers of illegally imported child pornography.

Where foreign police agencies provide the R.C.M.P. with subscriber mailing lists involving child pornography, the circumstances exist to justify thorough investigations, including searches and seizures. Were the R.C.M.P. to make it known publicly that it was actively seeking the co-operation of foreign enforcement agencies in obtaining mailing lists, and that it intended to conduct a rigorous investigation of any suspected case of unlawful postal importation of child pornography so discovered, it is likely that the prospect of being dis-

covered, of having one's residence searched and of facing prosecution and conviction would dissuade a significant number of persons from soliciting child pornography through the mail.

#### **Recommendation 51**

**The Committee recommends that the federal Department of Justice in conjunction with the Department of the Solicitor General, Revenue Canada and the Office of the Commissioner:**

- 1. Announce publicly, including notices posted at entry points and a statement contained in Customs Declaration Forms, that the R.C.M.P. is actively seeking the co-operation of foreign enforcement agencies to obtain information concerning the producers and distributors of child pornography, and that the R.C.M.P. intends to conduct a rigorous investigation of any suspected case of unlawful importation of child pornography.**
- 2. Instruct the R.C.M.P. to seek out, where possible, the mailing lists of all major commercial producers and distributors of child pornography, and to undertake thorough investigations on the basis of the information so provided.**

### **Access by Children to Pornographic Materials**

The Committee's research indicates that the distribution and sale of pornography is a thriving and growing enterprise; moreover, it is an enterprise supported by large numbers of Canadians. Hundreds of thousands of Canadians have viewed or purchased pornographic materials. There is no evidence that this trend will abate. On the contrary, the Committee's research findings strongly suggest that the consumption and sale of these materials will increase in the future. But despite the widespread purchase of pornography, there is also an urgent public concern about the open display of these materials and about their ready accessibility to young persons. From its National Population Survey, the Committee found that there is considerable agreement in Canada that an age limit should be established in relation to the purchase of pornography and that pornographic materials should not be displayed in a manner which makes them accessible to children.

In reference to the operation of municipal by-laws designed to regulate the sale and accessibility of pornography to children, the Committee found that relatively few municipalities had enacted by-laws of this kind. Further, some of these by-laws have been held to be legally invalid due to their lack of specificity in identifying the kinds of pornography sought to be regulated.

In the Committee's judgment, effective regulation of the access by children to pornographic materials can be achieved only through legislation which is national in scope, enacted under Parliament's constitutional authority to enact laws in relation to criminal law,<sup>35</sup> and for the "peace, order, and good



government of Canada.”<sup>36</sup> Federal statutes regulating the sale of tobacco products to minors<sup>37</sup> and the sale of products hazardous to children (for example, chemically-based products which may be used for “glue-sniffing”)<sup>38</sup> have been upheld as valid exercises of the federal criminal law power, as have the provisions of the *Juvenile Delinquents Act*.<sup>39</sup>

In the Committee’s judgment, the documented national dimensions of the problem of access by children to pornographic materials necessitate the enactment of a federal prohibition “to deal with a genuinely new problem which did not exist at the time of Confederation and clearly cannot be put in the [provincial legislative] class of ‘Matters of a merely local or private nature’”<sup>40</sup>. In light of the strong concerns expressed by Canadians about the ready access by children to pornographic materials, the Committee considers that provisions should be enacted to prohibit the accessibility and sale of pornography to young persons.

#### **Recommendation 52**

**The Committee recommends that the *Criminal Code* be amended to prohibit the accessibility and sale of visual pornographic materials to young persons under 16 years of age. The amendments should incorporate the following elements:**

- 1. A detailed specification of the range of visual pornographic materials sought to be prohibited, in terms both of content and visual medium. Magazines, video-cassettes and “sex aids” should be expressly included.**
- 2. Visual pornographic materials which are offered for sale in commercial outlets must be covered and sealed.**
- 3. No person shall knowingly sell, display or offer to sell such visual pornographic materials to anyone under 16 years of age.**

**For the purpose of sections (1), (2) and (3) above, “visual pornographic materials” includes any materials in which vaginal, oral or anal intercourse, bestiality, masturbation, sado-masochistic behaviour, lewd touching of the breasts or the genital parts of the body, or the lewd exhibition of the genitals is depicted.**

- 4. Every one who contravenes these provisions is guilty of an offence punishable on summary conviction.**

## References

### Chapter 3: Recommendations

- <sup>1</sup> Canada. *Report of the Royal Commission to Investigate the Penal System of Canada*. Ottawa: King's Printer, 1938.
- <sup>2</sup> Canada. Department of Justice. *Report of a Committee Appointed to Inquire into the Principles and Procedures followed in the Remission Service of the Department of Justice of Canada*. Ottawa: Queen's Printer, 1956.
- <sup>3</sup> Canada. *Report of the Royal Commission on the Criminal Law Relating to Criminal Sexual Psychopaths*, Ottawa: Queen's Printer, 1958.
- <sup>4</sup> Canada. Department of the Solicitor General. *Report of the Canadian Committee on Corrections*. Ottawa: Queen's Printer, 1969.
- <sup>5</sup> Law Reform Commission of Canada, *Report on Sexual Offences* (Ottawa: Supply and Services Canada, 1978) at 7.
- <sup>6</sup> See Packer, *Criminal Code Revision* (1973), 23 U.T.L.J. 1; and Hogan, "On Modernising the Law of Sexual Offences" in Glazebrook, ed., *Reshaping the Criminal Law* (London: Stevens and Sons, 1978) at 174. For a more general perspective, see Packer, *The Limits of The Criminal Sanction* (Stanford: Stanford University Press, 1968) at 261-69 and 296-331.
- <sup>7</sup> Cf. Wechsler, *Revision and Codification of Penal Law in The United States* (1983), 7 Dalhousie L.J. 219; and Hall, "The Three Fundamental Aspects of Criminal Law" in Mueller, ed., *Essays in Criminal Science* (London: Sweet and Maxwell, 1961) at 159.
- <sup>8</sup> Canada. Department of Justice. *Sentencing Practices and Trends in Canada*. Ottawa, 1983. Volume 1, pp. 57-58.
- <sup>9</sup> *Cr. Code*, s. 146 (1). Section 140 of the *Code* provides that, "where an accused is charged with an offence under section 146 in respect of a person under the age of fourteen years, the fact that the person consented to the commission of the offence is not a defence to the charge.
- <sup>10</sup> *Cr. Code*, ss. 146(2) and 146(3).
- <sup>11</sup> See Law Reform Commission of Canada, *Working Paper 22: Sexual Offences* (Ottawa: Supply and Services Canada, 1978) at 26-27.
- <sup>12</sup> Policy Advisory Committee on Sexual Offences, *Report on the Age of Consent in relation to Sexual Offences* (London: H.M.S.O., 1981) at 9.
- <sup>13</sup> *Ibid.*, at 5. For the English experience concerning sexual offences involving young persons who are close in age, see generally Walmsley and White, *Sexual Offences, Consent and Sentencing, Home Office Research Study No. 54* (London: H.M.S.O., 1979).
- <sup>14</sup> The Law Reform Commission of Canada has recommended that the incest offence be abolished: *Report on Sexual Offences*, *supra*, note 5 at 25-29; and *Working Paper 22: Sexual Offences*, *supra*, note 11 at 30-34.
- <sup>15</sup> Criminal Law Revision Committee, *Working Paper on Sexual Offences* (London: H.M.S.O., 1980) at 42. The Scottish Law Commission has also advocated the retention of incest as a specific offence with no minimum age: *Memorandum No. 44, The Law of Incest in Scotland*, paragraphs 6.7-6.11.
- <sup>16</sup> The Law Reform Commission of Canada has recommended that the incest offence be abolished: *Report on Sexual Offences*, *supra*, note 5 at 25-29; and *Working Paper 22: Sexual Offences*, *supra*, note 11 at 30-34.
- <sup>17</sup> Law Reform Commission of Canada, *Report on Sexual Offences*, *supra*, note 5 at 26.
- <sup>18</sup> Cf. Criminal Law Revision Committee, *supra*, note 15 at 46.

- <sup>19</sup> The Committee disagrees with the conclusions of the Law Reform Commission of Canada in this respect: see the Commission's *Report on Sexual Offences*, *supra*, note 5 at 30; and its *Working Paper 22: Sexual Offences*, *supra*, note 11 at 34-36.
- <sup>20</sup> For example, in *R. v. Bourne* (1952), 36 Cr. App. R. 125 (C.C.A.), the accused compelled his wife to have sexual connection with a dog.
- <sup>21</sup> *Cr. Code*, s. 155.
- <sup>22</sup> See *R. v. Baney*, [1972] 2 O.R. 34 (C.A.); and *R. v. MacCallum*, [1970] 2 C.C.C. 366 (P.E.I.S.C.). This holding with respect to the former offences of "indecent assault" would also apply, by parity of reasoning, to the "sexual assault" offences in sections 246.1, 246.2, and 246.3 of the *Cr. Code*.
- <sup>23</sup> The Committee's proposal is in similar terms to s. 1(1) of the English *Indecency With Children Act 1960*, 8 and 9 Eliz. 2, c. 33, which was enacted in order to remedy a similar problem in the English criminal law of sexual offences.
- <sup>24</sup> See Nadin-Davis, *Making a Silk Purse? Sentencing: The "New" Sexual Offences* (1983), 32 C.R. (3d) 28, especially at 43.
- <sup>25</sup> Law Reform Commission of Canada, *The General Part: Liability and Defences. Working Paper 29* (Ottawa: Supply and Services Canada, 1982). Appendix A: "Consent", at 137.
- <sup>26</sup> Stephen, *A Digest of the Criminal Law (Crimes and Punishments)* (London: Macmillan, 1877). The provisions were articles 203-209. One of these provisions, article 205, dealt with the situation where a person is incapable of giving consent, in this case consent to a surgical operation. Unfortunately, the Royal Commission on the 1879 English *Draft Code* (see note 29, *infra*), of which Stephen was a member, deleted the reference to consent, so that what had been article 205 subsequently appeared in the *Draft Code* and in our *Criminal Code* without any mention of consent (see *infra*, notes 28 and 33). As a result of this deletion and the decision not to include article 204 of the *Digest* (which provided that every one has a right to consent to a surgical operation) in the *Draft Code*, the application of the *Criminal Code* section has until recently been misunderstood. For the history and interpretation of the section, see Starkman, *A Defence to Criminal Responsibility for Performing Surgical Operations: Section 45 of the Criminal Code* (1981) 26 McGill Law Journal 1048, and the same author's *Sterilization of the Mentally Retarded Adult: the Eve Case* (1981) 26 McGill Law Journal 931, at 935-937.
- <sup>27</sup> *Supra*, note 25 at 137: "[I]t is not something which the defendant has to prove". See also Glanville Williams, *Criminal Law: The General Part* (2nd ed. London: Stevens, 1961) at 909-910 where, however, the author is discussing the meaning of "defence" in the context of the burden of proof.
- <sup>28</sup> Article 205 (surgical operation on person incapable of giving consent: *Draft Code*, section 67), and article 207 (no right to consent to have death inflicted upon oneself: *Draft Code*, section 69). Stephen, *supra*, note 26, 4<sup>th</sup> ed. (1887) at 148, note 2, and 149, note 1 states that the two consent provisions from the *Digest* were included in the *Draft Code*.
- <sup>29</sup> *Report of the Royal Commission Appointed to Consider the Law Relating to Indictable Offences: With an Appendix Containing a Draft Code embodying the Suggestions of the Commissioners* (London: Eyre and Spottiswoode, 1879) at 17.
- <sup>30</sup> See, for example, the discussion of consent in the Law Reform Commission of Canada's Working Paper 26 on *Medical Treatment and Criminal Law* (Ottawa: Supply and Services Canada, 1980). Chapter 23 of Professor Glanville Williams' *Textbook of Criminal Law* (London: Stevens, 1978) "is chiefly concerned with consent to what would otherwise be an offence against the person" (at 504, note 1). The chapter provides a valuable discussion of the general principles relating to consent, including consent by children.
- <sup>31</sup> *Draft Code*, sections 20 and 21.
- <sup>32</sup> *Criminal Code*, sections 12 and 13.
- <sup>33</sup> *Criminal Code*, section 14 (consent to have death inflicted upon oneself), section 45 (surgical operation on person incapable of giving consent). For the history and interpretation of section 45, see Starkman, *supra*, note 26. The Law Reform Commission of Canada, *supra*, note 25, considered that section 14, which provides that no person is entitled to consent to have death inflicted upon him "is strictly surplusage" because "consent is quite irrelevant to homicide offences" (at 137). In the *Digest*, the principle in section 14 was part of a group of seven consent provisions in which the author explained the extent to which consent affects the criminality of certain acts. Homicide was dealt with elsewhere in the *Digest*. Explanation by way of principles

makes the criminal law more accessible. Professor Glanville Williams explains the effect of consent as well as the crime: “[K]illing by consent . . . is still generally murder” (*Textbook of Criminal Law, supra*, note 30 at 531).

<sup>34</sup> *Supra*, note 25 at 36-41.

<sup>35</sup> *Constitution Act, 1867*, s. 91 (27).

<sup>36</sup> *Constitution Act, 1867*, s. 91.

<sup>37</sup> *Tobacco Restraint Act*, R.S.C. 1970, c. T-9. See *R. ex rel Barrie v. Stelzer* (1958), 119 C.C.C. 305 (Man. C.A.).

<sup>38</sup> *Hazardous Products Act*, R.S.C. 1970, c. H-3. See *R. v. Zellers Ltd.* (1982), 66 C.C.C. (2d) 236 (Man. C.A.); and *R. v. Cosman's Furniture (1972) Ltd. et al* (1976), 73 D.L.R. (3d) 312 (Man. C.A.).

<sup>39</sup> *A.G.B.C. v. Smith* (1967), 65 D.L.R. (2d) 82 (S.C.C.).

<sup>40</sup> *R. v. Hauser* (1979), 98 D.L.R. (3d) 193, at 210 (S.C.C.), *per* Pigeon J. In the *Hauser* case, the federal *Narcotic Control Act* was upheld, not under the criminal law power, but under Parliament's authority to enact laws for the “peace, order, and good government of Canada”.

## Part II

# Extent of the Problem

## Chapter 4

### Advisory Reports and Previous Research

Known child sexual abuse is a fraction of its true occurrence. Much more crime involving sexual offences occurs than is detected or reported. Of the cases that are reported, only a proportion results in the laying of charges by the police, and of these cases, still fewer end with convictions. Only the most visible acts are cited by the media and these are usually restricted to those incidents involving serious crimes of sexual violence, or to those in which charges are laid and court hearings held. Police practices which on occasion may involve charging the accused with crimes other than sexual offences, and court practices restricting publicity, result in many cases of child sexual abuse known officially being masked from public attention.

Beneath the visible tip of child sexual abuse known to the police and the courts is a more sizeable number of partially hidden cases cared for by medical and child protection services and other community agencies. Legal sanctions are invoked in relatively few of these instances. When such action is taken, it may be under statutes other than the *Criminal Code* or action may be taken on other grounds such as the neglect of a child or a child being in need of protection. In a majority of instances in which charges are not laid the attending physicians and social workers refrain from reporting these cases to the police because they believe that the available evidence is inadequate, that the acts occurred in the past and have stopped, or that even if evidence is deemed to be sufficient, to proceed with laying charges would inflict greater harm on the child than would resorting to other, less official means of intervention. Such decisions rest in part on the beliefs that maintaining the unity of the family is of over-riding importance and that treatment and counselling are more effective ways of stopping these acts than seeking the punishment of offenders.

Evidence concerning the actual extent of child sexual abuse is fragmentary. There is no doubt that the true prevalence of these offences is unknown to the official helping services. The reasons why so many victims of child sexual abuse remain silent are documented elsewhere in this Report. They include an unawareness by the very young child that a crime has been committed, a deep-rooted shame associated with having been a victim, feelings of helplessness and a lack of self-worth, the disbelief and rejection by those persons who are close to the child and a fear of reprisal by offenders.

Telling others these closely guarded secrets requires considerable personal courage, since doing so invokes stigma, may result in the condemnation by family members or by persons who are responsible for their care and may lead to an external professional scrutiny of intensely personal concerns. There is much ignorance and uncertainty among victims about to whom they can turn for help. On occasion, when they do look for help, they may withdraw prematurely from seeking further aid if they feel they are disbelieved or are rebuffed by the offensive nature of the assistance which is provided.

While there is broad agreement about the sequence of attrition from the actual occurrence of child sexual abuse to the subsequent conviction of only a few of the offenders who committed these crimes, there is no consensus about how many children are involved at each stage or on the adequacy of the information upon which the various estimates of sexual abuse are based. The three principal views are that: child sexual abuse is widely prevalent; it seldom occurs; and since none of the sources is accurate, no valid estimates can be made.

Much has been said in recent years about the alarming extent of child sexual abuse in Canada. From this perspective the problem has become a widespread crisis warranting massive public intervention and assistance. In the absence of firm and sufficient sources of information, high rates are cited as established facts, proven solutions for the helping services are proffered and experts are called upon by child protection services and the courts for their counsel about the documented profiles of abused victims or child sexual offenders. Because these reports of high rates are often believed to be true, a self-fulfilling prophecy occurs. The reports are acted upon subsequently as though they are true with the validity of the initial sources on which they were based being forgotten or disregarded.

One major Canadian report stated that based on "reliable estimates", one in four girls and one in 10 boys were sexually assaulted at some point in their lives, or about 1.5 million Canadian children were the victims of these offences.<sup>1</sup> In the course of its work the Committee heard estimates given by professionals across Canada which ranged from one in 200 children to the assertion that every Canadian child at some point had been sexually assaulted. The rates most widely cited by the media and reported at special conferences dealing with these problems were that one in five girls and one in 10 boys were sexually assaulted before they became adults.

Indicating the divided nature of opinion about the occurrence of child sexual abuse, another attitude held by some Canadians was that few children were affected by these problems. At the same time, professionals have told the Committee that after special conferences on child sexual abuse were held in their regions, many more instances of such abuse were reported. If a problem is not recognized, there is little likelihood that it will be seen to occur. Once the problem is publicized, incidents will be seen to occur more often. Persons holding the view that few children are affected by sexual abuse, or who believe that unmet needs are virtually infinite and can be documented to justify the sur-

poses of special interest groups, help to perpetuate the comfortable myth that since few instances of sexual offences against children are seen to occur, there is little or no need to provide special protection for them.

At one major medical centre serving a large region, a senior professional told the Committee that there were no known instances of sexual offences against children. In another sizeable city, a highly trained specialist said that information on child sexual abuse should not be collected since doing so would disrupt the lives of many otherwise normal families. In a provincial capital a senior official questioned the utility of the findings of any survey, noting that existing resources were already strained to capacity, and for this reason, no new unmet needs should be documented. In another province the Committee was informed that professional workers were too busy providing services to have time to document fully what was being done and since each case of child sexual abuse was unique, there was no relevance in marshalling survey findings about these problems. These examples illustrate why in some quarters few instances of child sexual abuse were known to occur and why it was concluded that no changes were warranted in dealing with these issues.

In contrast with the views either that child sexual abuse is a widespread problem or that it seldom occurs is a critical viewpoint that assumes it is not possible to document the prevalence of sexual offences or that rejects all available sources on the grounds that they measure inadequately the extent of these problems. The former view was held in the 1957 *British study on Sexual Offences* that noted: "The actual number of sexual offences committed is unknown and consequently, the actual number of victims cannot be ascertained."<sup>2</sup> The sources of information about crime that are rejected on the basis of how findings are collected and classified include: the official crime reports assembled by police forces; victimization surveys in which persons report crimes committed against them; studies of persons, often juveniles, who report minor crimes they have committed; and the indicators derived from these sources which gauge the relative gravity of the occurrence of known offences. An anomaly about what is known of crime in Canada is that while some researchers reject existing sources of information as being inadequate, they ignore this caveat when they portray the attrition of crime from its occurrence through to the stage of the conviction of offenders.

In the 1969 *Report of the Canadian Committee on Corrections* (Ouibet Report), it was concluded:

The corrections field in Canada . . . has suffered from a lack of comprehensive, continuous and long-term planning based, as far as possible, on empirical information . . . little use has been made of research . . . Research answers to many criminological problems are not available, nor have research techniques or facilities been developed that could supply all the answers . . . In terms of the peculiar society that is ours . . . what has been discovered in other countries cannot be applied to Canada without re-examination.<sup>3</sup>

That inadequacies in the types of information about crime in Canada still abound was re-affirmed by the 1982 *Report on The Criminal Law in Canadian Society* of the federal Department of Justice.



The first comment made in Ouimet's chapter on crime (concerning the lack of reliable information) is, if anything, more applicable today. There are no data on convictions since 1973. One must rely on reports made to police—reported crime, not convictions. And the reliability of these data has been questioned.<sup>4</sup>

Much of the information reviewed by the Committee is based on the experience of sexually abused children who were treated by physicians or social workers or who were known to the police and the correctional services. In each instance in the surveys undertaken by the Committee, more detailed information was obtained from these sources than was available in the published annual statistics of these services. As noted in the two federal reports, an obstacle inherent in official Canadian crime statistics between 1969-82 is the absence of sufficiently precise information and the reliance upon non-uniform systems of classification. The *Uniform Crime Report's Statistics* assembled by Statistics Canada from police forces across the country, for instance, do not give information about the victims of crimes or their ages. The actual counting of criminal acts in these statistics varies for offences involving property or offences against the person; no specific sexual offences are listed with these crimes being grouped under a few broad categories.

A comparable situation exists involving the statistics assembled for medical and child protection services in which child sexual abuse either is not recognized in the classification codes (e.g., the *International Classification of Diseases*), or in which no uniform basis has been established to identify these abuses (e.g., child protection statistics). From neither of these sources is it feasible to determine how many children have been raped, who are the victims of incest or what other types of sexual abuse may have occurred.

Even given the lowest estimates of the extent of child sexual abuse in Canada, the problem is a matter of grave public concern. Until more reliable and comprehensive information is available, it will remain a matter of conjecture how many Canadian children are sexually assaulted. This is a valid concern. However, the Committee believes that at the level of what is now known about these offences, it is crucial to understand why sexually assaulted children do or do not seek help, the nature of the harm done, the scope and adequacy of the services provided for their care and protection and what steps it is feasible to take to prevent and limit the occurrence of these acts.

While recognizing the limitations of the findings given in advisory reports and available research studies, the Committee drew upon these sources as a contributory basis for its review and the mounting of its research. Rather than undertaking the futile exercise of pitting the findings of different sources against each other, the Committee believes that the complexity of the issues raised by sexual offences against children requires drawing upon the complementary experience of all services that come in contact with these children. In this respect no single source should or can be relied upon by itself to provide sufficient information.

## Legislative and Advisory Reports

During the 1970s the Government of Canada received reports with findings and recommendations from several legislative and advisory bodies with respect to the need to provide more effective protection for abused and neglected children. Acting in response to these reports, the Government: initiated and/or sponsored a number of projects on these issues; convened two national meetings to review the findings of a national child abuse study; extended support to crisis information services through cost-sharing arrangements with the provinces; and in 1978 created a federal desk for a Child Abuse Information Program that was incorporated in 1982 within the mandate of the National Clearinghouse on Family Violence.

With respect to sexual offences committed against children, legislation was tabled in Parliament in relation to some aspects of these problems. A review of these statutes is given in Part Three of the Report. In addition, stemming from the recommendations of these various advisory bodies, this Committee was appointed in recognition of the need for a more complete review than was then available of the extent of these offences and to consider how children might be better protected in this regard.

The initial proposals at the national level on ways to provide better protection for child abuse were made by two Standing Committees of Parliament. These reviews were undertaken by: the *Standing Committee on Health, Welfare and Social Affairs of the House of Commons*; and the *Standing Committee on Health, Welfare and Science of the Senate*.

In accordance with its Order of Reference of December, 1974, the *Standing Committee on Health, Welfare and Social Affairs* of the Commons was asked to make recommendations with respect to "appropriate measures for the prevention, identification and treatment of child abuse and neglect, and for such other ancillary measures in the same matter as the Committee may consider desirable".<sup>3</sup> In the course of its sittings, the *Standing Committee* received testimony from expert witnesses, reviewed briefs and assessed the findings of a number of research reports.

While the *Standing Committee* recognized that child sexual abuse was a serious problem, it considered this issue within the context of the broader problem of child abuse and neglect. Among its central findings, the *Standing Committee* noted that:

1. Because of variations in definitions and reporting systems, there was no accurate figure on the occurrence of child abuse for Canada.
2. There was no one cause of child abuse or neglect.
3. The physical abuse of children was the extreme end of the continuum of child neglect.

4. The federal government had a role in respect to child abuse that was reflected in the *Criminal Code*, cost-sharing arrangements with the provinces and territories, grants for research and demonstration projects, and other consultative services.
5. Criminal proceedings, which were designed to punish the offender could be applied only in those cases where there was sufficient evidence to justify such proceedings, and such proceedings were probably not applicable in most cases because of the rules of evidence and other requirements.
6. The *Criminal Code* offered little by way of preventing or treating child abuse except that a conviction for an offence under the *Code* may remove the offender from contact with the child.
7. The reporting requirements in provincial laws with respect to the notification of child abuse were not generally understood.
8. The services available concentrated on the child after the problems had become known rather than focussing on assistance to families before a crisis had occurred.
9. Each case of child abuse must be treated on the basis of individual need and the unique circumstances of the case.
10. The public demand for punishment of offenders may cloud both the real issues of child abuse and the provision of services for families at risk.

In its Report to the House, the *Standing Committee* made 15 recommendations. These recommendations included:

1. *Preventive Services*: Support was recommended for a broad range of preventive measures. It was acknowledged that: "every child be entitled to adequate protective services in his own home and that these services include support services to parents as well as health and other community services to the child in his own right."<sup>6</sup>
2. *Research*: It was recommended that the Department of National Health and Welfare consider the advisability of ensuring that funds were available for research and demonstration projects relating to all aspects of child abuse, including: its etiology, identification and "the periodic follow-up, evaluation and cost-effectiveness of the program of preventive services."<sup>7</sup>
3. *Statistics and Information*: It was recommended that the Department of National Health and Welfare consider the advisability of providing assistance to the provinces with respect to the establishment of:
  - (i) a common data base on all substantiated cases of child abuse and for facilitating an exchange of information between provinces when persons active in a registry move from one province to another;
  - (ii) promoting an exchange of information on these issues by convening meetings; and
  - (iii) serving as a resource to the provinces on developments across the country in legislation, programs and services in child and family services, including services for the prevention of child abuse.

4. *Canada Evidence Act and the Criminal Code*: Amendments were recommended permitting a spouse to give evidence in criminal cases involving child abuse. The Standing Committee concluded there was no need: to amend the *Criminal Code* with respect to a mandatory reporting requirement in cases involving child abuse; and for the establishment of a federal child abuse registry.
5. *Public and Professional Education*: It was recommended that the Government consider means of extending public education on these issues through the media by the promotion of public affairs' programs on child care, family living and child abuse; that professional schools broaden the contents of their curricula by the inclusion of materials on the etiology of child abuse; and that training in child care be promoted in primary schools with additional courses given in secondary and post-secondary schools.

The second legislative review by the federal Government during the 1970s relating to child abuse was undertaken by the *Standing Committee on Health, Welfare and Science of the Senate*. In December, 1975, the Order of Reference given to the *Standing Committee* requested it to consider the feasibility of a Senate investigation on "Early Childhood Experiences as Causes of Criminal Behaviour". As a result of its initial review in which it was found that available information was "scant, highly technical and mostly American",<sup>8</sup> the *Senate Standing Committee* limited its inquiry to a consideration of the experience of children during the first three years of life.

The *Standing Committee* received testimony from a number of specialists, reviewed briefs and assessed several research reports. In tabling its Report in 1980, *Child at Risk*, the *Senate Standing Committee's* recommendations included:

1. A review be made of the offences specified in the *Criminal Code* with respect to those pertaining to all forms of child abuse.
2. An assessment be made of the purposes and effectiveness of existing child protection services and relevant legislation as these pertained to children in need of protection.
3. Support be given to expand the services provided by local child abuse and information programs.

In addition to its recommendations pertaining to child abuse, the *Standing Committee* also recommended that the federal Government establish a Canadian Institute for the Study of Violence having an independent board representing a broad spectrum of disciplines. The mandate for the Institute would include:

1. The co-ordination and evaluation of research on early childhood experiences as causes of violent behaviour in later life.
2. The funding of new research and pilot projects on vulnerable children.
3. The scheduling of opportunities (through workshops, research, journals) for members of different disciplines to review these issues.

4. To make recommendations about methods of reducing the incidence of violence in Canada.<sup>9</sup>

Between 1975 and the early 1980s, the *Advisory Council on the Status of Women* recommended that amendments be made to several sections pertaining to sexual offences in the *Criminal Code*. In October, 1975, the *Advisory Council's* brief on Bill C-71 recommended that evidence of previous sexual behaviour of a complainant with persons other than the accused should not be admissible and that a number of sections in the *Code* be replaced with broader categories of sexual assault. With respect to amendments related to the protection of children, the *Advisory Council* proposed that existing sections be altered to include sexual intercourse with children, the relatives of a minor, and any minor who was subject to authority by another person.

In expanding these proposals in 1976, the *Advisory Council* recommended that the *Criminal Code* be amended to make provision for four degrees of sexual assault.<sup>10</sup> As part of this redrafting of legislation, it was recommended that "protection from sexual intercourse . . . be provided to all persons under 14 years of age, whether they be male or female. It is our belief that a person under the age of 14 years is a child and lacks the experience or capacity to make decisions concerning sexual relations".<sup>11</sup> It was proposed that the following sections of the *Criminal Code* should be deleted.

- Section 144 (rape)
- Section 145 (attempted rape)
- Section 146[1] (sexual intercourse with a female under 14)
- Section 146[2][3] (sexual intercourse with a female between 14 and 16)
- Section 148 (sexual intercourse with feeble-minded)
- Section 149 (indecent assault on a female)
- Section 150 (incest)
- Section 151 (seduction of a female between 16 and 18)
- Section 152 (seduction under promise of marriage)
- Section 153 (sexual intercourse with female employee, step-daughter, foster daughter or female ward)
- Section 154 (seduction of female passengers on vessels)
- Section 155 (buggery or bestiality)
- Section 156 (indecent assault on a male)
- Section 157 (acts of gross indecency)

In making these proposals the *Advisory Council* stated "that laws against sexual assault should apply to all persons regardless of their sex, age, marital status or previous sexual conduct and recognize that all persons' sexual integrity should be respected and when necessary protected".<sup>12</sup>

In reiterating its position in 1979, the *Advisory Council* recommended that young persons should be protected from sexual exploitation by the specification of:

1. A statutory sexual offence applying where the victim is under 14 years.
2. An offence prohibiting the sexual coercion of young persons under 18 years by someone in a position of authority over them.

A number of the recommendations that had been made by the *Advisory Council on the Status of Women* with respect to amendments to the sexual offences in the *Criminal Code* were incorporated in Bill C-127 (1983).

The *Canadian Commission for the International Year of the Child* was established in 1978 with the objective of identifying and supporting activities that were designed to advance the rights, interests and well-being of children. The *Commission* reviewed some 4000 applications, of which 500 were funded. In its report, *For Canada's Children: National Agenda for Action*,<sup>13</sup> the *Commission's* recommendations included:

1. *Knowledge of Human Sexuality*: Children and youths have "the right to knowledge of the psychology of human sexuality, given in a medical or public health setting or in an appropriate agency by qualified people".<sup>14</sup>
2. *Protection from Sexual Exploitation*: That "the federal government enact legislation to protect children against all forms of sexual exploitation".<sup>15</sup>
3. *Child Pornography*: Children have "the right to be protected from premature exposure to, or erroneous information about human sexuality and from degrading and debased images of sexual behaviour in human beings".<sup>16</sup>
4. *Media Presentation of Sex and Violence*: "The producers and directors of television programs [should] reduce the present emphasis on sex and violence."<sup>17</sup>
5. *Reform of Sex Crime Laws*: With respect to the proposals pertaining to children, the *Commission* commended the recommendations on amendments to the sexual offences in the *Criminal Code* made by the *Advisory Council on the Status of Women* relative to Bill C-53 and Report Number 10 on *Sexual Offences* of the *Law Reform Commission of Canada*.<sup>18</sup>

As part of its program of legislative review, the *Law Reform Commission of Canada* issued a working paper on *Sexual Offences* in 1978.<sup>19</sup> Based on response that the *Commission* received to this report, a revision was reissued later that year.<sup>20</sup> A number of the legal issues raised in this report are considered elsewhere in more detail in the *Committee's Report*.

The *Law Reform Commission of Canada* called for a sweeping reform of some of the sections relating to sexual offences in the *Criminal Code*. It recommended that these sections be replaced or revised by two new categories of prohibited sexual conduct that were comprised of sexual interference and sexual aggression. With respect to the protection of the child, the *Commission* recommended that in line with its proposals, there be absolute protection under the

law for children under the age of 14 years and qualified protection for youths between ages 14 and 18 years.

The *Commission* proposed the enactment of a new offence, sexual interference due to dependency; this new statute would replace a number of existing sections of the *Criminal Code* including the offence of incest. The rationale underlying this latter recommendation was that "the Commission believes that incest should above all be a matter of social and psychological treatment; secondly, a matter of regulation by family and child welfare law; and only thirdly, a matter for the criminal law".<sup>21</sup> The *Commission's* recommendations like those of other advisory bodies were considered in the drafting of Bill C-53 that was tabled in Parliament on December 19, 1980.

As part of its commitment to the International Decade for Women: 1976-85, the Department of National Health and Welfare established the *Advisory Committee on the Status of Women*. The activities assigned to the *Advisory Committee* included a consideration of the issues of: violence against women; violence in the family; and crisis intervention. In the first report on its activities issued in 1980,<sup>22</sup> the *Advisory Committee* noted that the Department was undertaking a review of child abuse that had been established in November, 1978 in response to the recommendations of the Standing Committee on Health, Welfare and Social Affairs of the House, as part of Government's commitment to the International Year of the Child and stemming from consultation between the federal and provincial governments.

The two discussion papers that were prepared for the *Child Abuse Study* of the Department of National Health and Welfare were reviewed at meetings held in 1980 and 1981. Proposals were made at these meetings which were attended by representatives of some of the major child care service programs across Canada that steps be taken by government to review, and where appropriate, to implement the study's recommendations. The reports, an *Outline of Key Legislative Issues relating to Child Abuse* (1980) and *Child Protection in Canada* (1980), were issued as discussion papers in order "to promote a better understanding" of these issues. In the Preface to each report it was noted that the recommendations of the *Child Abuse Study* had "no formal status in terms of either official acceptance by the Department of National Health and Welfare or as a statement of government policy."<sup>23</sup>

The recommendations of the *Study's* first discussion paper, an *Outline of Key Legislative Issues relating to Child Abuse* (1980), included:

1. *Child Welfare Statistics*: Existing provincial statistics use different bases, definitions and classifications, "are not usually published, and if published, the categories chosen for publication differ from one jurisdiction to another"; legislative provisions should require the publication of certain basic statistics and "the federal government could undertake the responsibility for collating and publishing this information on a national basis."<sup>24</sup>
2. *Open or Closed Protection Hearings*: That the public needs greater knowledge about child abuse cases, and in this regard, "protection hearings

should be open to the public, reported by the press without an absolute ban on publishing any identifying information."<sup>25</sup>

3. *Child's Evidence before the Court*: It was recommended that "child protection legislation should require the child to be properly observed and interviewed by an independent psychiatrist or psychologist" and that this information should "be properly recorded and accepted by the court as evidence going to the truth of the matters stated or observed."<sup>26</sup>
4. *Child Protection Advocate*: It was recommended that the interests of the child be represented by a child protection advocate who would work independently of child protection services. Under this procedure child welfare services would be required to notify immediately the advocate of all suspected child abuse cases, the investigation would be under the authority of the advocate and be undertaken by an interdisciplinary team, and based on this review, the advocate would then be responsible for the decision of whether a court application should be made, and if this were done, the advocate would represent the interests of the child throughout the court proceedings.
5. *Reasons for Judgment*: Noting that written judgments were "not usually given in protection cases" and "even when written, they are rarely reported", it was recommended that there be "a statutory provision requiring the court to give adequate reasons for judgment" and where reasons are given orally, that they be transcribed by the court reporter, and copies be maintained in court files.
6. *Role of Criminal Law*: "Where there is a reasonable chance of successfully treating the abusive parent, therapy is preferable to criminal prosecution... imprisonment has rarely proven a successful method of rehabilitation."<sup>27</sup>

The second discussion paper of the Department of National Health and Welfare's *Child Abuse Study* expanded upon some of the recommendations of the first report and dealt in greater detail with aspects involving the provision of services for abused children. The recommendations of this report, *Child Protection in Canada* (1981), included:<sup>28</sup>

1. *Child Protection/Welfare Statutes*: That these statutes be amended with respect to the definitions of a child in need of protection, the concept of abuse be set aside in favour of more specific categories, and consideration be given to whether a child's condition should be tied to the conduct of parents.
2. *Child Abuse Registries*: That all provincial child protection statutes should stipulate mandatory reporting, that the persons making reports should be notified of the decisions taken, and that a central registry should be established that would enable the identification of children who are repeatedly abused, the listing of the families that moved between jurisdictions and the compilation of national statistics on reported cases of child abuse.
3. *Service Statistics*: That the provinces and territories maintain information on: the basic reasons for children being in protective custody; a specification of the problems experienced by these children; and a listing of the ser-



vices provided for them; and that the federal government should provide financial assistance to the provinces to establish the collection of these statistics.

4. *Deaths of Children in Need of Protection*: Based on a review of 54 deaths (none resulting from sexual assault), it was recommended that: efforts be made to obtain more accurate information on the extent of child deaths resulting from abuse; that coroners receive training in the recognition of the signs of child abuse; that deaths of this kind should be incorporated into a central registry; and that more indepth research on these issues was warranted.
5. *Child Protection Teams*: Based on a detailed review of the structure and operation of a number of child protection teams, it was recommended that: all cases of child abuse should be handled by an interdisciplinary team comprised of the disciplines of social work, paediatrics, nursing, psychiatry, psychology, Crown attorneys and the police; that these teams operate independently of child protection services and hospitals; that the teams have the authority to require other social agencies to provide services under team supervision; that where legislation or policies on confidentiality prevented or inhibited the exchange of information on a child between services, the legislation should be amended in this regard; that the teams should receive funding from several ministries; that financial support be given to the establishment of a number of pilot projects on a three year basis for purposes of demonstration, evaluation of services provided, and benefits received by children; and that the Department assist actively in the establishment of these teams by means of fostering research, the scheduling of meetings between existing programs and the publication and exchange of information.

In addition to its detailed recommendations, the Department's *Child Abuse Study* concluded that:

Very little material on the problem of child protection has been published and widely circulated in Canada . . .

The public has both a right to know and a need to know more about the problem. It is therefore recommended that the Department of National Health and Welfare, prepare and publish an annual report on child protection in Canada including national statistics, a review of legislation and policies in Canada, developments in selected foreign jurisdictions, an analysis of significant judicial decisions and other relevant and useful information.<sup>29</sup>

In addition to the reports on child abuse and neglect undertaken by legislative and advisory bodies at the national level during the 1970s, numerous reviews containing recommendations were made at this time by voluntary associations and provincial and municipal committees. In these respects, the interests of the child have been strongly presented. There is, however, a considerable shortfall between the recommendations that have been made by these sources and the steps that have been subsequently taken. It is apparent from the Committee's review that, for whatever reasons, most of the recommendations of these various reports have not yet been implemented and that the actions that have been taken are seldom commensurate with the intent of the bodies making these proposals.

In considering the recommendations of the various legislative and advisory committees, it is evident that the feasibility of implementing many of these proposals is limited by constraints that are inherent in the administration and provision of child protection services. Foremost among these limitations is the divided constitutional authority between federal and provincial levels for ensuring protection for the health and welfare of children. At the level of providing services directly to children, there is a further division of responsibilities between several helping professions, each of which specializes in a particular aspect of child abuse and in each instance having their work governed by different statutes. In this situation of divided legislative and service responsibilities, recommendations made to one level of government or pertaining to only one facet of child abuse, cannot be expected to achieve a comprehensive reform of child protection services for children who are abused and neglected.

Several of the reports on child abuse prepared by national advisory committees recognized the need for better information and research on the extent of these problems, the special needs of abused children and the effectiveness of services that were provided on their behalf. The earlier reports considered the broader aspects of child abuse while in later reviews, more attention was given to the issues of child sexual abuse and changes in the sexual offences in the *Criminal Code*. With respect to child sexual abuse, a number of admirable ameliorative proposals were recommended but in most instances the evidence to support them was still lacking. For the most part, these reports drew selectively, and in some instances not at all, on the research on sexual offences that had been completed for Canada at the time when the reviews were being undertaken. The reports of the advisory bodies serve to highlight the broadening recognition of the problem of child sexual abuse and the identification of special issues warranting more detailed documentation and consideration with respect to how these children might be better protected.

## Child Abuse Information Program

As an administrative means to review the reports and recommendations of the legislative and advisory bodies, the Department of National Health and Welfare struck an *Ad Hoc Committee on Child Abuse* which consulted with agencies in the private sector and provincial child protection services. The *Ad Hoc Committee* recommended in 1978 that a federal desk be established which would assemble and distribute information for Canada on child abuse and neglect. This program was approved at the end of that year.

At this time an interdepartmental committee, established in relation to the International Decade of Women, was reviewing the problem of family violence with particular attention being given to the situation of battered women. In its first annual report (1980), the *Advisory Committee* reported that:

As a service to groups offering assistance to victims of family violence and rape, Health and Welfare Canada will establish, by 1980, a National Clearinghouse for legal, research and service information and technical assistance.<sup>30</sup>

In January, 1982, the Minister of National Health and Welfare announced the establishment of the *National Clearinghouse on Family Violence*. The previously established federal desk for the Child Abuse Information Program was incorporated into the work of the *Clearinghouse*. During its initial period of operation, this unit had a complement of two staff positions.

The mandate assigned to the *Clearinghouse* dealt with four problems, each of which involved some form of abuse or violence. These issues included: family violence; battered women; child abuse; and the abuse of the elderly. In relation to these problems, the responsibilities assigned to the *Clearinghouse* were:

1. *Information and Statistics*: The collection, analysis and dissemination of information on: the occurrence of these problems; the services being provided; the legal issues involved; the development and collation of training materials for professional service workers; the preparation and listing of audio-visual materials; and other sources of information which pertained to these issues.
2. *Consultation*: The *Clearinghouse* was established as a resource for consultation to the federal and provincial governments on issues related to family violence.
3. *Technical Assistance*: The provision of technical aid to professionals and the public in relation to the four issues falling within its mandate.

In a report on the work undertaken by the *Clearinghouse* that was prepared for the Committee, it was noted that the following activities had been initiated.

1. *Bibliographies and Information Kits*. The preparation and distribution of a number of bibliographical inventories and information kits.
2. *Newsletter*. A newsletter setting out the objectives and activities of the *Clearinghouse* had been prepared.
3. *Audio-visual Catalogue*. A listing of audio-visual materials had been prepared for circulation to interested professional and voluntary groups.
4. *Professional Training Manuals*. Materials deemed pertinent for the training of professional workers had been assembled and circulated.
5. *Survey of Transition Houses*. A national survey had been started focussing on the programs and services provided by Transition Houses.
6. *Schools of Social Work*. A survey had been undertaken of the curricula pertaining to family violence that were offered by Canadian schools of social work.
7. *Purchase of Films*. In collaboration with the National Film Board, a number of films had been purchased for the Family Violence Film Library.

During the initial period of its operation the *National Clearinghouse on Family Violence* focussed on the collation and distribution of general sources of information on family violence and child abuse. The available staff resources precluded the undertaking of extensive research on these issues and the more

comprehensive evaluation of the services that were being provided. With respect to child sexual abuse, no special initiative had been undertaken in this regard in recognition of the review that was being made by the Committee.

## National Child Sexual Abuse Statistics

The growing recognition of child sexual abuse can be traced in the trends occurring in the reporting of these offences in the annual statistics reports of provincial child protection services. As noted elsewhere in the Report, the classification of these incidents varies between provinces and depends upon somewhat different reporting procedures.

Prior to 1977, there were few references to child sexual abuse in the annual reports of provincial child protection services and few statistics listing these incidents. This situation changed in 1977 when 300 sexually abused children were identified. There was an increase of 431 per cent by 1980 when 1593 cases were reported. The rate of annual increase since 1977 has fluctuated sharply, rising by 6.3 per cent between 1977-78, 275.2 per cent between 1978-79, and 33.0 per cent between 1979-80. These sharp changes are attributable to increased public awareness, significant improvements in the capacities of the reporting systems, and the number of new protection services that were geared to reach these children.

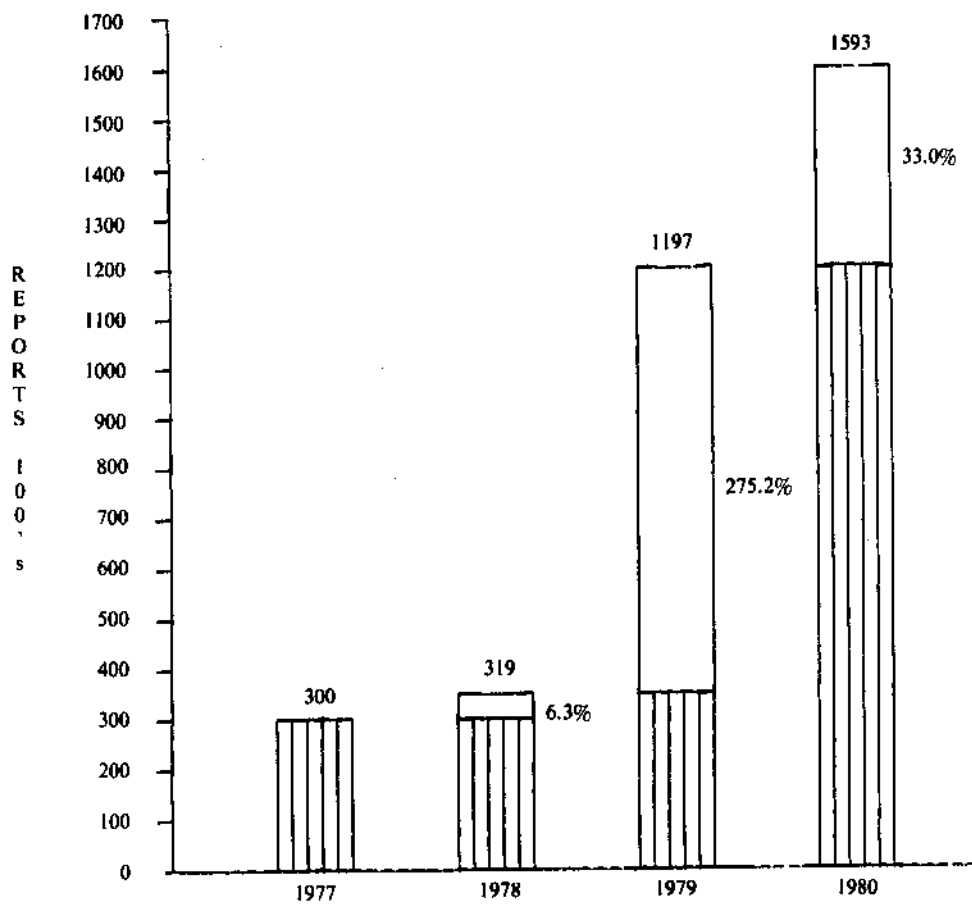
The proportion of Canadian children under the age 16 who were suspected or known by provincial child protection services to have been sexually abused was three in every 1000 children in 1980. No comparable statistics are available for other branches of the helping services (police, health, corrections). As shown elsewhere in this Report, the rates derived from published annual statistical reports of provincial child protection services do not provide an adequate estimate of the known prevalence of sexual offences against children. What these statistics represent, however, is a positive and strong endorsement of the steps that have been taken to strengthen child protection services, leading to the detection of substantially more sexually abused children.

## Estimates of Occurrence

Much of the research on the occurrence of sexual offences in Canada comes from studies that were undertaken for other purposes and focusses on the experience of adults. This collection of research is comprised of a mosaic of different groups, definitions and sources of information that has yielded sharply contrasting estimates of the extent of these problems. The estimates that are derived from these research reports vary from well under one per cent to a quarter of all Canadian women having been sexually assaulted. These estimates include:

Chart 4.1

*National Child Sexual Abuse Statistics:  
Provincial Child Protection Services, 1977-80<sup>1</sup>*



 Annual Increase

<sup>1</sup>Annual Reports, Provincial Child Protection/Welfare Services, 1977-80

Source	Group Studied	Proportion Sexually Abused/ Assaulted
Solicitor General (1979)	10,248 persons over 16 in Vancouver	0.5%
Solicitor General (1981)	817 persons over 18 in Quebec, Ontario, Manitoba	3.6%
Le Comité de la protection de la jeunesse (1978-80)	Child protection cases relative to Quebec population under age 17	0.02-0.04%
Advisory Council on the Status of Women (1976-81)	551 women surveyed in Winnipeg	20.1%
Ontario Rape Crisis Centres (1981)	513 persons seen at five Rape Crisis Centres	25.0%
Canadian Human Rights Commission (1981)	2004 persons in national population survey	48.7% females 33.2% males

The major studies that have obtained information on the reporting of crime by Canadians, some of which have dealt with sexual offences, include:

1. Victimization surveys, or those which have asked Canadians directly if crimes had been committed against them (Toronto, British Columbia, Edmonton, Vancouver, and a national sexual harassment survey).
2. Community surveys for London, Selkirk and The Pas.
3. The experience of sexually assaulted children treated by child protection services in Quebec.
4. The sexual behaviour and knowledge of school children (Saskatchewan, Calgary and Saguenay — Lac St. Jean, Quebec, and students attending an unidentified high school in Quebec).
5. A survey of rapes reported in 1970 to the Toronto Metropolitan Police Force.
6. Sexual assaults committed against women in Winnipeg.
7. Sexually assaulted persons who went to five Ontario Rape Crisis Centres.
8. National opinion surveys on physical child abuse, homosexuality and pornography.

While the case records and investigation files or charts of the helping services contain much valuable information about sexual offences and child sexual abuse, these sources have seldom been drawn upon as a means to document the types of crimes that may occur or how they are handled when they are brought to the attention of these services. The full potential of these sources is not real-

ized when summary official statistics are assembled for purposes of documentary annual reports. An instance of this is the unrealized potential of the *Uniform Crime Report Statistics* assembled annually by Statistics Canada from police forces across the country. While police investigation files contain extensive information about victims, offenders and the incidents that were investigated, little of this information is abstracted in the official statistics.

In the reporting of national crime statistics for Canada, all types of sexual offences are aggregated into a few general categories, a classificatory system that precludes an analysis of particular offences. No information is given in these sources about the victims of the crimes, and for this reason, they cannot be used to assess the reported extent of sexual offences against children. The anomaly is that while such information is available, it has been regarded as more important to list information about crime and offenders than about persons who are victims. These statistical reporting procedures have functioned to mask the extent to which children were involved as victims.

## Victimization Surveys

In order to obtain better information about the unreported or "dark side" of crime, a number of surveys have been undertaken across Canada by academic researchers and under the aegis of the federal Department of the Solicitor General. Most of these surveys did not obtain information about sexual offences or the experience of children. Taken together, the victimization surveys indicate that the reporting of the extent of crime varies considerably depending upon which sources are drawn upon and upon which survey procedures are used to collect such findings. The central implication of these studies is that no single survey or source is sufficient by itself but rather, a multifaceted research survey approach needs to be adopted in order to reflect the complex ways in which crime occurs, the range of persons affected and the ways in which it is dealt with.

One of the first victimization surveys undertaken in Canada was a study in the 1960s of 967 Toronto residents, about one in eight (13.0 per cent) of whom had been threatened or physically assaulted during the previous year.<sup>31</sup> Among all types of crime there was a substantially higher reporting to the police concerning property offences (35 to 45 per cent) than by persons who had been threatened or assaulted (12.5 per cent).

These findings about the selective reporting of different types of crime were subsequently confirmed by the more extensive victimization surveys undertaken by the federal Department of the Solicitor General. Along the gradient of crimes reported to the police, those which are least likely to come to their attention, are offences committed against persons, and among these, threats or assaults by strangers or persons who are not well known to the victim are more likely to be reported than those committed by persons known by victims.

Using a different survey procedure, a 1974 study of 956 respondents in British Columbia found that one in 20 (4.3 per cent) had been threatened or assaulted.<sup>32</sup> These incidents were more often reported by younger adults, persons with broken marriages, and three times more frequently by males than by females. In comparison with the victims of vandalism, theft or robbery, more persons who had been threatened or assaulted assessed the work of the police less favourably, and more of them felt the police were too lenient in their handling of suspects. While one in five of all respondents felt the police were too lenient with suspects (20.2 per cent), one in three of the victims of assaults (31.6 per cent) held this view.

During the 1970s the federal Department of the Solicitor General initiated a series of four crime victimization surveys.<sup>33-34</sup> These surveys tested methods of asking Canadians whether they had been the victims of crime, what had happened and to whom they had reported the incidents. The first surveys for Edmonton (1976-77) and Hamilton (1978) drew upon police records, had follow-up contacts with victims known to the police, and tested the feasibility of using a different means of collecting these types of information. While samples were selected of the records of other types of crime, all or a disproportionate number of police general occurrence reports involving investigation of sexual offences were included in these analyses. For this reason, the rates listed for sexual offences (3.01 and 3.28) over-represented substantially their actual proportion as compared to that of all of the offences known to the police forces. Neither victimization survey obtained information from the police records about children or youths who may have been victims. The Edmonton study collected information from persons 18 years and older, while the Hamilton survey of the following year included persons who were 16 years and older.

These victimization surveys found that many persons, when interviewed a year after the occurrence, were reluctant to admit they had been victims and that some recalled the incident inaccurately. The 1978 Hamilton survey followed up 94 sexually assaulted cases known to the police. Of these 94 persons, 51 or 54.3 per cent were contacted a year after the incidents had occurred. These 51 victims were subsequently interviewed, and while 39 or 76.5 per cent acknowledged that the offence had occurred, 23.5 per cent denied having been victims. Among the victims who were willing to speak about the sexual offences, only 38.5 per cent recalled accurately in which month they had been assaulted.

A general finding in studies on sexual offences is that a substantial number of these crimes are committed by persons whom the victims know, either well or as casual acquaintances. For a number of intensely personal reasons, many of the sexual assault victims choose not to report the offenders to the police, preferring not to have these matters become subject to official or external scrutiny. In the surveys for Hamilton and Edmonton, police records were used as the means of identifying persons who were contacted about crimes that had been committed during the previous year. Many of those who were contacted may have feared that these cases might reopen officially when they wished them to remain closed.



The methods used in the surveys for Hamilton and Edmonton may have contributed to the reported reluctance of victims to discuss the incidents. As well, the respondents were interviewed. While interviewing may be an appropriate approach to collect other types of information about victimization, it is less likely to be the case when a stranger inquires about sensitive personal matters such as sexual assaults, particularly when these may have been committed by family members, friends or acquaintances.

The third victimization study in the series undertaken by the federal Department of the Solicitor General was a telephone survey in 1979 of 10,248 persons over the age of 16 who lived in Vancouver.<sup>35</sup> While the questions asked about sexual offences focussed only on rape and attempted rape, all reported instances of sexual assaults were subsequently incorporated. For this reason, it is uncertain what is the actual range of the acts for which findings are given.

The reported occurrence of sexual offences among the residents of Vancouver in 1979 was 0.34 per cent. When this rate is prorated only for females, it rises to 0.50 per cent; this is approximately five in 1000 women who said that they had been raped, that a rape had been attempted, or that they had been otherwise sexually assaulted. A majority of the victims (69.5 per cent) were young, single, adult females who had been assaulted by strangers (63.6 per cent) in public places (78.4 per cent). In about a third (37.1 per cent) of the instances, alcohol was involved. About half (48.4 per cent) said they had been injured, but fewer (41 per cent) sought medical care. As with the findings of other such surveys, few of the respondents reported the incidents to the police.

The results of the Vancouver survey concerning the reporting of sexual offences differ substantially from the findings of most studies of this kind and may reflect more how the survey was conducted than the actual frequency of the occurrence of these incidents. Most of the sexual assault incidents were reported to have been committed by strangers and to have occurred in public places. While this may be a feature of these crimes that is peculiar to Vancouver, the findings of the Committee's research (police force records, child protection and medical services and national population survey) suggest that the survey procedure used was not wholly effective in documenting the full range of these assaults. The sexual offences reported in these telephone interviews were only those which the women were willing to discuss, namely, those in which most of their assailants' identities were unknown to them.

The fourth victimization survey undertaken in 1981 by the federal Department of the Solicitor General obtained information from 817 persons who were 18 years or older living in Quebec, Ontario and Manitoba, 76.4 per cent of whom lived in Montreal, Toronto and Winnipeg.<sup>36</sup> This survey focussed on the attitudes of these persons towards the administration of justice and obtained information about whether they had been the victims of 13 different types of crimes. Confirming the results of other studies, the 1981 survey found that while most of these persons endorsed strongly the work of the police (89.2 per cent), they believed that the courts were too lenient with criminals (72.0 per cent). As in other surveys of this kind, the distinction is usually not made

between the nature of the evidence presented in court and the sentencing decisions that are reached.

The survey asked the respondents three questions about their sexual attitudes, activities and their experience with sexual offences. One of these questions was if "homosexuals should be accepted in our society like everyone else?" Over half of the persons who were interviewed (58.7 per cent) agreed with this statement, 36.5 per cent disagreed and 4.8 per cent gave no reply.

Another question dealt with the knowledge and the participation of these persons in local programs of crime prevention. "Women's associations against rape" was one of the community resources that was included in this question. Although three in five of the respondents (59.2 per cent) said that they were aware of these associations, only a few (0.9 per cent) had contacted them or participated in their programs.

The results of other victimization and community surveys show that there is a selective reporting by victims of crimes to the police. This trend also emerged in the results of the 1981 survey. A third of the persons in the survey (33.8 per cent) said that they had notified the police after they had been threatened or attacked with a weapon and a quarter (24.2 per cent) had done this after they had been physically assaulted or injured. Among the 13 types of crimes that the persons in the survey were asked about, the victims of sexual assaults ranked the second lowest in terms of notifying the police of these incidents.

The wording of the question: "Have you ever been forced to have sexual relations?", did not specify what was meant by force or sexual relations and no information was asked about by whom these assaults had been committed or when they had happened. Of the 3.6 per cent of the persons who said that they had been the victims of "forced sexual relations", half (50.0 per cent) said that these episodes had happened once and that most of the incidents (77.8 per cent) had occurred over three years prior to the survey. Only one in seven (14.7 per cent) of the offences had been reported to the police.

In reviewing cases that were brought to its attention over a period of years, the *Canadian Human Rights Commission* found that a considerable number of complaints involved reports by persons about sexual harassment at their places of work. In order to document the extent of these problems, the Commission undertook a national population survey in 1981 of 2004 persons who were age 18 years and older.<sup>37</sup>

In the Commission's survey, unwanted sexual attention was defined to include: leering or suggestive looks; sexual remarks or teasing; subtle sexual hints and pressures; touching, brushing against, grabbing or pinching; repeated pressure for a personal relationship or sex; and forced sex. Two in five persons (41.2 per cent) said they had experienced one or more of these forms of unwanted sexual attention with the proportion of women who had experienced these acts being higher (48.7 per cent) than that for men (33.2 per cent).

The survey also reported that about one in eight persons said that they had experienced repeated pressure to have a "personal relationship or sex". Two per cent said they had been forced to have sex at some time in their lives; the proportions were: three per cent of the women and one per cent of the men. The persons included in the 1981 national survey were also asked if they had been "harassed" by the persons who had committed these acts. The assessment of what constituted harassment was left to the judgment of the respondents. No distinction was made in the survey about the explicit nature of the threats, what type of forced sexual acts may have been committed and how old the persons were when these incidents had occurred.

When all types of unwanted sexual attention were aggregated together, the 1981 survey found that over two in five of these acts (44 per cent) had been committed by co-employees, about one in five by other persons whom the respondent knew (20 per cent) and most of the remainder had involved strangers. Overall, two in three of the victims of these unwanted sexual acts had known the persons who had accosted or assaulted them. There was no further identification given in the Commission's report about the identity of these persons, e.g., whether they included family members, relatives or acquaintances. Because there was an imprecise specification of the nature of the association between the persons who were involved in these incidents and of the types of sexual acts that had been committed (e.g., pressure for relationship, forced sex), no direct comparison is feasible between the results of this survey and either other victimization surveys or the National Population Survey that was undertaken by the Committee.

The main features of some of the major victimization surveys for Canada document the sharp and persistent discrepancy between crimes actually committed and those reported selectively or discovered by the police and other helping services. These studies also raise a number of "warning flags" about the circumstances under which persons who have been the victims of certain types of crime, such as sexual offences, may feel reluctant to discuss them subsequently with strangers, or without sufficient preparation. The hallmark of these studies has been their preoccupation with crimes committed against adults. Based on this assumption, only the experience of adults was considered to merit research attention.

## Community Surveys

The intent of the 1970 mailed questionnaire survey of heads of households living in London, Ontario was "to document public attitudes concerning legal sanctions for a wide variety of criminal activities in Canadian society."<sup>38</sup> Included in the listing of the offences that 451 respondents were asked to rate on a nine-point scale (ranging from no penalties and fines to imprisonment and execution) were: rape, attempted rape, prostitution, the prostitutes' clients and homosexual acts.

The results for rape and attempted rape were similar with the most frequently assigned penalty being imprisonment for between two and five years. In contrast with these serious sexual offences, most of the persons in the survey felt that either there should be no penalties or only fines and probation for: prostitutes (70 per cent); the clients of prostitutes (90 per cent); and persons committing homosexual acts (79 per cent).

On the issue of the legal sanctions that the respondents recommended in relation to prostitution, the 1970 London report noted that "although the penalties for the female in this case are relatively light, the sentences given to the male who uses the prostitute are even more lenient".<sup>39</sup> Homosexuality was defined as "two members of the same sex (who) engage in sexual relationships", an activity that was said to be "no longer defined as a criminal activity in Canada".<sup>40</sup> Perhaps as a result of this misinterpretation of the existing criminal law, no distinction was made in the survey with respect to minors who may have engaged in these acts.

While the 1970 London report recognized that the views of these respondents could not be generalized to the Canadian population, its authors were optimistic that "the data gathered in London may, more than any other single area, have the greatest applicability".<sup>41</sup> In comparing the composition of the sample to the 1961 Census statistics for the city, it was concluded "that there are no statistically significant differences between the London population as a whole and our return sample".<sup>42</sup> While this assumption may have been valid in relation to the sample reflecting the characteristics of the heads of households, this group of respondents represented a narrow cross-section of that city's total population. The 451 persons from whom the results were obtained were predominantly middle-aged (median age, 42 years) males (88.0 per cent) who were married (86.7 per cent), protestant (72.1 per cent) and presumably anglophone (the language of the questionnaire).

Only about one in eight of the respondents was a female, a group that other research reports have shown comprises a majority of the victims of sexual offences, and whose views, had they been more fully represented, might have yielded somewhat different results than those given in this Report.

As part of a program designed to identify local crime problems and the public's assessment of enforcement services (police, the courts, corrections), the *Royal Canadian Mounted Police* (R.C.M.P.) in 1979 surveyed the rural and urban municipalities of Selkirk and The Pas in Manitoba.<sup>43</sup> The surveys included: the documenting of all service calls to the police; an assessment of police files involving investigations; four separate community surveys of residents; and extensive meetings with local leaders.

The number of service calls involving sexual offences in 1979 for the four regions ranged from 0.2 to 1.0 per cent. While these constitute a small number of cases, the rates varied by 400 per cent between the rural communities. A comparable variation was found in the number of sexual offences which were investigated by the police with an 800 per cent difference between 0.1 per cent reported for rural Selkirk and 0.9 per cent for rural The Pas.

About a third of all crimes reported to the police were not witnessed, with the proportions for particular offences varying between 29.0 and 38.6 per cent. These comprehensive community studies confirmed that the police relied heavily upon the participation of the public to bring offences to their attention. Between a third (32.3 per cent) and a half (49.5 per cent) of the police investigations were initiated by complaints made by the public, while those resulting directly from police work ranged from 18.0 to 32.8 per cent. When the residents of the four communities were asked how they rated the effectiveness of enforcement services, most strongly endorsed the work of the police (nine in 10 giving a strong positive rating), only about a half rated the courts positively and well less than half approved the work of the correctional services. These community assessments of crime prevention called for strengthening of police work when juveniles were involved, greater public visibility for the work of the police and more effective ways to involve the public in the reporting of offences.

The residents of the four communities in Manitoba were asked whether they feared that they were likely to become the victims of seven types of crime. One of these fears was that of being sexually assaulted. Among all residents, this was the least feared of the seven crimes. Between 1.7 and 3.7 per cent of the persons who were interviewed said there was a "certain" or a "good" chance they might be sexually assaulted (a difference in perceived risk of 118 per cent). On average, the number of persons stating they feared being sexually assaulted was five times the number of actual cases of sexual assault investigated by the police. There was no direct association between the perception of risk and the number of cases known to the police in the four communities. The community with the lowest proportion of cases (0.1 per cent) reported to the police had the highest number of persons (3.0 per cent) who felt there was a certain or good chance that they might be sexually assaulted. It is unknown whether this greater sense of concern in some of the communities led to greater precautions being taken that in turn accounted for the lower occurrence of reported sexual assaults.

What is unusual about the community surveys for Selkirk and The Pas is that several complementary surveys were undertaken, a procedure which permits the comparison of findings obtained from different sources within these communities. With respect to sexual offences, it was found that the reported prevalence of these crimes varied both between communities and with regard to the perceived risks of being sexually assaulted. What is unknown from these community surveys for London, Selkirk and The Pas is how many persons were actually assaulted sexually, their ages, sexes, and how such experience may have affected their willingness to report these crimes, and their perception of the relative risks of being assaulted.

## Quebec Child Protection Surveys

The most extensive surveys for Canada of sexually abused children who are cared for by child protection services have been undertaken by *Le Comité*

*de la protection de la jeunesse of Quebec.* Between 1975-81, Le Comité completed four major studies that included: surveys of child abuse in 1975-76 and 1978; an analysis of incest in one region; and a report on the sexual experience and knowledge of teenagers.

Based on its research and annual provincial child protection services' statistics, Le Comité found that a sharp increase had occurred in the reporting of cases of child sexual abuse. In 1978, 7.4 per cent of cases that were handled by child protection services involved sexual abuse. This proportion rose to 17.7 per cent in 1979 and to 22.9 per cent in 1980, or a tripling of the reported occurrence during three years. The research reports of Le Comité attributed this sharp increase to a greater willingness by victims and their families to report these offences and the impact of the application of amended child protection legislation which had facilitated the identification of these incidents.

In terms of the cases known to provincial child protection services, Le Comité estimated that in 1977, 0.20 per cent, or two in every 1000 children, were abused. When the number of sexually abused children reported to Le Comité are calculated, the incidence rose from 0.02 per cent to 0.04 per cent between 1978-80. Acknowledging the inadequacy of the sources of information about the actual extent of the offences, Le Comité estimated that the unreported incidents were at least twice the number of known cases.<sup>44-45</sup>

The results of the 1975-76 survey that was undertaken shortly after Le Comité was established are given briefly as its results were documented further by Le Comité's more extensive study completed in 1978. The 1975-76 survey drew upon a sample of 600 child protection records from child protection services across Quebec. A total of 28, or 4.7 per cent, of the cases involved child sexual abuse. Two in three of the children had been assaulted by a member of the family (fathers, 43.5 per cent; a substitute parent, 17.7 per cent; and in-laws, 4.3 per cent). Several of the children were subsequently found to have behavioural problems with 15 per cent being assessed as socially maladjusted, 11 per cent had educational difficulties, seven per cent had signs of mental deficiencies and six per cent had language or speech problems.

About half of the sexually abused children (48 per cent) were removed from their homes under court orders. Following the initial reporting of the cases to child protection services, 61 per cent of the sexually abused children were visited once by social workers and 17 per cent of them twice. After the children were removed from their homes, two in five were not contacted further by child care workers.

In 1977, amendments were proclaimed to the provincial child protection act. The 1978 study by Le Comité, called *Operation 30,000*, was a follow-up to the 1975-76 survey; it served as a basis to assess the operation of the new legislation.<sup>46</sup> Among the approximately 30,000 children served across Quebec by Le Comité, 6299 were reported by case workers to have been abused or neglected. Of this total, 398 children (6.3 per cent) were the victims of sexual offences.

The 1978 child abuse survey by Le Comité assembled cases from all regions of Quebec and the findings obtained indicate that there were extensive regional variations in the reporting of these cases. Confirming the results of the 1975-76 survey, the 1978 study found that 57 per cent of the children were socially maladjusted and 52 per cent were physically handicapped (visual, hearing, organic, mental deficiency, behavioural problems).

In addition to its review of child protection services provided for sexually abused children, the 1978 survey asked social workers about the objectives of these services and how such assistance was most effectively provided. While most of the case workers believed that attaining a stable environment for the child was the ultimate objective to be achieved, there was no consensus how this was to be done. A fifth of the workers advocated that a child should be kept with his or her family. Other options including the temporary or permanent removal of the child were endorsed by half of the social workers (53 per cent). Over half of them (57 per cent) called for improving parental attitudes and behaviour and about a third (30 per cent) focussed on the need to assist the child.

There were sharp disparities between the objectives of child protection services that were held by case workers and how such services were provided for sexually abused children. Between 1975-78, there was a marked shift towards more of the sexually assaulted children being removed from their homes. In the 1975-76 survey, 48 per cent of the children were taken from their homes, a proportion that had risen to 77 per cent by 1978. The average length of placements was about three years (35 months). Less than half (45 per cent) of the families from whom the children had been taken did not receive counselling or assistance from child protection services. Following their temporary placement, 55 per cent of the children were returned to their families without case workers assisting them in making the reunions.

Le Comité's third study of child sexual abuse was an indepth review of the experience of 36 girls who had been the victims of incest.<sup>47</sup> The case records of these children who had been seen by social workers during 1979 in the Outaouais Region were reviewed; five of the girls were interviewed. The report concluded that the amendments to the child protection legislation had facilitated the reporting of cases of incest, as assailants were less threatened with the fear of prosecution than before these changes had been made. These children were not only the victims of the offences, but in some instances, of the system that was intended to help them. Numerous gaps in the types of services provided were noted in the Report. An instance that was given of the need to strengthen these services was that with the exception of one social worker, none of the others had the requisite training or the experience to deal adequately with the victims of incest or their families.

At the request of the local board, Le Comité undertook a comprehensive review in 1981 of the sexual behaviour, knowledge and attitudes of 133 teenagers.<sup>48</sup> The findings of this study are reviewed with other surveys of the sexual behaviour of Canadian school children. In addition to the four research studies

on child abuse, Le Comité continued its concern with these issues by collaborating with the National Child Protection Survey undertaken by the Committee. Le Comité encouraged the development of the national survey, pre-tested the research protocol that was used subsequently in other provinces, and in 1981-82, completed a sample survey of cases of child sexual abuse that were treated by child protection services across Quebec.

The comprehensive and detailed research by Le Comité de la protection de la jeunesse is a significant contribution in documenting the dimensions of sexual offences against children, who the victims were, how they were harmed, and how services were provided for them. What is unusual about these studies is that they were undertaken in connection with changes in child protection legislation with the purpose of gauging the extent of the problems and how they were dealt with under the terms of the law. The child protection surveys of Quebec provide a basis upon which to gauge emerging trends involving the identification and the management of child sexual abuse. By identifying gaps in how services are given, this research provides an empirical foundation upon which to develop more effective means of providing protection for these children.

## Sexual Knowledge and Experience of School Children

In addition to victimization and community surveys, a number of studies completed during the 1970s inquired about the sexual attitudes, knowledge and behaviour of high school children. While the studies for Saskatchewan (1979), Saguenay — Lac St. Jean (1981) and Calgary (1981) did not ask students whether they had been sexually abused, information was obtained about when they began to have intercourse, about their attitudes towards sexual behaviour, and in one instance, about their experience with homosexual acts. An exception to the type of information that was collected in the other surveys was a detailed review of the sexual experience including sexual assaults of a small number of high school students in Quebec (1981).

The 1979 Saskatchewan Youth Health survey of 744 high school youths who were between 15 and 19 years-old found that 44.1 per cent said they had had intercourse at least once.<sup>49</sup> Among these sexually initiated youths, 23.8 per cent had had intercourse before age 14, and by age 15, almost half (48.1 per cent) had done so. No information was obtained about the ages of their partners. The results of the Saskatchewan Youth Survey confirm the findings of the larger 1976 national population survey undertaken by the federally appointed *Committee on the Operation of the Abortion Law*. The survey found that among young males, 30.0 per cent of 15 year-olds and 41.6 per cent of the youths between 16 and 17 years had had intercourse at least once, while among young females, 8.3 per cent of those who were age 15 and 18.6 per cent of those who were 16 and 17 years had had coitus. Concerning this discrepancy



between the sexual experience of young males and females, the *Committee on the Operation of the Abortion Law* noted:

In the folkways of young males who socially and physiologically are in transition between childhood and manhood, there is much braggadocio about their sexual potency and their alleged sexual liaisons. It is often thought that to be a man is to be sexually intrepid, and to be seen to be so . . . it is not readily apparent from the higher rate of coitus . . . of young males between 15 and 17 years than females, with whom sexual intercourse occurred unless this happened extensively with older women by younger men . . .<sup>50</sup>

Adopting a broader definition of sexually active behaviour than was used by the Saskatchewan study, the 1981 Calgary Survey of Sexual Behaviour and Attitudes reported that 58.0 per cent of 810 high school students were sexually experienced.<sup>51</sup> About one in six youths (16.6 per cent) had had coitus before age 14 years. The proportion was higher among those who had engaged in other forms of sexual activity, among whom one in four (26.5 per cent) had had coitus. Information was not obtained concerning the ages of their partners or about the relationships between them.

In one of the most extensive reviews of school children in Canada, the 1980 *Enquete sur les connaissances sexuelles des etudiant(e)s* in the Saguenay — Lac St. Jean region of Quebec obtained information on the knowledge, beliefs and sexual behaviour of 658 adolescents comprising 7.9 per cent of 8257 college (C.E.G.E.P.) students who were 17 years and older.<sup>52</sup> Among these students, 43.1 per cent said that they had had coitus at least once since age 12, and 10.8 per cent said they had had a homosexual experience. The experience with homosexual partners varied by sex, with 15.2 per cent of adolescent males and 5.8 per cent of adolescent females reporting that they had participated at least once in these acts. Regarding their attitudes towards pedophiles, the students regarded pedophilic persons as: psychotics or very dangerous individuals (48.2 per cent); middle aged men who fondled children but who did not want sex (28.7 per cent); older men with records of past sexual offences (11.6 per cent); homosexuals (9.9 per cent); and alcoholics (1.7 per cent).

The Saguenay — Lac St. Jean survey found that girls were more knowledgeable about sex than boys. Fewer than three in 10 students looked to their parents as the primary source of information about sex. Other frequently cited and multiple sources of information about sexual behaviour were: reading (23 per cent); school courses (22 per cent); friends (18 per cent); and the media (18 per cent). Based on the criteria of a Sexual Knowledge Test, it was concluded that 84 per cent had inadequate knowledge, that 13 per cent had a weak understanding, and that only three per cent were considered to be well informed. That these students possessed an inadequate level of sexual information was illustrated by the fact that 55 per cent of young males and 39 per cent of young females did not know when a woman's most fertile phase of the menstrual cycle occurred.

The 1981 study of the Sexual Behaviour and Opinions of Adolescents undertaken by *Le Comité de la protection de la jeunesse* is unique among the

Canadian studies of school children because of the detailed questions that were asked about their experience with sexual offences.<sup>53</sup> Because of the forthright nature of these questions, the identity of the high school attended by the 133 students who were surveyed was not reported.

Two-thirds (63.2 per cent) of the students said that they had been the victims of some form of violence or physical assaults. One in 13 had been sexually assaulted (7.5 per cent); slightly over half of these victims (4.5 per cent) had been sexually assaulted while the remainder (3.0 per cent) had been the victims of both physical and sexual assaults. Among the 10 sexually assaulted students, seven were girls and three were boys. Family members had committed six of the offences (against four girls and two boys). Among the incidents which had been committed by other persons, two victims had been attacked by gangs (a girl and a boy), one assailant was an adult acquaintance and one offence had involved a boyfriend.

The Quebec high school students said that they had obtained most of their knowledge about sex from books (79 per cent) and their friends (69 per cent). When they were asked who they would prefer to obtain this kind of information from, the sources that the students listed were: parents (23 per cent); books and magazines (20 per cent); friends (19 per cent); and health workers (18 per cent).

These four surveys of teenagers are alike in indicating that, starting at about ages 13 to 15 years, a sizeable proportion of young males and females have had coitus at least once, and that both the numbers involved and the frequency of these sexual acts increase with age. What has not been documented in these reports are the ages, the sex and the nature of the association with their partners, or the extent to which participation in these acts was voluntary or involuntary. With the exception of the report about the experience of a small number of Quebec high school students, the prevailing assumption in these reports was that these teenagers were experimenting with, or learning about, sex with their peers and that none of the acts involved prostitution, incest, rape or a broad disparity in age between partners.

## Sexual Assault Surveys

The 1970 Toronto rape study of 116 women who were 14 years or older drew its results from assaults reported to the police.<sup>54</sup> The majority of the offences (64 per cent) were acts of violence committed by strangers; these assaults involved the use of weapons (13.5 per cent), physical attacks (32.0 per cent) and threats (37.1 per cent).

Among the rapes that were investigated by the Toronto police in 1970, 36 of the victims were teenagers between 14 — 19 years. No separate analysis was made for this group. The 1970 Toronto rape study acknowledged that there was incomplete information about the actual occurrence of sexual offences. Its

estimate was that between 2.5 and 25 rapes occurred for every one that was reported to the police. The basis for this conclusion was that:

In Canada, the most knowledgeable and most frequently heard 'guesstimate' is that for every ten rapes committed, between 1 and 4 are reported. And a Toronto psychiatrist, whose clients include a large number of rape victims and their husbands, believes that only 1 rape in 25 is reported. Thus, estimates of reporting rates go from a high of 40% to a low of 4%. This means that at least 2.5 rapes and as many as 25 rapes occur for every one that is reported. Reported rapes are only the tip of the iceberg.<sup>55</sup>

The results of the 1970 Toronto rape study were cited widely as the basis to justify the reform of the sexual offences in the *Criminal Code*. Assumptions that were implicit in this review of 116 rapes were that these offences were committed primarily against older teenagers and adult women, that the legal reforms advocated would equally benefit children and adults, and that a single source of information was a sufficient basis to document the general dimensions of these incidents.

In the 1978-79 Winnipeg survey of sexually assaulted women, a random sample of 10 women was drawn from each of the City's 105 census tracts.<sup>56-57</sup> A total of 551 women, or 52.5 per cent of those females who were initially approached, gave information on whether they had been sexually assaulted. The definition of rape which was used included oral, anal and vaginal intercourse. A sexual assault was defined to include the following acts: being kissed against one's will; grabbing the sexual parts of a woman's body; unwanted holding or rubbing of bodies; the tearing of clothes; and attempting to commit rape.

Among these women, 6.0 per cent said they had been raped and 27.4 per cent reported having been sexually assaulted, resulting in a total of 33.4 per cent who had been sexually assaulted at least once in their lives. When unwanted kissing was eliminated, 27.2 per cent, or about one in four women said that they had been sexually assaulted. About half of the rapes (46 per cent) and the sexual assaults (53 per cent) had happened before the victims were 17 years-old. Two-thirds (67 per cent) of the assaults were committed by family members, friends or acquaintances. In about a third of the instances (rape, 36 per cent; sexual assault 31 per cent), the assailants had been under the influence of alcohol or drugs. All of the victims reported one or more long-term psychological consequences resulting from these assaults, including dysphoria (depression, anxiety) fear and anger.

Twelve per cent of the women who had been raped and 18 per cent of those who had been sexually assaulted said that they had not told anyone about these offences before disclosing them to the interviewers. About half of the raped women and almost all who had been sexually assaulted (94 per cent) had not sought professional help after these assaults had occurred. Twelve per cent of the raped women and seven per cent of the sexually assaulted ones had reported the offences to the police. The Winnipeg Rape Crisis Centre had been consulted by 3.0 per cent of the raped women and 0.7 per cent of those who had been sexually assaulted. The other multiple sources of help contacted by

these women included: physicians/hospitals (12 per cent); social workers (12 per cent); psychologists/psychiatrists (12 per cent); public health nurses (3 per cent); and none had sought out mental health services, the clergy or had used emergency hotlines.

The research of the 1978-79 Winnipeg Sexual Assault Survey was drawn upon by the federal *Advisory Council on the Status of Women* to project the extent of sexual assaults against women across Canada. In its pamphlet, *Rape and Sexual Assault*, the *Advisory Council* noted that:

1 in every 17 Canadian women is raped at some point in her life; 1 in every 5 women is sexually assaulted . . . a woman is raped every 29 minutes in Canada — a woman is sexually assaulted every 6 minutes.<sup>58</sup>

In supporting its conclusions about the national occurrence of these sexual offences, *Fact Sheet #4* of the *Advisory Council* noted that since "the Winnipeg incidence rate is not unusual, the results of the Winnipeg survey had been generalized to Canada as a whole."<sup>59</sup> Based on its review, the *Advisory Council* called for the reform of the sexual offences in the *Criminal Code*, a program of public education and a strengthening of rape crisis centres.

While the findings of the Winnipeg survey, the most detailed of its kind for Canada, are not impugned, the experience of 33 women who had been raped and 117 who had been sexually assaulted in one city provide a limited basis upon which to develop national estimates, particularly since these estimates did not take into account the possibility of regional variations in the occurrence of the offences. Until more broadly based findings are available, in relation to sexual offences committed against children and adults, the Committee believes it inappropriate to draw upon the results of a single study for one metropolitan area as though they represented accurately the national experience.

In addition to its extensive findings, the Winnipeg Sexual Assault Survey indicates that a sizeable number of women, if approached sympathetically, may overcome their reluctance to speak and will provide information about these sensitive issues, and that approaching adults may be a feasible means of obtaining an estimate of the extent to which they were sexually abused as children. The procedural difficulties involved in asking young children to participate in a survey include: obtaining informed, and where appropriate, parental consent; the wording of the questions; and the fact that some of the assaults may have been committed by family members, relatives or persons who are responsible for the children about whom information is being sought. The approach adopted by the Winnipeg Sexual Assault Survey, while it is a second best option to asking children directly about their experience, indicates that it is feasible to obtain detailed information from adults about their childhood experience with sexual offences. The principal limitation of this procedure is the accuracy with which the incidents may be recalled, a factor that is partially offset by gaining information about the long-term consequences that may have resulted from the sexual assaults.

The 1979-80 study of 513 cases reported to five Ontario Rape Crisis Centres rejected the official sources of statistics about sexual assaults as misrepresenting the nature of these crimes.

Police reports and classification is not an accurate portrayal of sexual assault occurrences . . . The police appear to believe that large numbers of women lie about sexual assault and must be prevented from pursuing their complaints . . . (there has been) . . . an alarming increase in charges of Public Mischief being brought *against the victim* who reports a sexual assault and is not believed . . . ”<sup>60</sup>

Based on the experience of five Ontario Rape Crisis Centres, the results of the Winnipeg Sexual Assault Survey and the 1970 study of rapes reported to the Toronto Police, it was estimated that “the combined incidence rate of rape and sexual assault is one in four for women living in Canada. Far from being an infrequent crime, sexual violence is a fairly common experience.”<sup>61</sup>

The conclusion that a large number of violent sexual attacks are committed against women came from the study’s findings that: two-thirds of the women (63.4 per cent) had been raped or attempts had been made to rape them; a third (33.8 per cent) had been attacked violently; and well over half (58.5 per cent) had been severely injured. One in 10 of the women (10.2 per cent) said they had been the victims of incest or an incestuous assault. Among the women who had been injured, 15 had been beaten severely; 51 had been burnt, choked or hit; 12 had suffered vaginal or anal bruises and lacerations; and 20 reported other kinds of physical harm.

Many of the victims said they had suffered emotional problems that had resulted from the assaults. Of the 165 cases, for which this information was available, the harms included: trauma up to four weeks (53); symptoms up to one year (29); severe long-term trauma (38); difficulty with or loss of a job (13); major changes in lifestyle (40); and thoughts of or attempts to commit suicide (22).

The majority of the persons who came to the centres were young (53.1 per cent under age 20) women (96.4 per cent), most of whom had been attacked by slightly older males. A quarter of the assailants (27.3 per cent) were strangers, over half were acquaintances (54.0 per cent), and one in six (16.8 per cent) was a family member. Of the children who were under 14, 35 per cent had been raped and 16 per cent were incest victims. One in seven assaults (14.1 per cent) had been committed by two or more assailants. Over two-thirds of the incidents (69.6 per cent) had been in the homes of the victims or the suspects, and the remainder had occurred in public places.

The Report stated that “in the experience of counsellors at Rape Crisis Centres, fewer women than formerly are willing to go to the police and lay charges against an assailant.”<sup>62</sup> Of the 148 females for whom this information was available, 118 or 79.9 per cent, had notified the police.

The Report on the persons who had consulted Rape Crisis Centres concluded that “the results of the Ontario study provide more detailed information

on the experience of sexual assaults, than do other available studies completed so far in Canada."<sup>63</sup> This objective was not fully realized since few of the completed Canadian studies were cited.

A limitation in the presentation of the Report's findings was the use of flexible denominators. While 513 cases were selected initially for analysis, the method of analysis was to give information for each item for which findings were available. This procedure serves to inflate results by calculating them on a smaller denominator than the initial listing of the cases that had been selected (513 cases). The denominators used to calculate some of the results were: sex distribution (274 persons); the number of assailants (304 persons); multiple assault cases (425 persons); the location of incidents (207 persons); the type of association between victims and assailants (268 persons); physical injuries (200 persons); emotional harms (165 persons); and the notification of the offences to the police (148 persons). In this respect, it is unclear how information was given for 507 persons who had been assaulted, while the sex of only 274 persons was listed.

## National Opinion Surveys

Two national opinion surveys have gauged the awareness of Canadians about the physical abuse of children by their parents, about whether they believed sexual assaults constituted a serious problem and about their attitudes towards homosexuals and the availability of pornography. While these national opinion surveys did not obtain information on child sexual abuse, the views of Canadians on related issues indicate that these issues are seen as serious problems and that there is a widespread condemnation of sexual deviance.

In January, 1982, the Canadian Institute of Public Opinion (Gallup Poll) asked 1050 Canadians who were 18 years and older; "Are you personally aware of any serious instances of physical abuse of children by their parents, that is, not just something you read about in newspapers or saw on T.V., but that happened to someone you know or someone who lives in your neighbourhood."<sup>64</sup> One in 10 Canadians (11 per cent) said that they knew a child who had been physically abused by a parent, a rate lower than that in a similar national survey for the United States (15 per cent).

Both national surveys used a definition of physical abuse which did not distinguish between child abuse and the parental disciplining of a child, such as spanking. The focus on physical abuse excluded other forms of harm such as emotional abuse, or the neglect of a child, as well as acts committed by persons other than a child's parents. For these reasons, the reporting of the physical abuse of children by a cross-section of the Canadian population constitutes an underestimate of the full range of abuses committed against children.

The knowledge by Canadians of physically abused children varied regionally and according to their social circumstances. Fewer persons in the Maritimes (4.4 per cent) than elsewhere in Canada knew of incidents of physical

child abuse. The rates for other regions of the country were: Quebec (12.7 per cent), Ontario (11.8 per cent), the Prairies (9.5 per cent) and British Columbia (12.5 per cent). The reports of known instances of child physical abuse were given more often by persons with higher incomes and with higher education (university education, 14.1 per cent; primary school education, 7.4 per cent), and among households with children (13 per cent) than by adults living by themselves (8.9 per cent). While the national survey of knowledge about physical child abuse provided information on a single issue that was narrowly specified, the results indicate that variations along these lines may occur between regions of the country and according to the social situation of persons from whom such information is obtained.

Between 1975-81, two national surveys focussed on the attitudes of Canadians who were 18 years of age and older concerning a number of issues including whether persons felt they were at risk of being sexually assaulted and their attitudes towards homosexuality and the availability of pornography.<sup>65</sup> The results of the surveys suggest that Canadians held deeply entrenched views about these issues and that there was little change in their opinions during this period. Eighty per cent of the adults in the 1980-81 national survey said that sexual assaults were a serious problem. These concerns were greater among women (89 per cent) than men (71 per cent), and for women, more often voiced by those who were younger or much older, and those having broken marriages and less education. While a majority (70 per cent) said that homosexuals were entitled to the same rights as other Canadians, about an equal number of persons in each survey believed that homosexual acts were wrong (72 per cent in 1975; 69 per cent in 1980-81). The disapproval of homosexuality was more strongly held by men than women, by married than single persons, and by the residents of smaller than of larger centres.

Indicating a growing public concern about pornography, more Canadians condemned its distribution in 1980-81 (92 per cent) than in 1975 (86 per cent). The condemnation of pornography was expressed more strongly by older rather than younger persons, by more women than men, and by more of the residents of smaller than larger population centres. These differences, however, were relatively insignificant compared with the widespread condemnation across the country against the distribution of pornography.

In the 1980-81 national survey, 35 per cent of the respondents said its distribution should be banned completely, 57 per cent said the law should prohibit its availability to youths who were 18 years and younger and only eight per cent advocated that there be no curbs restricting its distribution.

These widely held negative views expressed by many Canadians about the distribution of pornography differ sharply with the widespread availability and consumption of these materials across Canada. This paradox between moral imperatives and what Canadians do in relation to buying these materials indicates that there is much latitude in terms of what is considered to be acceptable sexual behaviour and its description or display in publications. This fact may account for the discrepancy between how Canadians believe the distribution of

pornography ought to be limited and the more tolerant application of sanctions by enforcement and legal authorities. What such surveys do not indicate is whether, in the pursuit of a more vigorous prohibition of the distribution of pornography, Canadians are fully agreed about the types of acts which they condemn in general terms and whether they are prepared to forego certain entrenched rights in order to achieve the desired prohibition.

## Summary

The salient features of the research on the extent of sexual offences include: the consistent reporting of a substantial number of these crimes that are unknown or undetected by public services; the broad range of helping resources that are turned to for assistance; and an imprecision in the identification of the specific acts that were committed, the persons involved and what their relationships were. In addition to these trends, the Canadian research on sexual offences has focussed on the experience of adults. No central co-ordinating mechanism has been established that assembles and makes available these sources of information.

Despite its diversity, there is no doubt that for Canada and elsewhere the number of officially reported sexual offences does not accurately reflect the true occurrence of these crimes. There is a firm and broad consensus on this point. There is no agreement, however, on the size of the ratio between the number of undetected incidents and the number that are officially recorded by the public services.

The research on sexual offences reaffirms the truism of clinical interviewing and social survey research that the way in which information is collected influences the extent to which persons are willing or reluctant to speak subsequently about certain events as well as the types of incidents they are prepared to report. Brief and impersonal contacts in which general questions are answered with uncertainty that the confidentiality about one's responses will be maintained yield fewer replies when matters of sensitive personal concern are broached. In the instance of sexual offences, this procedure would undercover incidents involving strangers. Where more effort has been made to identify the purpose of an inquiry, where more specific questions are asked and where a sense of rapport is established, fuller and more detailed information is given. This approach relies upon the objective neutrality of the interviews. One procedure which has been seldom tried is to ask persons to read questions and to provide written answers while assuring that confidentiality of their replies will be honoured. Most of the differences in the ratios between unreported and reported sexual offences are accounted for by the various methods used in the research studies, some of which are inappropriate to obtain reasonably reliable information about sexual offences.

Much of the research on sexual offences has been completed in recent years, and for this reason, only a modest start has been made in the collation and the cross-referencing of different studies. In the absence of firm informa-



tion gauging the extent to which these crimes occur, a common practice in Canada has been to project the experience documented abroad as though it was indicative of the Canadian experience.

When the victims of sexual offences report these incidents, they turn to a variety of sources for assistance. As a result, the types of information available to each of these sources represents neither the full range of the incidents, nor the full sequence of events that may happen to each victim. While some observers have discounted the value of information that is obtained from such sources for these reasons, this consistent research finding indicates that, in considering the complex issues involved in the occurrence and management of sexual offences, there is a need to draw upon complementary sources.

Typical of this research and of the official criminal statistics for Canada has been the collection of information about offences committed against adults. With few exceptions, most of these sources have not dealt with sexual offences committed against children. Up to the present time, for reasons unknown, the experience of children has consistently been ignored, forgotten or deemed to be unimportant in the documentation not only of sexual offences but also of other types of assaults.

This grave omission is reinforced by the procedures used in the collection and classification of information about victims, suspects or offenders, and the crimes that were committed. In both types of sources — surveys and criminal statistics — only broad categories of sexual offences are typically reported. This practice precludes the specific identification of those sex crimes set out in the *Criminal Code* that specify the elements of these offences in relation to the age, sex and relationships of affinity, positions of authority or trust. Because these rudimentary types of information are consistently missing in the research surveys and official criminal statistics, these sources can be used only as a baseline for documenting broad trends. For these reasons, they cannot be used as basis to review the operation of existing sexual offences in the *Criminal Code* or the potential impact of new legislative proposals.

A characteristic common to most of the Canadian research on sexual offences is that it has been largely the work of single disciplines. This separation has led to distinctive and unrelated bodies of research for police work, community associations, child protection services, school programs, medical services, the field of corrections and social science surveys, among others. Typically, the research that has been undertaken within the purview in one field deals inadequately with the issues that concern the members of other disciplines or services.

In a number of respects, the Canadian research on sexual offences is seriously flawed. While it purports to deal with criminal behaviour, it is seldom informed accurately about the relevant legal issues, even as these pertain to such basic information as the ages and the sexes of the victims, or the types of association between victims and offenders. It is no surprise, then, that these types of studies have often been ignored when legislation is being reviewed or

amended. On the other side of the coin, there has been much reluctance by legal scholars and researchers to seek an empirical basis in relation to the operation of the sexual offences set out in the *Criminal Code*, or concerning the efficacy of different sanctions and sentencing practices. Amendments to this legislation have been made on grounds other than a sufficient documentation of the types of sexual acts that are committed or what happens to the victims and offenders. This approach to the drafting of new legislation is inappropriate when the means are available to obtain more complete documentation.

In his 1968 review of homosexual, exhibitionistic and pedophilic acts, A.K. Gigeroff advocated that empirical research should be the foundation for the review and reform of the law. The Committee concurs with this perspective.

The information exists in the courtrooms and the police services across the country; there is a methodology for analysing and structuring the data in meaningful ways; the technology necessary is widely used in government and industry. What is missing? There is an unfamiliarity with and skepticism over the possible application of scientific methods to what have been regarded traditionally as legal problems. It follows that there is also a failure to appreciate the relevance of empirical studies and to utilize these in the formulation of criminal legislation. There is perhaps an understandable hesitancy over considering a balance sheet on the operation and effectiveness of previous legislative efforts in criminal law, where there is no precedence for ever having done so in the past.

... no simple or single approach to these offences could possibly yield the kind of information one would wish or need to have in order to reformulate them. Each phase of the study presents a different facet of the problem ... (this approach) ... provides us with a means of looking behind the legislation, beyond the case law, and it confronts us with a new dimension of the problem of sexual deviations and the law. It presents us with a picture of the legislation *in operation* ... it enables us to conceive of the problem not on the basis of the act alone but on the basis of the 'event'.<sup>66</sup>

There is an absence of sufficiently extensive and specific information about crimes including sexual offences committed against children in Canada. Strong public effort is warranted to rectify this situation. The value of assembling such information lies in identifying the children known to the helping services, in indicating those who may be highly vulnerable and in making possible an ongoing review of existing policies and programs.

**By focussing on sexual offences against children, the Committee has been able to obtain extensive and detailed information on the relevant legal issues as well as on the wider issues that concern the helping services. The Committee believes that because of its usefulness in putting a wide variety of behaviours under examination, this focus should be retained in the federal government's response to the Committee's findings and recommendations. However, care should be taken to ensure that the Committee's wide coverage of behaviours and protective mechanisms is reflected in the government's response by the involvement of all interested federal and provincial departments and non-governmental agencies.**

**In light of its review of the reports of earlier advisory bodies, completed research studies, and the extensive findings documented in this Report, the Committee believes that these purposes as specified in more detail in Recommendation 1 (Chapter 3), would be most effectively realized by the establishment of an Office of the Commissioner having assigned authority to serve as the means to initiate and co-ordinate the reforms which are called for. On the basis of our findings, there can be no doubt about the need to afford better protection for sexually abused children and youths or about the need to seek more effective means of reducing and preventing these offences.**

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## Chapter 5

### Personal Accounts

The complex issues involved in sexual crimes committed against children cannot be dealt with by any single source. The Committee therefore obtained information on several thousand known incidents from child protection workers, police, doctors and others in the helping professions. Briefs were received from a number of groups and associations representing the interests of sexually abused children and their parents. In the National Population Survey the Committee asked a representative sample of some 2000 Canadians about their experiences with child sexual abuse.

In order to reach directly children and youths who had been sexually abused and to obtain information on the experience of adults who had been assaulted as children, the Committee placed requests for information in a number of wide circulation daily newspapers across Canada. Comparable requests were carried on a number of regional radio programs and were made to groups representing children and parents which contacted the Committee. In response to these requests, the Committee received a number of written replies and oral presentations. As expected, in light of what is known about the degree of recognition by children of such offences, their deeply held fears and concerns, and their reluctance to talk about such incidents to others, most of the replies came from older teenagers and adults.

Because of the stigma associated with these assaults, even long after the incidents had occurred, most of the persons who contacted the Committee sought an assurance that their anonymity would be respected. This assurance was given. The excerpts taken from their accounts have been altered only to the extent that references are deleted which might identify persons, institutions or the places where the assaults occurred. To assure the validity of the replies, only those accounts that were signed and in which there was confirmation of address are reported.

These accounts reveal that the family circumstances of the persons abused, the types of acts committed and the identity of their assailants influenced the decisions to seek or not to seek assistance, and when this step was taken, which sources were contacted. Most of these persons were reluctant to give evidence against their assailants. In a few of the instances which were

investigated by the police, the fact of their young age was reported to have precluded charges being laid. The accounts show how the decisions concerning the giving of evidence were made. They also document vividly the effects such sexual contacts had on their lives long after the incidents had occurred.

To assist the members of the helping professions to identify and provide assistance to the young victims of sexual assaults, a number of widely distributed check-lists have been developed which detail the signs of these conditions and the typical responses that may occur following an assault. Some of these reactions have been reported to include: irritability; excessive dependency; loss of self-esteem; general depression, regressive behaviour; withdrawal, truancy; academic difficulties; physical trauma; and suicidal behaviour. Following a sexual assault, the young victims are said to pass through three phases which include: an acute reaction; a recoil phase; and a longer period of reintegration.

During the acute phase which occurs immediately following a sexual assault, the reactions of victims are reported to involve disturbances in eating habits and nausea, insomnia and nightmares, tension, headaches, and if a serious assault has occurred, general body pains. The victim's emotional reactions are reported to include: shock and disbelief; fear; guilt; a sense of helplessness; and anger. Many victims are said to develop an absolute distrust of other persons.

During the second or recoil phase, the young victims of sexual assault are portrayed as resuming their usual activities, often in a hyperactive manner. At this time they may appear outwardly to be adjusting well and are likely to deny what happened to them, to withdraw from discussion of their experience and to resent offers of assistance. The third phase involves a process of reintegration and a gradual return to normal activities.

The accounts reported in this chapter which were written by persons who had been sexually assaulted as children indicate a broad range of reactions, most of which do not conform well to the items on the check-lists of the signs and reactions which they are said to experience. For the most part these classificatory profiles have been developed on the basis of the experience of children who have been seriously hurt, who have been assessed, and whose reactions are projected to be similar to those of adult women who have been assaulted in incidents involving threats or force. It is apparent from these personal accounts that the check-lists have not been grounded on the experience of both females and males who are victims. They neither encompass the full range of the types of incidents which may occur nor do they take in account the attendant circumstances in which children may be involved.

The personal accounts show that few of these individuals received any form of guidance or instruction about sex from their parents, schools or other sources. Several individuals strongly advocated that they would have been in a better position to know what they should have done had they known more



about what was being done to them, that it was wrong, and to whom they might have been able to have turned for help.

Since a central concern of the Committee is the earlier detection and the prevention of sexual offences against children, these accounts are grouped into categories reflecting when and from whom assistance was sought. This grouping of the personal accounts is given in terms of: no assistance sought; assistance sought later in life; and assistance sought immediately.

## No Assistance Sought

### *Personal Account 1*

I was an only child of a marriage which broke up when I was four. Over the years, and after the death of my father when I was seven, my mother had several live-in boyfriends (three in all to the best of my recollection). One of these was several years junior to my mother who lived with her for a period of at least six years. At the onset, this was under the pretense of being a boarder, and then gradually, he was presented as being mother's boyfriend and then her husband.

Within a short time of his moving in, this man began what could be called a courting type of relationship with me (then age 11 or 12), taking me out to movies or skidoing. At first, the attention seemed heaven sent. Within a short time, favours were asked in return, starting with petting, undressing, looking, and then, oral sex. I hated being part of this. I made every effort to avoid being alone with him. I recruited some of my friends to rescue me, without explaining why, simply telling them I didn't like him, he was a jerk.

Luckily for me, because of the rate at which the demands were progressing, with actual sexual intercourse being next on the list, the relationship between my mother and this man broke up. I was saved.

I have never shared any of this with my mother. To this day, she and everyone else is — and has been — unaware of my experience, with the exception of my husband, whose support, love and reassurance at the beginning of our relationship, and throughout, has helped me get over those harsh days of my childhood.

Although my childhood experience with sexual abuse was far from being as terrible as many I have heard about since being an adult, I can say, in honesty, that all of this affected my life directly and indirectly. I grew to resent my mother for not protecting me, thus losing the only connection with any living relative.

I felt guilt. Being unable to relieve myself of it with or through anyone, I carried this burden with me. In many ways, I am still insecure and unsure of myself because of these experiences, although time and my husband's love and support certainly have helped to increase my self-confidence.

I am not an expert, but I am relating my thoughts and feelings in the hope that something can be done to help prevent and protect children from having this type of thing happen to them.

1. As a child I felt I was the only one subjected to this type of harassment. Had I been aware that others were too, I might have felt able to share this burden with someone, particularly a helping

adult such as a teacher or a school counsellor. I have seen an ad from the States telling kids that if someone is touching them, to tell an adult, any adult, until someone believes them and stops the attacks. To me, this is one of the best ways to reach kids — to tell them how to get help, and also, to let them know it happens to others.

2. Children should be interviewed by the school counsellor, not at their request, but as a matter of routine, with inquiries being made about their home situation. Too often, kids at the age of 10, 11 and 12 simply do not have the courage or the moxy to seek out a counsellor for help, or even to be aware that help can be obtained through them.
3. As sexual abuse breeds a complete lack of self-worth, and may encourage prostitution, perhaps it would be advantageous to seek out, within the system, be it social service agencies, schools, and other agencies, youngsters who appear to be severely lacking in self-esteem as a clue to their home situation, and thereby, arrest the process before it is too late.

#### *Personal Account 2*

I was sexually abused as a nine year-old boy in a fashion that is classic. It took me more than 20 years before I could admit this to anyone. To this day, my parents are unaware that I was victimized. My wife became privy to the information seven years after we began to live together. Only two or three people within my immediate circle of friends are aware of my experience.

The incident took place at the summer residence of my Grade One teacher who used to select four or five of her former inner city immigrant pupils and invite them to spend the summer at her large estate in \_\_\_\_\_. My parents, who had been in Canada for approximately five years, considered this an honour and let my younger brother and me out of our overprotective cocoon, entrusting us to her care, feeling that this was an important advance in our lives. After all, her permanent address was in an elite suburb. Two other children were also invited.

I came down with tonsillitis, during the summer, an illness which plagued me until adolescence. I was bedridden for several days. For some reason my former teacher and the other children were absent for several hours on a particular day. Perhaps it was Sunday and they went to church. At any rate I was left alone in this large mansion with a male house guest. I cannot recall how he came to be there or the duration of his stay. Maybe he was just there for the weekend. Shortly after we were left alone, he came into the room where I was convalescing. He got into bed with me. He began to fondle my genitals. I recall just lying there, possessed by total fear. His biggest concern was whether he was hurting me or not. He inquired repeatedly about this.

I cannot recall this person beyond the fact that he was much older because of his gray hair and stooping posture. He left shortly thereafter. I never saw him again, although his presence has remained with me ever since.

As I grew up my biggest problem with what had happened was coming to terms with its homosexual aspects. My peer group was severely negative towards any homosexual, and so I was truly ashamed of what had happened. When I began to attend university, the milieu I frequented continued to be

totally inimical to any form of homosexuality. So my experience was suppressed again, to the extent of being quasi non-existent in my mind. Essentially, I feared that because I was a latent homosexual, I had somehow invited or caused the assault by that strange house guest.

When I became a teacher, the last thing I wanted to admit in any professional discussion concerning child molesting was my own experience. As a personal anxiety the problem gave rise to active prejudice on my part, because it focussed solely on the homosexual nature of the encounter. In other words, had the adult involved been a female, I probably would have boasted about the experience. In fact, that same summer, I had repeated sexual explorations with a young female, one of the other children who had been invited. Also, each morning we were obliged to witness our former teacher's ablutions which were always conducted in total nudity over the kitchen sink. Both of these experiences concerning females were never hidden from my "gang". In fact, as a young boy, they were a constant source of discussion and "authoritative" information in my peer group.

In retrospect, this was solely due to the strong dichotomy that my friends and acquaintances made in evaluating heterosexual and homosexual experiences. As an adult I feel this is wrong. Our concern for ethical sexual behaviour must be able to come to terms with all aspects of sexuality, and not to discriminate in favour of a specific preference when it comes to taking advantage of children.

### *Personal Account 3*

I am going to relate briefly my story, never having done so before. I'm not sure what has prompted me to write you about something that has been a source of shame and despair all my life.

As a boy of six I was sexually assaulted over a period of months by a male member of the family in whose keeping I'd been placed by my father. I didn't know it was wrong. No one had taken the time or trouble to inform me. Whenever I protested, the threats of a beating kept me docile. One particularly severe beating just before the initial encounter left me dreading others.

Shortly after, I was placed in a relative's care. She derived pleasure by hugging me and then beating the hell out of me in a corner of the basement. Everything from an ironing cord to the coal scuttle was used. Yes, my father noticed the marks and bruises, but ignored them as he had no where else to leave me.

Later, I was made a ward of the Crown and sent to a long string of foster homes. With several exceptions I was subjected to perversions, beatings and child slave labour. One occasion was the Christmas morning I spent standing at the top of the landing with my urine soaked underwear tied around my face. I had been beaten in the kidneys and for some time could not control my bladder. The good people looking after me thought this punishment would "teach me a lesson". So I stood there listening to the carols, hearing the couple's natural children exclaiming over their presents, and hating the world. Another memory concerns the good farmer who worked me 12 hours a day in the spring and summer, thinking nothing of keeping me from school at the age of 13 hauling cow manure from the pasture to the farm by wheelbarrow. The distance was roughly a quarter of a mile and my hands were blistered for months before proper callouses formed.

By age 14, I'd developed a bad stutter and an inability to talk to authority figures. When I was 14, I ran away from "home" hitch-hiking to \_\_\_\_ in

early winter. I had no money, so I stayed and ate at hotels without paying. I was caught and charged, appeared before a judge who: (i) transferred me to adult court; (ii) sentenced me to 18 months; and (iii) made me feel like a piece of shit. That started a pattern. I've tried to break it, but something has always turned up from my past to haunt me and make me run. I'm so ashamed of what was done to me that the words just won't come, and when they do, I still stammer very badly.

I implore you, please recommend that "would be" foster parents be cleared by a psychologist before they are allowed to look after children. At one point I was so in despair that I tried to kill myself. I was 12 years-old.

#### *Personal Account 4*

At the time the ad appeared, I had reached the point of desperation. I felt that no one was capable or willing of sharing the horror of my childhood rape.

I was molested when I was 13 years-old by my next door neighbour. I was not released from his iron grip for at least two years.

Now that I am 22, I find it hard to believe that one person can torture another in such a humiliating and painful way. He felt that if anyone will get hurt, it will not be him. However, I am hurting in one of the worst ways possible.

#### *Personal Account 5*

I don't know how I could have been so naive not to have done something more about what I came to realize was wrong. When I was a boy of about 16, I was homosexually harassed for about half a year.

This man was supposedly an honourably discharged war veteran. I later found out why, but it was only honourable on paper. He was about 28 or 30, went to church regularly and was a pre-med student. He was so ingratiating there was nothing he wouldn't do around the house.

I grew up as the youngest in a family of several children. Emotionally, we were a close and an affectionate family but there was something in our Presbyterian background which precluded physical affection. We didn't hug, touch or kiss each other.

After a while this boarder tried to touch me regularly, to put his arm around my waist, or even to kiss me when he came back from visiting his family. I was disgusted, but assumed he was just different than we were.

Sometimes as a special treat my Mother would make coffee in the mornings on the weekends and we would enjoy drinking this in bed, all in separate rooms. To be sociable, this man said it would be nice to do this together. He got into my bed, starting rubbing my hips and buttocks, tried to kiss me and to put his penis in. My pajamas saved that. I punched him hard enough so that his mouth bled. I got up immediately.

I was too ashamed to tell my Mother. Somehow, I felt guilty as though I had done something wrong. And I knew she needed the extra money.

I told my Mother I disliked him. Could we get another boarder? She said I should be a better Christian like him because he was so good and generous. He tried to do it again at every opportunity, but I never let him get that close. I felt like a stalked animal in a cage.

When I couldn't take it any more, I told my Mother. She was such a devout and good person, she couldn't believe it. She didn't understand. She didn't say I was a liar. Not only did we not know the word "homosexual" - even the idea was unbelievable.

I'd like to think teenagers today are better informed. At age 16, no one had told me about sex. Not believed by my Mother, I didn't know who to turn to. It was too personal a problem to tell a teacher, the minister where we went to church, or even a kindly paediatrician who was our family doctor. It didn't occur to me to go to the police: I wasn't afraid of them. I'd never had any contact with them. I regret now I didn't go to the police so that at least other children who this man abused later could have been saved from what he tried to do to me.

When my older brother and his fiancée were visiting, it just burst out. They made the boarder leave and told his family who lived in another city. I heard later he had been seen by a psychiatrist, but that didn't do much good. He became a teacher and was active in youth church groups so he could find, I guess, more young innocents like me. A long time after I heard from someone who had been in the army with him that that had been the reason for his discharge.

The only time I ever think about it now is when I unexpectedly see an effeminate male, an obviously dressed up "gay", or am touched beyond a handshake by another man. I feel cold and withdrawn. I have been scarred with an intense hatred of any type of sexual deviance or perversion. I am angry that sex which should be giving and affectionate can become twisted and perverted.

I don't know if I would have turned to outside help. I think I might have. What I needed was a formal and complete course in sex education with no holds barred about human sexuality and its deviations. I might then have known what to do.

There is too much hypocrisy about sex education in Canada. Those who oppose it say it will demean children and put ideas of promiscuity in their heads. I reject this. It would give children a shield of protection against sexual deviants, let them know what is acceptable, and what to do when it is not. I hope your Committee has the guts to do something strong and positive so that all children can have that choice.

#### *Personal Account 6*

I was raped by a man when I was a boy of about eight years-old. This man was a friend of the family who was invited to stay at our home while he was employed in my father's business. He was married, had children, and drank alcohol, sometimes excessively. I would guess that he was in his early forties.

Prior to the rape we had developed a sexual friendship, often hugging and fondling each other's genitals in bed. We shared a double bed. I had the greater say in what took place between us, and after initial fears, looked forward to sleeping with him. There was something natural about the relationship. The child is not always, nor totally, the innocent victim of a pervert.

Love to a child of eight is total, immutable and always pleasant. The night I was raped he was very drunk. I will never know why because a child of eight cannot comprehend what could drive someone to drink, or to rape.

The man was a friend, not a stranger. Recently, I was dismayed to view on American television that school children were being taught to distrust all strangers, to refuse to listen or to talk to them, and to run away, scream for help or kick anyone who tried to touch them. The harm caused by such fear-mongering is ultimately worse than the sexual offence it purports to prevent.

It would be wrong to assume that the man was a homosexual. He was married, with children, and seemed to enjoy the company of women. He liked to look at pictures of nude women. When a man sexually abuses a boy, or a woman or a girl, I think sexual preference is seldom a major factor whereas other emotional forces, such as repressed anger or the need to express power, are. I question whether pedophilia is as serious a crime or mental illness as it is made out to be. I do not condone the practice.

I recommend that children be protected from sexual involvement with adults. The age of consent should be lowered to reflect earlier maturation. Sex education should be promoted so that the children of today and the adults of tomorrow can act from enlightenment, not ignorance.

## Assistance Sought Later in Life

### *Personal Account 7*

My father committed incest on me when I was a child. It started when I was about eight or nine until my late teenage years. It was devastating. My childhood was ruined. I always felt people could see and tell what has happened.

I married at 19 and was fine for a couple of years. Then, it all came to the surface. I told my husband and went into therapy for a few years which helped some. I was told to write a letter to my father telling him what I thought of him. I put all that I felt in that letter, but not the incest. I knew my mother would read it, which she did, and I ended up being called a liar and not allowed to go home. I turned to alcohol. I was on nerve pills for years. As a result, I got addicted to both.

I could not forget "the secret". Dad said it was our secret. It ruined my childhood. To this day, every day, I think about it. It is something that can never recede to the back of my mind. I stopped drinking four years ago. With the help of A.A. (Alcoholics Anonymous) and reading all the books I can on incest, it is getting better. Ever since I can remember, I thought of suicide. It is a viable alternative. But my two sons are what kept me alive and a husband who went through hell with me and stuck by me.

God willing, the future will get better. I dreamt for years of killing my father even when he was on top of me. I hated him for breaking the trust between father and daughter. I've always felt old. I want to ask him one question before he dies. "Why?"

This is very hard for me to write. If I can help one child, it will be worth every bit of effort. The person who commits incest should be taken out of the home, not the child. There should be incest treatment centres for the family to go for counselling. If there is violence, the father should be put in jail and have psychiatric tests or he will never stop. If there are other daughters, he will go to them. The mothers either don't care or are very submissive. My mother was quiet and sick. I think she knew, but doesn't want to believe it happened.

*Personal Account 8*

My husband molested our daughter over a period of years of which I had no knowledge of at the time. I only found out about it when I told my daughter, by then, about 17 years-old that I was leaving her father for good as I could no longer tolerate the emotional abuse he inflicted on me. I was horrified and sickened when she told me about her experiences.

I sought advice from a lawyer for a divorce and for counselling regarding what happened to my daughter. No one took it seriously. Even a doctor we were seeing at the time thought it was funny. He said it was nothing — that some men are more animal-like than others.

I don't care to go on — the whole thing upsets me. I did get my divorce. I won on grounds of mental cruelty.

Can't something be done to these men? If not a jail sentence, then why not compulsory counselling with a psychiatrist? Could not a doctor have the power to turn the information over so that some investigation could be made. I am happy to see on television a program where people go out to the schools and teach children they have rights concerning their own bodies. I would like to see something like this established in our school system.

I don't know if I've made any sense in what I've said. I only know I had to say it. My own sons have no knowledge of what their father has done. It is just a dark, quiet secret my daughter and I share. I never talk to anyone about this. I write in the hope that something can be done, that with your Committee, more people will become aware, and that education will bring about change.

*Personal Account 9*

Even though I am no longer a child or a youth (I am 40), I would like to report sexual abuse as a child. The first rape occurred when I think I was approximately 18 months-old. I was too little to speak and tell my mother. A second rape occurred when I was between two and three. From three to age seven, I was raped routinely, especially in the summer when I could not be kept in the house. The rapist was my father.

Until age 36, I had no recollection of my childhood. Growing up on a farm, I had assumed until then it had been a happy one. I knew my father as a good man, religious and a leader in our small community.

When he died, freeing within me the terror and the rage against him, I started experiencing serious problems towards men. If any man showed any interest, I would "freeze up", be paralyzed inside, and unable to move or speak.

I am from a family of 12 children, or 14 I should say (two having died in their first two years of life). I am quite sure that at least six of my eight sisters went through what I did in their childhood. There are enough signs to prove it, although some have no recollection of it. Two others have, but they will not speak of it. It is also possible that one of my brothers had also been abused. And from comments from my mother and an older sister, at least one of his sisters had been abused by my father. This is based on a conversation between the two while my father was on his death bed asking forgiveness for what he had done to her. This sister is now a nun. My father was known as a "good" Catholic.

After five years of primal therapy (re-experiencing one's childhood), I am just beginning to recover my soul which had gone into hiding to survive the trauma. At age six, I had suffered a stroke (I wanted to die), but I survived. I had to relearn how to speak and to walk. I forgot everything prior to that period. From age six to 36, I functioned as an average neurotic having no idea of what my past had been. During the last four years, I have been able to reattach the child in me to the functioning adult.

#### *Personal Account 10*

I was raised to be a "nice" (passive, quiet, obliging, helpful, pretty) daughter. I trusted others and was obedient in letting others do as they wished. I hated myself as a result, without really knowing why. It's a terrible position for a child to be in, especially with sexually inhibited parents. Sex, then, simply wasn't "discussed" - it wasn't for me. A subject of punishingly cold anger at home.

I was subjected to rape and sexual violation from the age of three to about 12 by:

- an in-law of one of my parents who was a pharmacist when I was 3, 11, 12;
- an elderly (and nearly blind, white-caned) neighbour when I was 8; and
- another neighbour's teenage son when I was between 10 and 12.

As soon as I knew about menstruation, conception and male and female sexuality, I was able at the age of 12 to stop all of this abuse myself by:

- refusing to visit the neighbour's (teen of 17) son's home again;
- asserting and saying "No" and meaning it and knowing why, finally; and
- telling a parent of the in-law's abusive ways.

I finally had the words and the concepts to tell what was occurring. It's great they have dolls now so that young children can get their plight across to caring, informed and believing adults. When sex is not discussed in the home, a child has no way of knowing that people can understand the feeling that "it's only happening to me" and all the fear and guilt that being in that position entails.

When is it O.K. to touch or not to touch? What about play, tickling, hugging, kissing . . . ? Everything normal and healthy becomes contaminated. People you once trusted, you come to doubt. "Don't kiss me, don't hug me, leave me alone". Yet I craved all of these forms of loving which were offered to me. This feeling cuts off love and stops emotional growth. Everything normal becomes distorted and tainted.

Based on my own experience I believe:

- Children should be informed about sex and sexuality from the earliest age so that they can tell a parent or a guardian of any "unusual contacts".
- Parents must be as aware and cautious as they can be, especially when entrusting their children to the care of relatives or friends. It can happen with anyone, as I discovered, and in the "best" of families.
- Parents, schools and even family physicians should discuss this openly. They warn children not to take candy or car rides from strangers. They should be able to tell them about body-abusers/touchers, and in a positive manner, so that children will not feel "bad" about it and will feel free to talk about it immediately without negative after-effects.



- I believe loving treatment is needed for victims. Returning the victims to society without treatment may “sentence” them instead later to a mental institution, a life of reclusiveness, or a permanent feeling of “not-OKness”. They must feel “OK” about themselves and understand what happened so that they can go on with their lives in a healthy, self-loving manner.

Writing this has been good for me — healing. I felt I could turn something negative into something positive to help others. When I began to write I felt very negative. It has taken me a decade to get to where I am now and an enormous amount of energy from “loving caregivers” when I have been in therapy.

#### *Personal Account 11*

I was sexually abused by my father. As far back as I can remember (to about age 11), I had to touch my father on the penis. It was a nightmare come true. My mom and aunt went to bingo, while my cousins, sister and brother played outside. My father made me stay in and watch T.V., lying down with him. I fell asleep. He undressed me and started touching my vagina. I woke up when he had his fingers inside me. It hurt. It stopped after this one time. Then around the age of 12, he started again; this time it seemed worse. He would always come into my room, wake me and tell me to go downstairs to keep him company. I didn't know who to turn to. I didn't think my mom or anyone else would believe me. I was afraid.

The first time he had intercourse with me was when I was taking care of my little brother, and everyone was out. He said “this won't hurt”. He lied. The pain was undescrivable. This happened about three times in two years. It didn't happen as often as he wanted because I said “no”, and then, he made me give him a blow job. I was always too scared to tell anyone.

The last time he had intercourse with me was the day I came back from summer camp. No one was home when we got there so he said he had built something in their (mom and dad's) room. “Come and see”, he said. I went there. “You have to lie down on the bed to see it”, he said. I lay down on the bed and he laid down beside me and gave me a kiss on the forehead. I didn't think anything of it. He said, “you must be hot with all your clothes on”. I said, “no”. He didn't take that for an answer. He started undressing me. I started to cry. He didn't care; he never cared. I guess I went into a state of shock or into a daydream. He was forceful during the intercourse. I started bleeding afterwards. He made me so mad at him, I started crying when I saw my mom.

About two months after this incident, I was talking to a friend in one of my Grade 9 classes. I told her I was getting beaten up at home. She told me to phone the operator and ask for Zenith 1234. I had told this person (a stranger) that I was getting beaten up, and then, I was being sexually abused. They wanted to pick me up that night, but I was babysitting.

After I finished babysitting I phoned my sister to come and pick me up. We walked home and I told her what I had done. She said she went through the same thing. The next day a worker phoned and we met her at a park. My sister talked to her for an hour; they argued. We went to the police station and we had to give testimony to a male policeman, which made it more difficult. I was giving my testimony for an hour or two. My sister was in there for over four or five hours.

I was put in a receiving home with my little brother. He hadn't been abused. He stayed with me for about two or three weeks. I was in there for

almost two months. I chose to live with a very strict and religious person. She had her own son and four foster children — two little girls, a 13 year-old and me. I lasted there for five months.

I got kicked out because I came home drunk as a skunk at 2:00 in the morning. I had a child-care worker who brought me home. My foster-mother and the child-care worker argued for an hour or so while my sister took care of me. The next morning she told me I had to go somewhere else to live. I didn't mind at all. My child-care worker was phoned and was asked if she could take me in. I have lived with her for almost three years.

#### *Personal Account 12*

When I was about four, I remember being at a picnic. I was cuddling in my father's arms on a blanket and he started rubbing me between my legs. After that, we used to fondle each other often.

I didn't realize it was wrong until I was about nine or 10. I felt alone. I had a teacher who was special, but I couldn't tell her. Once my mother found us French-kissing. She told us to stop and not to do it again. She knew what was happening, but she never let on.

I used to try to get away when he was home. It went on when we were in the car and on weekends. We only had sex once. That was terrible. When I was 14, I told our doctor and swore him to secrecy. He was disgusted. When I got home, I found the doctor had called my mother. My mother confronted my father and me. He denied it all. I broke down. My mother believed me. We never told my brothers then. They continued to live together, but they did not share the same bedroom.

Until I left home at 18, it still happened sometimes. I didn't want to break up the family. My mother was very moral about sex and had been physically abused as a child. She heard men's stories about sex when she worked at a plant. For her, sex was just to have children. I didn't know their marriage was weak. I thought I was helping to keep it together by giving my father something my mother couldn't. Two years after I left home, they separated. I still write to my father and sometimes see him at Christmas. He doesn't understand he did anything wrong. He was an electrician and has an IQ of about 80. I'm a teacher, so I know that now. I hate him. He's a weak, rejected man. But putting him in jail wouldn't do any good. He needed treatment.

I can't get close to my mother. I feel sorry for her. She knew, but she never understood. It was another world for her. She's lonely and a broken woman. Her safe world came apart. She doesn't like me or how I live. My brothers are taking care of her as she gets older. They know now and reject my father.

After I left home, I was sexually promiscuous. I had sex with a lot of men. I still enjoy it often. But I can't get close as a friend to men or women or learn to be soft and affectionate. I'm aggressive with other people and having sex. I still have my guard up in case I'll be hurt. Men want to use women and dominate them like my father did to me. Many men want to have sex with me. I'm careful who I go with. I've lived with several men, one for 6 1/2 years. It broke my heart to break up with him. He was too nice, too conservative about sex.

What my father did to me is like it happened yesterday. It still hurts deeply. I'm a strong and intelligent woman. I've read all about incest. Writing about it helps some. But it never leaves you.

I went to a psychiatrist five years ago. He said I wasn't ready, that he couldn't help me. I'm having psychotherapy now. I'm getting to know myself and realize what happened. Someday, I want to get married and have children.

When I was younger, no one could have helped me. I didn't trust anybody. I wouldn't have told a teacher. Trying to tell pupils about unwanted touching is no good. Or distress lines. Or distress centres. I knew it was wrong, but I couldn't ask for help. Social workers are useless. I've talked with other incest survivors. That's useless too. All they do is talk about it. You don't get anything from that.

What I really needed as a child was a warm and loving family. That's what all children need. It would stop incest.

## Immediate Assistance Sought

### *Personal Account 13*

I am a mother of a four year-old girl who was sexually abused. It is an experience I will never forget. I hope to God my daughter will.

The problem is that I don't know when it happened and that makes me feel responsible for what happened. I was getting my daughter ready to go out; she was talking away, but I wasn't paying much attention until she said "and he did this to me". She was playing with herself. I started asking questions. I asked "when did it happen?" She couldn't tell me. Where did it happen — "in the bed in the basement. He took my clothes off, washed me, and played with my private area." This man is married and has two girls. His five year-old daughter plays with mine.

It was reported to the police. They came and talked to us. They believe what happened and were very concerned, but there wasn't much they could do but talk to him because of my daughter's age and there was no witness.

I don't think a four year-old could make up a story like this. She doesn't know anything about sex. She doesn't read, hear or see anything like this. To me, a child between the ages of three and five will tell the truth more likely than an adult would.

When I questioned her why she didn't tell me before, she said he told her "don't say anything to your Mommy". Then she started to cry because she thought she was going to get spanked. He has gone and told some of the neighbours that I pressed charges against him. He thinks it is a big joke. What gets me upset is when things like this happen is that the same old excuse is used. They can't help it. "THAT'S NO EXCUSE". It doesn't give them the right.

They can get help and when they do, it is all forgotten. But what happens to the victims who can't forget? I don't know what can be done. The criminals have their lawyers to protect them, but who protects the children?

Why is it so hard for the police to do something? In fact, I feel sorry for them. They know these people are guilty, but the courts will not take the word of a child. It was suggested to us by the police that our children should not leave the property. How do you explain to a child that she can't play with her friends unless they come over to her house, and that you are doing it for her own safety and not punishing her?

*Personal Account 14*

My eight year-old son was raped by a 21 year-old man. This man is a brother of one of my daughter's friends. In a matter of 20 minutes, my son was lured into his place and raped. They live only two buildings from us.

I won't go into the tears, the rage and the heartache my family has gone through due to this act. My son was not beaten up, but he was raped. We took the proper steps. The police arrested the man. We took our son to the police station for his statement and then took him to the hospital to have tests done and pictures taken to make sure he was alright. This is something an eight year-old boy should never have to go through.

I have found out from this experience that a victim hasn't any rights. Once the man was arrested and pleaded guilty, there was nothing more I could do. I made several calls to legal aid, the police and the victim's protection office, but there wasn't a thing I could do. I got through to the Crown prosecutor because I couldn't understand how this lawyer could speak on our behalf when he had never spoken to us. I wanted the judge to know how I felt, what my son had gone through and how this crime affected our family. The prosecutor was very understanding, but he said it was up to the judge alone for sentencing. He said in crimes of this nature they feel the family has gone through enough without being in the court on the sentencing day. Believe me, I know we went through enough, but you feel so helpless. I still feel a judge should hear the parent's viewpoint.

The bottom line is — I have to wait and see what this man will get. He is now undergoing mental tests to see if he is sane.

In my opinion the laws should lean more on the victim's side. After all, we are the innocent ones. We didn't bring this situation on ourselves. He did. The guilty one has his lawyer to talk to. What about us?

We teach our children to be careful, not to talk to strange people, to let us know where they are. You can't keep them in the house at eight, 11 and 13 years of age. My faith in people has changed a great deal. I try to feel like myself again, but it is difficult at times.

I hope my letter will help in a small way. Our children are precious. We must find a way to protect them from these terrible acts.

*Personal Account 15*

Both of our female children have been sexually molested by an individual who was a family friend. We speak with first-hand knowledge of this problem.

The support offered by the city police was excellent, but similar support in the outlying community where the offences took place was sadly lacking. The fact that the offence was committed in another jurisdiction raised problems in dealing with the offender. The city police were eager to intervene, but were unable to, and those able to, were apathetic. We were ultimately placed in the position of having to confront this individual ourselves with no assistance from the police or health professionals.

This apathy was caused in part by our unwillingness to lay criminal charges against this individual. Of all the problems concerning sexual abuse, we feel most strongly about the inability of the system to deal in any way whatsoever with the individual who has committed the offence. The police were unable to lay charges without interviewing our daughters. They said

that even had they done so, the children's testimony would probably be unacceptable in court. Not wishing to expose our children to further trauma, we refused permission for the police or the social service agencies to interview them.

If we were to press charges, we must expose our children to the judicial system, thus seriously aggravating the offence with a negligible chance of a successful action. In refusing to accept these risks and lay charges, any hope of dealing with this sick mind was effectively dashed. In this current situation, society has unwittingly adopted a very permissive attitude. Sexual offences of this nature should be taken out of the realm of criminal law where the rights of the accused must be so vigorously defended. It would seem more desirable to place the accused in a position where he was at least forced to discuss the offence with professionals who are skilled at dealing with this sort of issue.

As the situation stands now, only a small minority of the adults who sexually molest children come in contact with the authorities. By removing the threat of prosecution, perhaps it would be possible to approach and deal effectively with these diseased individuals.

#### *Personal Account 16*

My children are seven and nine now, and they're lucky. About four years ago, my son, then five, came to me one morning not realizing that he'd tried something bad and said that my brother had tried something with him and his sister the night before. Luckily, he was unable to complete the act with either of them. With them having been so young, they were able to forget easily.

At the time I was very mad and went to the police about it. One officer talked to my son and then he went to talk to my brother. Of course, he denied it. They couldn't do a thing. All they could do was to warn him. There was a lot of hurt and anger in our family for a long time. It was very difficult to put it behind me.

My brother moved to \_\_\_ a year ago and lived with another brother for awhile. Suddenly, he moved back here and we never thought much of it. My mother was in the hospital for an operation and my thoughts were elsewhere. When I phoned my other brother to let him know how Mom was, he asked what reason our brother had given for moving back here. I told him he said there was no work there. He said that was a lot of crap, but that it was too much to go into over the phone, just that our brother was never allowed in their home again. I knew right then what was wrong. I asked him if it was what I thought it was. He said "yes". When his girlfriend got on the phone, she asked how I knew and I said "experience".

But the worst problem I had was the guilty feeling. I had never told my brother in \_\_\_ what had happened because I'd told a couple of people close to us who had kids that he was friends with, but they hadn't believed me. So I kept my mouth shut and hoped he'd be scared off. My kids forgot. But my brother's one daughter is 10. She was old enough to be terrified of my brother. She won't forget what he tried to do.

It's hard to live with the guilt, knowing it could have been much more serious for her. I know I'm not really to blame. My brother is sick. But it makes me so angry to know that nothing can be done to or for my brother. Nothing, that is, unless he's caught in the act. To think that he'd have to

actually hurt a small child before someone could lock him up and pick at his brains and find out why he's that way really makes me mad. What can I do?

My brother has moved to \_\_\_\_ and has a job. But he'll never change. He really doesn't think he's done anything wrong. He refuses to admit to a thing. The worst of it is, who's to say he'll never turn into another Clifford Olson? When my brother was in his early teens, he was caught with a younger male cousin. My father used a strap on him until his upper legs and rearend were black and blue. Maybe that just intensified the problem and made him crave the forbidden. Who really knows?

All I know is he must have had a problem early in life. He should have got help at the first incident. But not many people knew about it.

But there has to be an answer. There just has to be.

#### *Personal Account 17*

I found out in 1980 that my brother, age 20, was using my four-year old daughter for his sexual desires.

I told the police and I took her up to the \_\_\_\_ Hospital where they checked her out and said no damage was done. After the first court appearance, my daughter was still getting burning feelings in her private spot. I then took her to another hospital, \_\_\_\_ Hospital, where she was seen by a gynecologist for the first time. The doctor told me she had a swelling and bruising and he had had his penis in her at least two inches.

Later, I found out from the hospital that my brother had venereal disease. That is where my daughter's burning came from. I asked the police to seize the reports from the \_\_\_\_ Hospital. They said it could not be done because we had already been to court.

Well, he got off. I am no longer living in \_\_\_\_, but in a small village. Now I find that my brother is visiting and hanging around \_\_\_\_ to try to talk to my daughter. My father lives here too, but my brother never bothers to visit him. Now he's hanging around, and God only knows, what he wants with my daughter.

My daughter is now getting psychiatric help at the \_\_\_\_ Hospital. I am living common-law and I can't afford it. But so far, she is doing really well and now he comes back.

I don't think it's fair. Why do child rapists get off scott-free? They don't go to jail. They don't get professional help. Nothing. I want to know why. My brother should have at least gotten professional help.

I feel that the laws for rape, child molesting and even gross indecency, and all other things like that, should be strict. People like my brother should pay for their crimes.

My little girl is suffering and will always have it on her mind. Now that he is loose, what about other children? What about kids who walk to school, the store or are playing in the playground? He could try it on any of them. And he would not be punished for his crime. It is not fair to the children.

I urge you to make stiffer laws so our children can live in a safer world. Can you help?

## Pathways to Assistance

While the persons who wrote to the Committee are not representative, as they volunteered these accounts, of all young victims of sexual offences, their experiences reflect some of the trends common to the incidents of this kind. What is unusual about these accounts is not only the courage of these persons in relating events which hurt them deeply, but their ability to recollect these episodes as though they had happened yesterday. Their value is that they have been told by the victims in their own words.

Most were young children when the assaults first occurred. Their average age was about six years; three in four were girls. All of the assailants were adult males. Half of the offenders were members of the family or close relatives. The remainder were acquaintances and family friends and in one incident, a stranger was involved. All of the assaults occurred in private places, usually either in the home of the victim or the offender.

The assaults committed against these children included fondling, sexual molestation, homosexual acts and in about a third, genital or anal intercourse. Two-thirds of the children did not immediately report these assaults to anyone. When they were older, about a half of the victims told physicians about these acts. The remainder never consulted any type of helping service. Some later confided to their spouses what had happened to them as children; a few had told no one before contacting the Committee.

Why did so few of the young victims seek assistance? These persons, or the parents of children who had been assaulted or molested, explain in their own words why most of them did not even tell another family member. Two-thirds were too young when these incidents occurred to know that the sexual contacts were wrong. If they did know, then they were too ashamed about what had happened, or they were too afraid of their assailants to tell others. Among the few who later told a parent about these incidents, all were initially disbelieved. These accounts indicate that in order for a child to give evidence, the pre-requisites for this step to be taken are the recognition that an act was wrong and the strength to overcome the fears or the shame involved in telling other persons about these acts.

On the basis of the accounts it appears that there is a greater likelihood of a child telling a parent and of initiating a police investigation in situations in which the assailants either are less intimate family members or are friends, neighbours or acquaintances.

The police were contacted in about a third of these incidents of sexual assault of children. When the police were contacted, the sexual contacts stopped completely. For these children, police intervention provided a clear-cut and positive outcome. There is no indication that the investigations by the police had harmed the young victims. In one instance, the parents of two daughters had been unwilling to lay charges to preclude their children from experiencing more trauma. While the work of the police in different parts of

Canada was endorsed by the persons who had sought their assistance, much frustration was expressed about the inadequacy of existing laws to accept the evidence of children, about the treatment of offenders and about their punishment.

There were no witnesses to any of these incidents. There was only one instance in which a medical examination found evidence of physical injury and venereal disease. This evidence became known only after the court had dismissed the case. In other instances, the ages of the children or their perceived inability to give evidence were the reasons why charges were not laid. With the exception of two cases, none of the assailants had been contacted by child protection services. Also, none of the assailants had been convicted. Psychiatric help had been provided for only one offender.

The accounts document the difficulties involved in determining the nature of the potential long-term effects of sexual assaults. The victims remember the assaults with anguish and anxiety, and in some instances, with a burning anger. One young male child had been physically injured and a girl had contracted venereal disease. About a third of the victims reported that much later in life they had experienced behavioural disorders or that they had received psychotherapy. It is unclear whether these problems constituted pre-existing conditions which may have been exacerbated by the sexual assaults, whether they had stemmed from them, or whether they had been influenced by events occurring later in their lives.

What stands out sharply in these accounts about child sexual abuse is the sense of helplessness, uncertainty and ignorance about what the victims felt they might have done when they had been assaulted as children. Most did not then know to whom they should have turned for help. When the assault was committed by someone whom they knew well, they felt constrained from telling even other family members. Several of the children did not know that the sexual acts which had been committed against them were wrong.

Few of the child victims had been examined medically. None voluntarily sought out social workers, teachers, the clergy or community agencies immediately following the assaults. The victims either did not know about these services, or their personnel were not sufficiently trusted by the children to confide these experiences to them.

**The persons who gave accounts to the Committee did so to provide a better understanding of how children in the future might be more effectively protected from sexual assaults. Most of the persons said they had not understood what had been done to them, and that if they had known, they might at least have had the option of seeking help. They make a strong and eloquent appeal that in the future Canadian children should have this option that could be brought about by a greater public and professional awareness of all aspects of child sexual abuse.**



The personal accounts highlight the profound nature of the complex issues that are involved in child sexual abuse. The experiences that are recalled by these persons are confirmed by the statistical findings obtained in the surveys which were undertaken by the Committee.