



# Closed-circuit Television for Young Witnesses

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Research and Statistics Division  
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## Document Request

The following appendices were not included in this version of the report:

- Letter of Information for Parents
- Letter of Information for Youth
- Child and Youth Consent Form
- Parent Consent Form
- Parent Questionnaire
- Ethics Approval
- Letters of Support
- Letters to Inform
- Crown E-Survey
- VWAP/CWP E-survey
- Section 486.2 Case Law Review

To obtain a copy of any or all of these appendices. Please contact Susan McDonald at (613) 957-9315 or [Susan.McDonald@justice.gc.ca](mailto:Susan.McDonald@justice.gc.ca).

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## Key findings

Through child, youth and parent interviews as well as data from two e-surveys, this report found the following:

- The majority of children and youth used CCTV, with 12 witnesses testifying outside the courtroom at least once, and 10 witnesses testifying via CCTV at trial. A screen was used for two witnesses at trial. A small number of child/youth witnesses chose to testify in open court. The importance of having a choice and input in how they testified was emphasized by many child/youth witnesses.
- Cross-examination was a repeated theme in the study and described as one of the more negative aspects of testifying. Use of CCTV did not appear to provide a buffer for child and youth witnesses during cross-examination. Many reported being distressed by confusing questions, aggressive tone and use of language or words they did not understand.
- The lengthy waiting period for the case to reach conclusion as well as the many adjournments took a significant toll on child and youth witnesses and their families, and was described by most as one of the most stressful aspects of the process. The negative impact of delays and length of time in the system has been identified repeatedly in the literature.
- Almost half of the parents interviewed were also witnesses in the cases involving their children. As such, they were unable to be in the courtroom while their child testified, and this was concerning for them.
- The majority of Crowns who responded to the e-survey did have access to CCTV in their jurisdiction and reported that applications for CCTV were often or always approved. The majority of Crowns also indicated that technical difficulties existed.
- The majority of V/WAP/CWP representatives indicated they have access to CCTV at their court location(s) and that they accompany a child or youth witnesses often or always when he or she is testifying. V/WAP/CWP representatives also indicated that where CCTV is not frequently used at their court location, the most common reason was due to technical difficulties.
- The witnesses who used CCTV responded that they could not have testified without the aid. The major benefits they described included: not having to see, or be in the same room as the accused; not having to testify in front of people in the courtroom; and, that they felt safe in the small testimony room. These benefits have been identified in many studies.
- Age and gender were not significant in distinguishing use from non-use of CCTV. Most of the teenaged witnesses used CCTV.
- Technical difficulties with CCTV equipment were reported in several cases, resulting in delays and adjournments, which made the experience more stressful for the child/youth.
- Court preparation and individual support during the court process was highly valued by the young witnesses and parents. All referrals to the project had received services from V/WAP or the CWP.
- When asked to comment on the challenges that exist with the use of CCTV, the majority of Crowns, V/WAP and CWP representatives indicated technical difficulties as the primary challenge. The difficulties they noted included: equipment problems, poor sound

quality, poor image quality, poor microphone quality, and that it is a technically complex system.



## Executive Summary

### *Background*

The purpose of this study is to better understand the use of closed-circuit television (CCTV) in the West Region of Ontario and to explore how, or if, the use of CCTV helps facilitate giving evidence, improve the quality of testimony and minimize stress and re-victimization for child and youth witnesses.

There have been significant changes in the legal system addressing the needs of children and youth called to testify in Canadian criminal courts. The 2006 amendments to legislative provisions, made testimonial aids (closed-circuit television/video link, witness screens, a support person) and other measures presumptively available for all witnesses under the age of 18 years, and for adult witnesses with a mental or physical disability, upon application unless they would interfere with the proper administration of justice.

Despite the clarity provided in the *Criminal Code*, there is a great deal of variation in how these provisions are being implemented both between and within jurisdictions. Anecdotal evidence shows that testimonial aids and other measures are not being used consistently for child and youth witnesses across the country. The impetus for this study was based on concerns raised by West Region Crowns, and other professionals working with child and youth witnesses. One identified concern was that screens were being used instead of CCTV, requiring child and youth witnesses to testify in the courtroom, in the presence of the accused.

### *Methodology*

The experiences and perceptions of child and youth witnesses about testifying in criminal court were explored through in-depth interviews. Their parents were also interviewed and completed questionnaires. This report also includes the findings of two e-surveys, one with Crown Prosecutors and one with victim/witness services workers from the Victim/Witness Assistance Program (V/WAP) and representatives from the Child Witness Project (CWP) in the West Region. The report describes how children, youth, their parents, Crown Prosecutors, V/WAP and CWP representatives experience the use of CCTV and how this influences their experiences in the Canadian justice system.

The purpose of this study was addressed through three data sources: Two electronic surveys; one with Crown Prosecutors and one with V/WAP victim/witness services workers and CWP representatives, were administered by the Research and Statistics Division, Department of Justice. Semi-structured interviews with child and youth witnesses and their parents were conducted in the West Region (consisting of 10 areas, rural and urban, extending from Grey Bruce County - Owen Sound to Essex County - Windsor) and analyzed by the contractor.

Due to the topics being covered in the interviews, ethical issues such as informed consent, confidentiality, data storage and destruction, risks and benefits were considered. The interview protocols and questionnaires were therefore reviewed by the Steering Group<sup>1</sup> and by a

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<sup>1</sup> Karen Bellehumeur, Assistant Crown Attorney; Linda Chihab, Regional Manager, West Region, Victims & Vulnerable Persons Division; Deborah Elliot, Manager, V/WAP and Andrea Hare, clinician CWP.

Community Advisory Group<sup>2</sup>. The interviews were all conducted by one person, with extensive experience interviewing young children and youth. Twenty-nine parents agreed to be contacted for the research interviews. Of the original 29 participants; 15 children/youth and 13 parents participated in the interviews.

In June 2014, information about the e-surveys was shared with V/WAP managers by the Regional Manager and with Crown Prosecutors by the Director of Crown Prosecution. All West Region V/WAP victim/witness services workers CWP representatives and Crown Prosecutors who had prosecuted a case involving a child or youth witness were invited to complete the survey. Responding to the e-survey was voluntary for all three groups.

### *Results*

#### **CCTV**

Twelve of the 15 children and youth in the interview group used CCTV at least once. Problems with CCTV equipment were experienced by six witnesses resulting in delays and adjournments in some of the cases. Interviews explored reasons why CCTV was not used at trial for five of the child and youth witnesses. Two of these witnesses used a screen; one because the courthouse did not have the equipment, and the other because of technical problems that arose with CCTV. The other three witnesses testified in open court at trial, by their choice; one of these witnesses had used CCTV during their preliminary inquiry.

#### **Screens**

Two of the 15 participants testified using a screen, for one child/youth it was the only testimonial aid option, and the other chose to use it in order to avoid the rescheduling of the case, due to technical problems with the CCTV. One of these two witnesses testified from behind a screen, while in the other case, a screen was placed in front of the accused.

#### **Support Persons**

All of the 15 participants had a support person with them while testifying, the majority being court approved. In the cases where there was no application made for a support person, a victim services worker accompanied the child or youth witness to the courtroom and sat where they could see him or her, while testifying. All participants found this support to be helpful in feeling safe and less anxious.

#### **Video-recorded Statements**

Statements for 11 children and youth in the participant group were video-recorded. Two youth reported that a video statement was not taken due to problems with the equipment. One of the younger children interviewed did not know if their statement was video recorded. A written statement was taken from one 17 year old complainant. Eleven of the participants recalled reviewing their video statements before they testified. Four of the child and youth witnesses reported that their video was used in court, and that they were in the CCTV testimony room.

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<sup>2</sup> Louise Sas, PhD., Rhonda Hallberg, M.S.W., and Maureen Reid, M.S.W.

### **Cross-examination**

Although use of CCTV protects children and youth by removing them from the courtroom environment, for many child and youth witnesses, the use of this testimonial aid does not ameliorate the negative experience of cross-examination. The majority of child and youth participants described cross-examination as the most difficult part of their court experience.

### **Court Preparation**

All 15 children and youth received court preparation, in six locations from the V/WAP and in one location from the CWP. The majority of the children and youth recalled having more than one court preparation meeting, and some remembered having several sessions of court preparation. For the majority of participants, court preparation with V/WAP or CWP began well before the court date, and they experienced the one consistent person as a support throughout. In most cases, the V/WAP or CWP staff who provided court preparation also acted as a court-approved support person. All child and youth witnesses highly valued the court preparation services and the individual support they received. In addition to learning about court, many children and youth reported that the court preparation helped them deal with anxiety related to testifying.

### **Crown Prosecutor E-Survey Results**

A total of 47 Crown Prosecutors completed the e-survey. The majority of respondents indicated having between seven and 15 years of experience or more than 20 years of experience, and approximately half of the respondents had received training for working with child witnesses.

The majority of Crowns reported having access to CCTV in their jurisdiction and many also noted they experienced technical difficulties with the aid. These technical difficulties included equipment problems, poor sound quality and poor image quality. On the other hand, the majority of Crowns highlighted significant positive responses from child and youth witnesses and their parents regarding having access to CCTV in that they appreciated the protection it provided, in particular being kept apart from the accused and, that they found that it helped to reduce stress and trauma associated with testifying.

### **Victim/Witness Assistance Program & Child Witness Project E-Survey Results**

There were 18 respondents to the V/WAP and CWP e-survey. The majority of respondents indicated having between 7 and 15 years of experience. Half of the respondents had received training for the use of CCTV.

Most respondents identified that either one or two courtrooms exist where child and youth witnesses testify in their jurisdiction. V/WAP and CWP representatives also indicated that the most frequently used testimonial aids in their court locations were CCTV (76%, n=13), a support person (71%, n=13), and a witness screen (65%, n=11). Many of the respondents (77%, n=10) mentioned technical difficulties that exist with the use of CCTV including unreliable/malfunctioning equipment, poor sound quality, microphone quality and the technical complexity of the system being used.

### *Conclusion*

To summarize, this study examined the personal experience and opinion of children, youth, their parents, Crown Prosecutors, V/WAP and CWP representatives who were either involved in or work in the criminal justice system of the West Region of Ontario. Participants were either interviewed or e-surveyed and were asked to comment on their experiences and opinion of the use of testimonial aids, specifically closed-circuit television (CCTV). The overarching opinion and comments from the participants in this study were unanimous.

The importance of having CCTV available to child and youth and/or vulnerable witnesses was highlighted by almost all participants. The child and youth witnesses who used CCTV expressed appreciation for having access to the aid. In addition, they commented that having a support person with them in the CCTV testimony room was reassuring and helped reduce their anxiety. Crowns, V/WAP and CWP representatives also strongly endorsed the use of CCTV and indicated that their clients expressed appreciation for its existence.

Challenges identified around the use of CCTV included frustration with the technical difficulties which often caused delays and/or having to testify without the aid. Some Crown Prosecutors mentioned problems with the simultaneous use of CCTV and Section 715.1 video-recorded statements; the technology or training was noted as an important issue that remains to be addressed. A number of Crowns also indicated concern regarding both Crown and defence counsel being present in the CCTV room and the impact on the child. Further exploration of this matter and standard guidelines might be helpful next steps to address this issue.

In sum, the findings in this study identified that the majority of child/youth witnesses interviewed did have access to CCTV, and that most had been informed about the testimonial aid well ahead of the court date and were given the option to use it. The findings also identified challenges with the use of CCTV, mainly technical problems, which caused delays and increased stress for child and youth witnesses and their parents. All participants and respondents viewed CCTV as an aid that facilitates testimony by removing the witness from the courtroom and the presence of the accused, thereby creating a more protective and positive environment in which to testify.

## 1. Introduction

The participation of child and youth witnesses in the Canadian justice system has been the focus of considerable attention from the perspectives of minimizing re-victimization and maximizing the ability to provide best evidence. For almost three decades, efforts to make the system more sensitive and responsive to the participation of children and youth have been reflected in legislative amendments in Canada and internationally<sup>3</sup>.

Since the first series of legislative reforms in 1988, there have been significant changes in the legal system addressing the needs of children and youth called to testify in Canadian criminal courts. The 2006 amendments to these provisions, made testimonial aids (closed-circuit television/video link, witness screens, a support person) and other measures presumptively available for all victims and witnesses under the age of 18 years, upon application unless they would interfere with the proper administration of justice. Additionally, there were other important amendments including expanding the court's ability to appoint a lawyer to conduct the cross-examination of a witness when the accused is self-represented (Bala, Paetsch, Bertrand, and Thomas, 2008). The intention of the legislation was to provide clarity and consistency in the use of testimonial aids and other measures for victims and witnesses under the age of 18 years. The legislation also made testimonial aids and other measures available to vulnerable adult witnesses for the first time.

The purpose of this study is to better understand the use of closed-circuit television (CCTV) in the West Region of Ontario and to explore how, or if, the use of CCTV helps to facilitate children and youth giving evidence, improve the quality of that testimony and minimize stress and potential re-victimization for children and youth. Between February 2014 and October 2014, the experiences and perceptions of child and youth witnesses were collected. In addition to ascertaining the experiences and views of children, youth and their parents through interviews, this report also includes the findings of two e-surveys, one with Crown Prosecutors and one with victim/witness services workers from the Victim/Witness Assistance Program (V/WAP)<sup>4</sup> and the Child Witness Project (CWP)<sup>5</sup> in the West Region. This report describes how children, youth, their parents, Crown Prosecutors, V/WAP victim/witness services workers and CWP representatives perceive the use of CCTV and other measures and how this influences their experiences in the Canadian justice system.

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<sup>3</sup> s. 486 of *Criminal Code of Canada (CCC)*. See <http://laws.justice.gc.ca/eng/>

<sup>4</sup> V/WAP is a court-based government service that provides comprehensive support services to victims.

<sup>5</sup> The CWP at the London Family Court Clinic (LFCC), London, ON, provides court preparation services for children and youth under age 18. The London Family Court Clinic was formerly known as The Centre for Children & Families in the Justice System.

## 2. Background

Despite the clarity provided in the *Criminal Code*, there is a great deal of diversity in how these provisions are being implemented both within and across jurisdictions. Anecdotal evidence shows that testimonial aids and other measures are not being used consistently for child and youth witnesses across the country. The impetus for this study was based on concerns raised by West Region Crowns, and other professionals working with child and youth witnesses. One identified concern was screens being used instead of CCTV, requiring child and youth witnesses to testify in the courtroom, in the presence of the accused. This raised the question of whether the use of screens resulted in more negative experiences for child and youth witnesses.

Research has attempted to ascertain the effects of these provisions on children and youth who give evidence in court. It is generally accepted that testimonial aids and other measures improve the experiences of child and youth witnesses in the courtroom. Early studies have reported the benefits of closed-circuit television (CCTV) in facilitating the process of giving evidence (Davies & Noon, 1993; and Goodman et al., 1998). Other research has focused on understanding of the experiences of children and youth and their views on the criminal justice system, by speaking directly with them (see Sas, Hurley, Hatch, Malla & Dick, 1993; Plotnikoff & Woolfson, 2004; 2009; and Hayes, Bunting, Lazenbatt, Carr & Duffy, 2011). The present research reflects the experiences of child and youth witnesses in court, retrospectively (now aged nine - 19) and their use of CCTV and other testimonial aids and measures.

### 3. Method

The principal research objective was to better understand the implementation of CCTV for child and youth witnesses and to determine how it was being used in the West Region of Ontario. In order to satisfy this research objective, a Steering Group was established at the outset and included: the contractor Pamela Hurley, a Crown Prosecutor, and three other representatives; a clinician from CWP, a Regional Manager from the west region's Victims and Vulnerable Persons division and a manager from V/WAP. This group met periodically and there were also frequent phone updates and discussions between the contractor and the Department of Justice. The purpose of the Steering Group was to review data collection tools, set reasonable timeframes for the different phases, assist with recruitment of respondents, and review final products. There were no set research questions for this project.

The principal research objective was addressed through three data sources: Electronic surveys were administered by the Research and Statistics Division, Department of Justice; one with Crown Prosecutors and the other both V/WAP victim/witness services workers and CWP representatives. The contractor conducted semi-structured interviews with children and youth witnesses and their parents in the West Region (consisting of 10 areas, rural and urban, extending from Grey Bruce County - Owen Sound to Essex County - Windsor) and parents also completed a short questionnaire. Both interviews and questionnaire answers were analyzed by the contractor:

The contractor undertook the in-depth semi-structured interviews with child and youth witnesses who had testified<sup>6</sup> in the West Region. Interview questions were developed with input from the Steering Group; children and youth were asked about their experiences as witnesses and their perceptions of the court system. The interviews did not include specific questions about charges or the criminal incident (alleged or proven). Background information made available included: the type of charge(s), the relationship to the accused, the court outcome, the amount of time the matter was in the system, and the use of testimonial aids. Parents were able to be present during the interviews. Qualitative data analysis was used by the contractor to identify common themes across participant responses and a summary of themes was developed, highlighting important issues that were identified.

Parents/guardians completed questionnaires which included basic demographic information, input on their child's experience in the justice system, the use of CCTV, information and supports received, counselling/therapy received, insight on their child's current adjustment and for comments or suggestions they wished to make. Parents/guardians were also interviewed by the contractor who thematically analyzed their responses to identify common themes.

Electronic surveys were sent to Crown Prosecutors and to both V/WAP victim/witness services workers and CWP representatives. The Steering Group provided input in the development of both surveys. The two e-surveys differed somewhat to reflect the different roles of each group of criminal justice professionals. The e-surveys were developed, up-

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<sup>6</sup> These interviews were modeled on those undertaken in the research project: *Reducing the System Induced Trauma*, of the Child Witness Project. See [http://www.lfcc.on.ca/Cwp\\_2002.pdf](http://www.lfcc.on.ca/Cwp_2002.pdf); see also <http://www.lfcc.on.ca/3yrschap2.pdf>

loaded on-line and analyzed by the Research and Statistics Division. The e-surveys asked Crowns, V/WAP victim/witness services workers and CWP representatives about their experiences with child and youth witnesses and the use of CCTV. Crown, V/WAP and CWP responses to qualitative questions were thematically analyzed to identify common themes.

## Ethics

The contractor sought and was granted ethics approval for the interview portion of this study by the Research Ethics Review Committee (RERC) King's University College at Western University, as it met the ethical standards in the *TCPs2 - Tri-Council Policy Statement: Ethical Conduct for Research Involving Humans* (2010). Participants in the interviews will not be identified in this final report. The Department of Justice will use the results of this study to assist with training and awareness of the use of CCTV and to inform programming and policy.

Due to the topics being covered in the interviews, ethical issues such as informed consent, confidentiality, data storage and destruction, risks and benefits were considered. The interview protocols and questionnaires were therefore reviewed by the Steering Committee Group<sup>7</sup> and by a Community Advisory Group<sup>8</sup>. The interviews were all conducted by one person, with extensive experience interviewing young children and youth. Prior to the start of interviews, it had been determined that any interview that caused a child or youth to become distressed would be terminated. A child psychologist was also available to receive an immediate referral should a child or youth need support after the interview. This precaution did not prove necessary as no child or youth was identified as needing psychological support following the interviews.

With respect to the e-survey portion of the study, respondents were assured that there would be no identifying information in the final report and that data are secured according to federal government security and privacy guidelines.

### *Recruitment of Interview Participants and E-Survey Respondents*

Criteria for inclusion in the interview portion of the study was determined by the Steering Committee Group and included:

- the case had been completed within a two year period (January 2012 - January 2014);
- the witnesses were under age 18 at the time they testified;
- the child would be eight years or over at the time of the interview; and
- the child or youth had received services from V/WAP or the CWP.

Cases that fell within the two year parameter were identified by V/WAP in six of the 10 locations and by the CWP in one location. Information retrieved from the files included the following:

- type of offence(s); number of child/youth witnesses in each case; completion date; disposition; and, what, if any, testimonial aids/other measures were used.

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<sup>7</sup> Karen Bellehumeur, Linda Chihab, Deborah Elliot, and Andrea Hare. Karen Bellehumeur, Assistant Crown Attorney; Linda Chihab, Regional Manager, West Region, Victims & Vulnerable Persons Division; Deborah Elliot, Manager, V/WAP and Andrea Hare, clinician CWP

<sup>8</sup> Louise Sas, PhD., Rhonda Hallberg, M.S.W., and Maureen Reid, M.S.W.



V/WAP and the CWP contacted parents and informed them about the research. A written script describing the purpose of the research was used by V/WAP and CWP when contacting prospective participants. Twenty-nine parents agreed to be contacted for the research interviews. Of the original 29 parents who expressed interest in the study; 13 parents and 15 children/youth participated in the interviews for a total of 28 interviews. (Note: One guardian was interviewed and signed appropriate consent forms, however, the information provided was not included in the study, as that guardian had not been present during the child's court experience).

Most participants chose to be interviewed in their own home, while two participants choose to meet at a V/WAP office. Their residences were located in rural areas as well as in small and large urban centres. At the beginning of each interview, parents/guardians, children and youth signed consent forms. Parents were present during the child and youth interviews, with the exception of two youth, aged 18, who lived independently, and were interviewed alone. The interviews were between 30 - 90 minutes duration. The interviewer spoke with each parent, either by telephone or in-person, before meeting with the child or youth, to ascertain if there were any special information needs or concerns of which she should be apprised; none was reported. In each case, care was taken to establish rapport with the child or youth and to ensure that they felt comfortable, before asking more direct questions. Children and youth were reassured that they would not be asked about the evidence they had given in court and that the incident(s) would not be discussed. They were also assured that they did not have to answer any question that was not comfortable for them and that they could stop the interview at any time. A preliminary open-ended question, asking the child or youth what they remembered most about court helped to orientate participants to the topic of the interview, prior to addressing more specific questions.

In June 2014, information about the e-surveys was shared with V/WAP managers by the Regional Manager and with Crown Prosecutors by the Director of Crown Prosecution. An invitation was then sent in June 2014, to all V/WAP victim/witness services workers in the West Region, to all Crown Prosecutors in the West Region and to the CWP in the West Region. Crown Prosecutors who had prosecuted a case involving a child and/or youth witness were invited to complete the survey. Responding to the e-survey was voluntary for all three groups.

### Limitations

With respect to the interview data, the findings presented in this report are representative of only those interviewed and should not be generalized to the whole population of child and youth witnesses in Ontario, nor in Canada. The number of interviews with children and youth and their parents is small. These findings are valuable nonetheless as there is very little Canadian research involving children and youth who have participated in the criminal justice system. While many of the cases have similarities (e.g. offences, relationship to the accused, and gender), each case is unique, as is each court location in the West Region in terms of equipment, facilities available and the parties in the case.

The findings from the e-survey data cannot be generalized to other parts of Ontario or Canada. They represent only the experiences and opinions of those who responded to the e-survey.

#### 4. Interview Results: The Experiences of Child and Youth Witnesses and Testimonial Aids/Other Measures

##### The Interview Participants:

###### *Children and Youth*

Twelve females and three male children and youth, ranging in age from nine to 19 years old, participated in the study, all of whom were under age 18 when they testified in court. Fourteen of the 15 participants were complainants in the case and there was one witness. Eight of the child and youth witnesses testified twice, once in the preliminary inquiry and once at trial. In cases where the child/youth testified once, the matter had proceeded straight to trial, or, in a small number of cases a guilty plea was entered after the child/youth testified at the preliminary hearing. Thirteen of the 15 cases involved sexual offences. Eight of the cases resulted in an acquittal and seven in a finding of guilt.

Twelve participants used CCTV at least once. Six of these cases had no preliminary hearing and CCTV was used by the child/youth at the trial. In two cases, the child/youth witness used CCTV at the preliminary hearing, but not at the trial. One witness chose not to use CCTV at the trial as she felt emotionally ready to be in the courtroom; the other witness opted to use a screen as there were problems with the CCTV equipment. In four cases, CCTV was used by the child/youth at both preliminary hearing and at trial.

Two child/youth witnesses used a screen: one witness used a screen because it was the only option available, and the other as noted above, chose to use a screen rather than have the trial rescheduled, because of CCTV equipment problems. Two child/youth witnesses chose to testify in open court, from the outset. All children and youth had a support person while testifying.

Fourteen of the 15 children and youth were related to, or knew the accused. Of the 11 cases where the accused was a family member, 10 involved sexual offences.

**Table 1: Child and youth interview participants - relationship to accused and type of offence**

Relationship to accused	Number of children/youth	Type of offence
Biological Father	1	Sexual
Step-Father	5	Sexual (4) and Physical (1)
Uncle (Caregiver)	1	Sexual
Step Brother	1	Sexual
Step Grandfather	2	Sexual
Cousin	1	Sexual
Teacher	1	Physical
Family friend	1	Sexual
Boyfriend's Uncle	1	Sexual
Stranger	1	Sexual
Total	15	

N=15

### *Parents and Guardians*

Of the 13 parents interviewed, 10 mothers and one father were interviewed individually and one joint interview was held with a child's mother and father. Family compositions varied, with two-parent, blended and single parent families being represented in the group. Eight of the parents had testified in their child's case.

### *Non-Participants*

Fourteen parents expressed an interest in themselves and their children participating in the interviews and agreed that they be contacted by the researcher, but did not participate in the interview process. There were varied reasons for their inability, unavailability or unwillingness to proceed with the interview. Reasons included: a move to another part of the province; the accused breached conditions and new charges were laid; three youth, now living independently, informed the researcher that they were experiencing current stresses in their lives and did not want to be interviewed; two parents confirmed the interview time and place and did not show up; and, making contact with some referrals proved to be impossible. Non-identifying case information (gender, age, use of testimonial aids and case outcomes) for these 14 non-participants was reviewed.

### **CCTV**

Almost three-quarters of the children and youth in the interview group used CCTV at least once, and 13 of the 15 participants had been informed of the CCTV option during the pre-court preparation period. The child and youth witnesses who used CCTV had a support person with them while testifying and, in four of the five courthouses where CCTV was used, both Crown and defence counsel were in the testimony room with the child/youth and support person.

In examining the court outcomes for the participant group, there appeared to be little difference associated with whether the child/youth testified using CCTV, screen or in open court. In cases where CCTV was used at trial, there was a finding of guilt in four of the 10 cases<sup>9</sup>. Case outcomes for the non-participant group indicated there was a finding of guilt in four of the eight cases where CCTV was used.<sup>10</sup>

Problems with CCTV equipment were experienced by six child and youth witnesses in the interview group, resulting in delays and adjournments in some of the cases. One child/youth witness reported that there were difficulties with showing the DVD of her statement in the testimony room, causing the matter to be re-scheduled to another date.

Interviews explored reasons why CCTV was not used at trial for five of the child/youth witnesses. Two of these child/youth witnesses used a screen; one because the courthouse did not have the equipment, and the other because of technical problems that arose with CCTV. Rather than having the trial re-scheduled to another date, this child/youth witness opted to use the screen, which was placed in front of the accused during her testimony (this child/youth witness had used CCTV at the preliminary inquiry). The other three child/youth witnesses testified in

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<sup>9</sup> Five child and youth witnesses testified in these four cases; one case involved two children/youth: a victim and a witness.

<sup>10</sup> No information is available on any other witnesses, child or adult, who may have testified in these cases. No inferences between use of a testimonial aid, or not, can be drawn from the outcomes.

open court at trial, by their choice; one of these child/youth witnesses had used CCTV during their preliminary inquiry.

There was agreement amongst the child and youth witnesses about the benefits of using CCTV, the majority believing that they could not have testified if they had to be in the courtroom. Their most significant worries about testifying were alleviated because:

- they did not have to see, or be in the same room as the accused;
- they did not have to see supporters or family of the accused; and
- they did not have to testify in front of members of the public.

The children and youth commented on some of the benefits of testifying outside the courtroom:

*...I didn't have to be in the courtroom. I didn't have to have people staring at me. If they didn't have CCTV it would have been very difficult for me.*

- female, 13

Another noted,

*I would have been even more scared if I had to go into that little box beside the judge...if he (the accused) was looking at me, I don't think I would have said everything.*

- female, 14

Using CCTV enabled this witness to testify and she commented,

*I would have frozen without it.*

- female, 18

CCTV is perceived as providing protection. One youth remarked,

*I could not see him... I was scared of him.*

- male, 16

The comments of this small group highlight the importance of the child or youth witness having a choice and input in how they testify. They also provide insight on their emotional 'readiness' to face the accused, at that point in time:

*I wanted to say it in front of him, even though I was afraid of him.*

- female, 19

*I wanted to make him feel uncomfortable; I wanted to look him in the eyes.*

- female, 17

*I was still scared but wanted to show him that I was strong enough, show him I was not scared anymore.*

- female, 15

One child/youth witness noted that in her experience testifying in the courtroom that the witness box was too close to where the accused was seated and this *made things a lot harder* for her.

CCTV, however, may not prevent an unexpected encounter with the accused in the courthouse. One child/youth saw the accused at the security gate and another saw the accused sitting on the bench outside of the testimony waiting room. Both of these child/youth witnesses talked about the shock and distress that these unanticipated meetings caused them. For another participant, the accidental move of a camera revealed the accused on the monitor in the testimony room.

### Screens

Screens are used to prevent the witness from seeing the accused. Typically a screen is placed on or near the witness box, although in a few courtrooms it is placed in front of the accused. In some courtrooms across the country a screened-off section accommodates the child or youth witness and a support person<sup>11</sup>. While testifying, the child or youth's image is relayed via a video-camera to the courtroom monitor allowing the accused and others to view. Use of a screen can provide a sense of protection for child or youth witnesses who may prefer to be in the courtroom while testifying but do not want to see the accused.

Two of the 15 participants testified using a screen, for one child/youth it was the only testimonial aid option, and the other chose to use it in order to avoid the rescheduling of the case. One of these two witnesses testified from behind a screen, while for the other child/youth a screen was placed in front of the accused. One participant was shown both CCTV and the screen, during their court visit but chose not to use the screen, preferring the CCTV option, reasoning that,

*the screen wouldn't be that helpful as you are still in the same room.*

- female, 13

Participants who used a screen were asked, *what did you see with the screen?*

One respondent who had the screen placed in front of him in the witness box recalled a,  
*black and white screen – (and) the person could see me*

- male, 11

Where the screen was placed in front of the accused, this witness remembered that she saw,  
*everyone in the courtroom and him behind the screen.*

- female, 14

Technical problems are not typically identified with use of the screen, as compared with CCTV, however other difficulties have been identified in practice. For example, although a screen may block the child or youth witness from seeing the accused, when the witness box is located close to where the accused is seated, the child or youth may be concerned about being in such close proximity to that person, especially in smaller courtrooms. Not all screens may provide a complete barrier for the witness, for example if they are not in good repair or improperly placed, or if there is a gap between the screen and the witness box, at the child or youth's eye level. In

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<sup>11</sup> This is not the current practice in Ontario's West Region.

courts where the screen is placed in front of the accused, there is a concern that person may not remain completely obscured from the child or youth's view.<sup>12</sup>

### Support Persons

All of the 15 participants had a support person with them while testifying. In the cases where there was no application made for a support person, a V/WAP or CWP worker accompanied the child or youth to the courtroom and sat where the child or youth could see him or her, while testifying. All participants found this support to be helpful in feeling safe and less anxious. The following comments were made about support persons:

*Helped me feel less anxious,*

- female, 19

*She was a big support. She called to see if I was okay and she sat with me in court,*

- female, 18

*Stayed close to me while I was testifying.....I felt safe,*

- female, 18

*Cool and helpful.*

- male, 16

A support person can provide emotional support to child and youth witnesses, increase their sense of safety and security and assist in reducing stress and anxiety. Testifying alone in an adversarial environment can be intimidating. When a supportive parent or parents are also witnesses and thus excluded from the courtroom, the presence of a support person has been found to be reassuring (Cunningham and Hurley, 2007).

### Video-recorded Statements s.715.1

Interviews conducted by a police officer for 11 children and youth in the participant group were video-recorded. Two youth reported that a video statement was not taken due to problems with the equipment. One of the younger children interviewed did not know if their statement was video recorded. A written statement was taken from one 17 year old complainant. Eleven of the participants recalled reviewing their video statements before they testified. Four of the child/youth witnesses reported that their video was used in court, and that they were in the CCTV testimony room.

The period between the investigative interview and the trial is often prolonged, and memory for details of events can fade over time. While waiting months, or even years to testify, children and youth who were victimized or who witnessed a traumatic event may actively try to forget distressing memories of what occurred. A video-recorded interview captures and preserves the child or youth's original account that he or she provided during the investigative interview.

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<sup>12</sup> For example: the screen may not be flush with the table exposing a view of the accused; if the screen is placed on a table where the accused is seated, only the upper body of the accused is blocked from the child or youth's view; and if the accused leans over to speak with the defence counsel, the child or youth may see his or her face.

Criteria for introduction of the video statement as evidence must be fulfilled, including that the child or youth must adopt the contents while testifying and must be available for cross-examination.

### Cross-examination

Although use of CCTV protects children and youth by removing them from the courtroom environment, for many child and youth witnesses, the use of this testimonial aid does not ameliorate the negative experience of cross-examination. The majority of child and youth participants described cross-examination as the most difficult part of their court experience. One child/youth commented that,

*it was like I was on trial – she (defence counsel) - was trying to demean my character*

- female, 14

Over half of the children/youth said that they were unable to say everything they had wanted primarily due to the questioning by defence counsel.

*No, the other lawyer didn't give me time to answer. He interrupted me; he didn't want me to say what I was saying. He didn't want answers. He yelled at me,*

- female, 13

*The defense lawyer was aggressive and repeated questions and I got confused and upset,*

- female, 18

*No. There was too much focus on time frames that happened a long time ago and not enough focus on the events,*

- female, 15

*No. Complicated questions, sometimes I said I didn't understand, and sometimes I didn't understand the questions and didn't say.*

- male, 16

A small number of participants recalled that the defence lawyer had been *nice*, but that they were confused by the questions. None of the children or youth reported confusion about questions asked by the Crown.

Participants recalled that court preparation helped somewhat with cross-examination, and were aware that they might be asked difficult questions. One youth commented that the Crown had said she would intervene on her behalf if cross examination during questioning was inappropriate. One youth who used CCTV became highly distressed during cross-examination, ran from the room and was unable to return.

## Court Preparation

A significant body of research has identified the many stresses and challenges children and youth face as witnesses; the most significant of these include a lack of understanding about the court process, anxiety about testifying, and dealing with complex questions in an adversarial environment which are not age-appropriate. Research and practice have also identified the benefits of court preparation, which provides education for child and youth witnesses about court and their roles and reduces the anxieties related to testifying (Sas, Hurley, Austin & Wolfe, 1991). Teaching child and youth witnesses stress reduction techniques helps empower the children and youth to be more effective witnesses (Plotnikoff & Woolfson, 1998). Court preparation techniques were developed to improve a child or youth's communication skills when testifying (Saywitz and Snyder, 1993).

All 15 children and youth received court preparation, in six locations from the V/WAP and in one location from the CWP. The majority of the children and youth recalled having more than one court preparation meeting, and some remembered having several sessions of court preparation. For the majority of participants, court preparation with V/WAP or CWP began well before the court date, and they experienced one consistent person as a support throughout. In most cases, the V/WAP or CWP staff who provided court preparation also acted as a court-approved support person. Aspects of the court preparation that stood out for children and youth included:

- Learning about the roles of court personnel
- Learning about CCTV
- Awareness about cross-examination
- Help with managing court-related stress
- Court orientation visit

All child and youth participants highly valued the court preparation services they received and many felt that they could not have got through the process without the V/WAP or CWP person who supported and helped them. In addition to learning about court, many children and youth reported that the court preparation they received helped them deal with anxiety related to testifying. Individual workers impressed children and youth by their availability throughout the process, including on the day of court. Some of the children and youth also mentioned the positive on-going support that had received from the investigating police officer.

The majority of children and youth were informed about the availability of CCTV by the V/WAP, CWP, or by the Crown (see Table 2 below).

**Table 2: Court Preparation**

Court Preparation	Yes	No	Don't know/ remember	Other	Total
Did somebody help you prepare for court?	15				15
Did you visit the courthouse?	13	2			15
Did you meet the crown?	11	2	2		15
Did you watch your video statement?	11	2	1	1 (written)	15

N=15



### *Meeting the Crown*

Thirteen of the 15 participants met with the Crown, at least once before court; some child and youth witnesses reported having two or more meetings with the Crown. Meetings with Crowns were described as reassuring and helpful. Many found that they learned what to expect when testifying and some of the Crowns spent time preparing the witness for cross-examination. Two participants reported they did not have the opportunity to meet the Crown before court as the meetings were cancelled. This was upsetting for children, youth and their parents.

### *Stress and Anticipatory Anxiety*

While struggling with the emotional and psychological impact of abuse, most children and youth called to testify experience anticipatory anxiety and stress during the months before court (Sas, Hurley, Austin and Wolfe, 1991; Plotnikoff & Woolfson, 2009; Hayes, Bunting, Lazenbatt, Carr & Duffy, 2011). In this study 87% of participants (n=13) reported being worried while waiting to testify, with 10 of the 15 children and youth reporting that they were *very worried*. Their worries included: fear of seeing the accused, nervousness about testifying, seeing supporters of the accused as well as strangers in the courtroom, talking about what happened in public, and anxiety about what might happen in court. Concern about impact on the family was also reported (where the accused was a family member). Some children and youth were worried that *people would find out* about what had happened to them. For many children and youth, delays and adjournments exacerbated these stresses. One child/youth witness described that she was stressed and worried as the date of court kept changing;

*I would prepare, then I would come to court and it would not happen – so each time I worried if it would go ahead*

- female, 14

Parents also described their perceptions about their child's worries about testifying during the pre-court waiting period. Their responses echoed those of children and youth's and included: seeing the accused, having to talk in front of the accused, worries about what to expect and testifying about what happened in public. The majority of parents also expressed concern about their child's emotional well-being during this time. Table 3 below, illustrates a high degree of consistency between the concerns of the parents and concerns of the children or youth about testifying.

**Table 3: Concerns about testifying**

Concern	Not worried	A little worried	Very worried	Total
Parent perception of child's worries about testifying		3	10	13
Child or youth's report of how worried they were before court	2	3	10	15

N=15

The findings found in Table 3 are consistent with other studies such as Plotnikoff and Woolfson (2009) who reported that 79% of young witnesses interviewed, described themselves as worried or anxious about court and 52% reported experiencing at least one stress symptom in the pre-court period. Hayes et al. (2011) also reported that the majority of young witnesses in their study described themselves as being very worried or anxious during the pre-trial period.

## Impact of Delays in the System

Reaching resolution of a case in the legal system is a lengthy process, sometimes taking several years. Of the 15 participants, their time spent in the system ranged from 11 months to 38 months and on average, cases took just under two years to reach completion. Children, youth and parents voiced their frustration about the many delays and adjournments in their case and were distressed by the length of time it took for the court process to end.

Many child and youth witnesses reflected that they could not get on with their lives as they knew they had to testify. For some participants, the process of reaching closure and the process of recovery was delayed as witnesses were required to remember details of the event until the court process is over.

*It was always at the back of my mind and sometimes I would think about it a lot  
– and then I would get stressed*

- female, 15

Another youth recalled that as soon as she received the subpoena, she began  
... *reliving the memories about what happened.* ...

- female, 18

Another participant said that she also,

*I had to relive it again and keep thinking about it. I was nervous and stressed  
about it a lot.*

- female, 14

Waiting for court can cause on-going stress in a child's life. One thirteen year old witness reflected that she had,

... *wasted two years stressing about this*

- female, 18

Spending a prolonged time waiting to testify can impact a child's willingness to testify, as observed by one youth:

*(It) took so long; I didn't want to do it anymore.*

- female, 14

## On the Day of Court

Waiting to testify on the day of court can be anxiety provoking and it is difficult for children and youth to have a long wait before being called to give their evidence. For the participants, just over half reported that they testified in the morning, while others had to wait several hours. One parent was frustrated that her child had waited all day to testify, only to be asked to return on another date, she reported that:

*(t)hey scheduled two cases on the same day and they didn't have time for our  
case, so we had to go home.*

- female, 14

Many waiting rooms accommodate younger children and adults, but often have few resources available for pre-teens and adolescents. Some participants recalled waiting in pleasant surroundings and feeling comfortable, while others reported that there was nothing for them to do. One participant noted the benefit of being able to go straight into the CCTV room from the waiting room. Another recalled that there was,

*. . .nothing to do...there were white walls with no pictures and the video games were broken.*

- female, 17

A more pleasant waiting experience was reported by one witness; she waited in a room,  
*. . . with toys and a movie we could all watch. They made us our own food... a Caesar wrap; it was very good.*

- female, 14

### Counselling

Twelve of the 15 children and youth were referred for counselling services as a consequence of their victimization. Some children and youth reported that they found meeting with a counsellor/therapist was helpful and a few reported that they were not ready to talk to a counsellor at the time of referral.

It is generally recognized that children and youth who have been sexually victimized or who have been exposed to a violent crime require specialized therapeutic support to assist them in their emotional recovery. The importance of a child or youth having timely access to effective mental health services is critical to their recovery. Prolonged involvement in the legal process can exacerbate stress and a child or youth's vulnerability should be considered in order to develop the most effective intervention during this period (Kuehnle & Connell, 2011). The National Children's Alliance Revised Standards identifies that without effective therapeutic intervention, many traumatized children will experience ongoing or long term adverse outcomes. The document also identifies that non-offending family members are frequently key to the child's recovery, and can benefit from counselling and other mental health services<sup>13</sup>.

Thirteen cases in this study involved sexual offences, 10 of which were interfamilial. Twelve of the 15 children and youth were referred for counselling, and most met with a mental health practitioner before their court case. One mother noted that her child was not ready to engage in counselling until after the verdict. Another mother however, reported that her young child, a victim of interfamilial sexual abuse, was declined treatment by a local agency as *the case was before the court*. This parent described the concerns she had about her child's emotional wellbeing at that time, and the ongoing stress the family was experiencing as the case took so long to reach completion. There is a concern that if treatment for a child or youth is delayed for too long, their symptoms can worsen. In some cases symptoms become chronic and resistant to treatment, further exacerbating the original impact (Saywitz, Mannarino, Berliner & Cohen, 2000).

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<sup>13</sup> [http://www.nationalchildrensalliance.org/sites/default/files/download-files/NCARvisedStandardsforMembers\\_0.pdf](http://www.nationalchildrensalliance.org/sites/default/files/download-files/NCARvisedStandardsforMembers_0.pdf)

Children, youth and parents in the study, described a range of mental health services provided by various professionals before, during and after court. The majority of children and youth reported that they found counselling *very helpful*. One youth described meetings with a psychologist as helpful in dealing with the impact of a physical assault as well as coping with court-related anxiety. Another youth, a victim of sexual abuse, reported that her counsellor, a social worker, helped her *get stronger* and *cope in court without breaking down*. Two youth rated highly the support they received from their high school counsellors. Two youth reported that they had discontinued meetings with their initial therapist as they did not find the person helpful, however, both youth pursued counselling with other practitioners, and reported positive results. The parents of four children with a history of sexual victimization commented on the need for longer-term supports for their child, siblings, and themselves. Two other parents reported they and their children were involved in family therapy to help them deal with the impact of their child's sexual abuse. The importance of supporting parents in supporting their sexually victimized child is identified by Crawford and Bull (2006). Three parents recommended the need for ongoing counselling that supports children and youth in cases where there has been an acquittal.

Along with therapeutic treatment, parental support is a significant factor in recovery and can greatly increase the child or youth's ability to cope with the impact of victimization and involvement in the legal process. An additional concern reported by some of the parents was being unable to talk with their child about the charges before the court until the case was concluded. The mother of one 14 year old participant in this study discussed the concerns she had about her daughter's well-being during the months before court, feeling that neither she or her husband could discuss what had happened *because we didn't want to ruin the case, (it) was so hard not to talk about it with her*.

### Changes or Stressful Events since Charges were Laid

The parents were asked if stressful events or significant changes had occurred for the child, youth or family since giving evidence in court. Sixty percent of the parents reported changes that were related to charges laid, and seven of the fifteen children/youth experienced changes to their family situation. Two children/youth moved to live with their other parent, one child/youth was placed in foster care and one child/youth had no further contact with the offending parent. Three children/youth lost their relationship with extended family members, who supported the accused during the court process. Two children/youth relocated with their families to a new area, away from where the accused lived. Moving to a new school was an added disruption for several children and youth. One parent reported that their teenage daughter no longer felt safe while home alone. One youth experienced a panic attack when the abuser approached her in a store after the custodial sentence had ended.

### Victim Impact Statements

In the seven cases<sup>14</sup> where there was a conviction, three of the victims chose to write a victim impact statement (VIS). One youth, now aged 18, commented that reading her VIS in court was *a form of closure*. While reading her statement, she stood beside the Crown rather than being in the witness box, in order to avoid seeing the accused. One youth, who chose not to write a VIS,

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<sup>14</sup> Eight children testified

explained that she had, *had enough*. On the other hand, the opportunity to talk about the impact was unavailable to children and youth in cases where there was an acquittal. One child/youth witness who had prepared a statement before the trial, regretted that she could not talk about her *feelings and the impact* of her victimization. Four parents reported that they wrote their own VIS for the sentencing hearing (one parent whose child also wrote a VIS, one couple each wrote their own and whose child also wrote a VIS and one parent whose child chose not to write a VIS); all four parents read their statements in the courtroom.

Of the 15 participants, nine children and youth answered that they would not want to testify again and six said they would. Of the six who responded that they would testify again, three had no hesitation about doing so and three offered they would *only if they had to*. Of those who had no hesitation, one youth reasoned she would do so to *help the greater good*, (female, 16) and another reported that she would testify if her case (which ended in an acquittal) were to be re-opened (female, 15). The third youth provided no reason, but was clear that he would be willing to testify again (male, 16). Frustrations about delays and adjournments and the negative experience of cross-examination may have influenced some responses. From the parents' perspective, eight parents would not want their child or youth to testify again and five stated that they would.

### Parents' Perceptions

Thirteen parents participated in the interviews. Several parents expressed concerns about the emotional welfare of their child during the court process. One parent acknowledged the importance of testifying, but cautioned that children,

*. . .should never be in front of the abuser (it is) too emotional and difficult.*

Several parents commented on the benefits of testifying outside of the courtroom using CCTV. In the words of one parent:

*It's great for them to feel they can speak and not have to face the accused.*

One parent commented that,

*CCTV gave (her child) support and courage to speak out and to ease her mind.*

Another parent reflected that CCTV enabled her child to testify, stating that,

*. . .if she had to see the accused again, I don't think she could have gone through with testifying. Knowing that she would be in a separate room got her through it; the room was also smaller which was less intimidating, (and) no spectators which was also fantastic.*

Parents were asked about their thoughts on children and youth testifying. Several parents commented on the importance of court preparation and support for children and youth.

In one parent's opinion,

*(t)here were a lot of good supports in place to make it easier for my family through such a tough time; we met lots of kind, supportive people.*

Many parents discussed their frustration with the many delays and length of time it took before the case was over. This parent echoed the experience of others that the,

*. . .trial date was changed many times.*

One parent identified the difficulty children and youth have remembering years after an event:

*(t)hey left it too long, two years later she testified and children cannot remember everything.*

Waiting many months, often years can negatively impact children, youth and families. Parents spoke about their inability to talk to their child about their victimization until the case was completed, often having to wait up to two years. Parents were called as witnesses in several of the cases and these parents voiced their appreciation for the preparation and support provided to their children. Many of the parents who were called to testify, noted that they could have also benefitted from the enhanced court preparation that their child received.

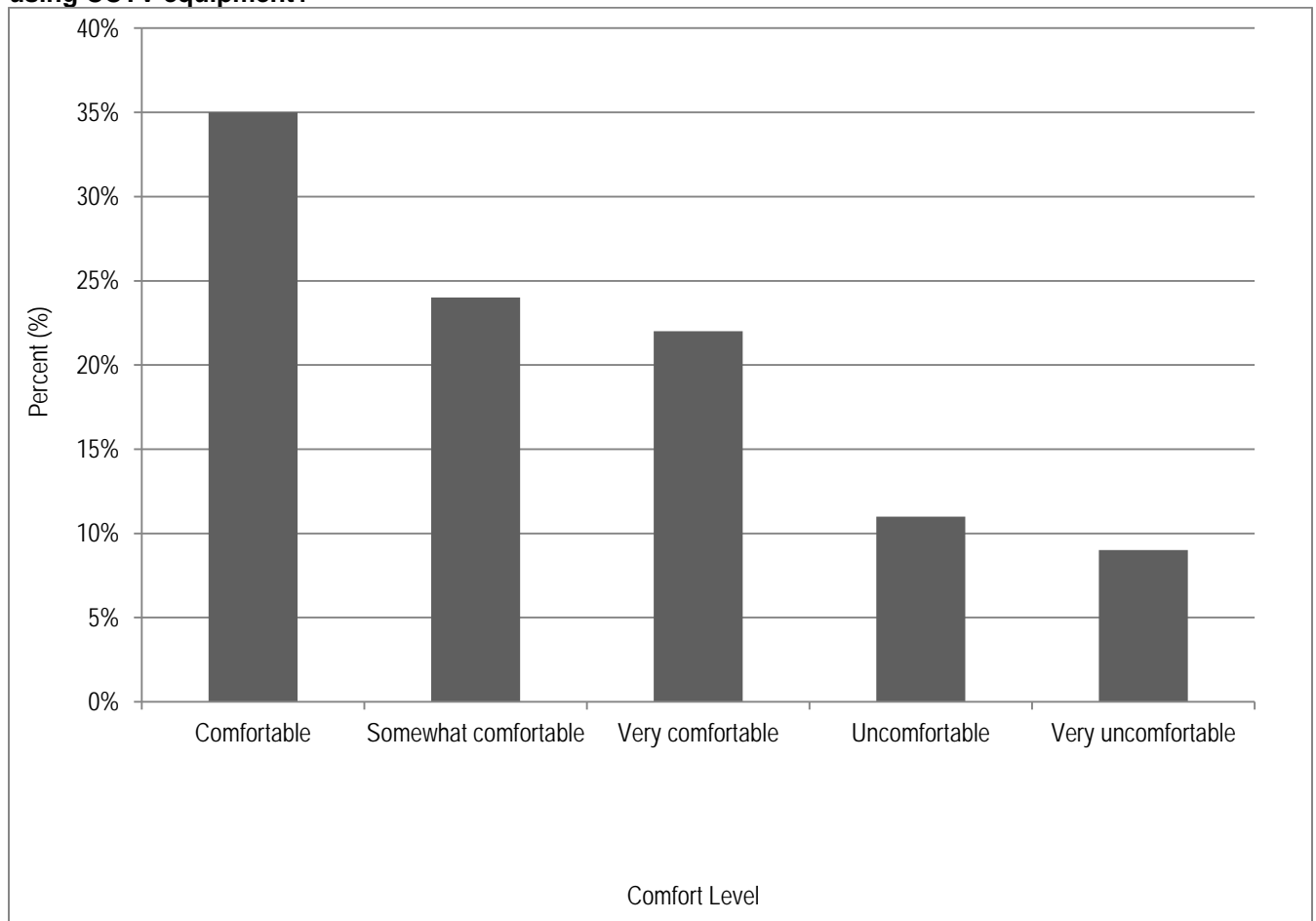
## 5. Crown Prosecutor E-Survey Results

A total of 47 respondents answered the e-survey; 25 males (54%), 21 females (46%) and one respondent who did not specify. The Crown Prosecutors who responded were called to the bar between 1981 and 2013, with most Crowns being called during the year 2003. Forty-one percent of Crowns indicated having “16 to 20 years” (n=4) or “more than 20 years” (n=15) of experience in the field. Another 40% indicated they had between seven and 15 years of experience (n=19) and the remaining 20% (n=9) indicated zero to six years of experience.

Approximately half of the respondents had received training for working with child witnesses. Of those who responded to the survey, 96% (n=44) indicated that they have access to CCTV in their jurisdiction; however, 85% (n=40) indicated technical difficulties exist with the use of CCTV in their jurisdiction.

### *Experience with CCTV*

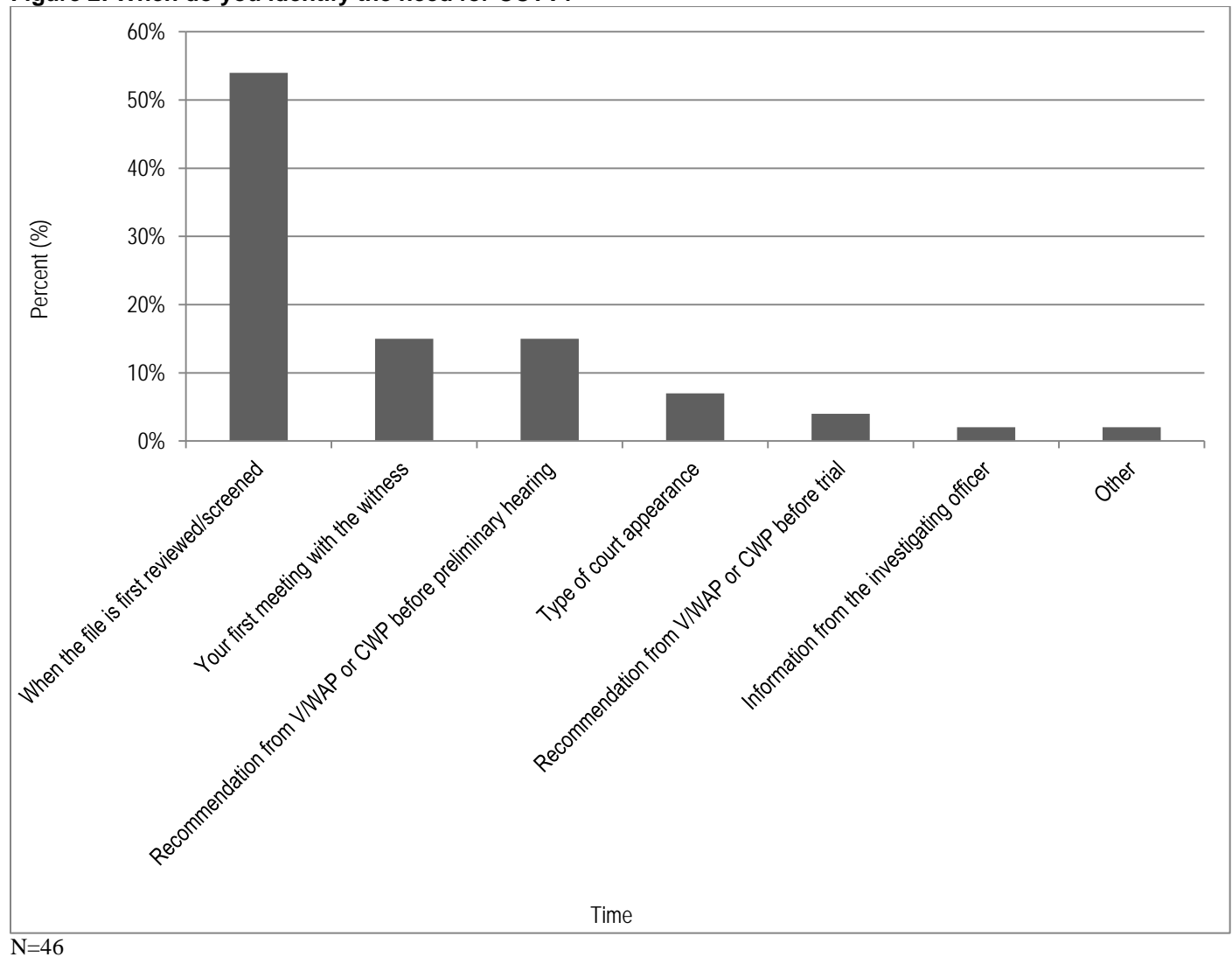
**Figure 1: On the scale provided, how comfortable are you conducting examinations of witnesses using CCTV equipment?**



Using a Likert-scale, respondents were asked to rate their comfort with conducting examinations of witnesses using CCTV equipment, the majority of respondents indicated they felt “somewhat comfortable” (n=11), “comfortable” (n=16) or “very comfortable” (n=10) using the equipment.

Crowns were asked at what point during a case they would identify the need for CCTV when a witness is under the age of 18. Figure 2 illustrates the responses to this question.

**Figure 2: When do you identify the need for CCTV?**

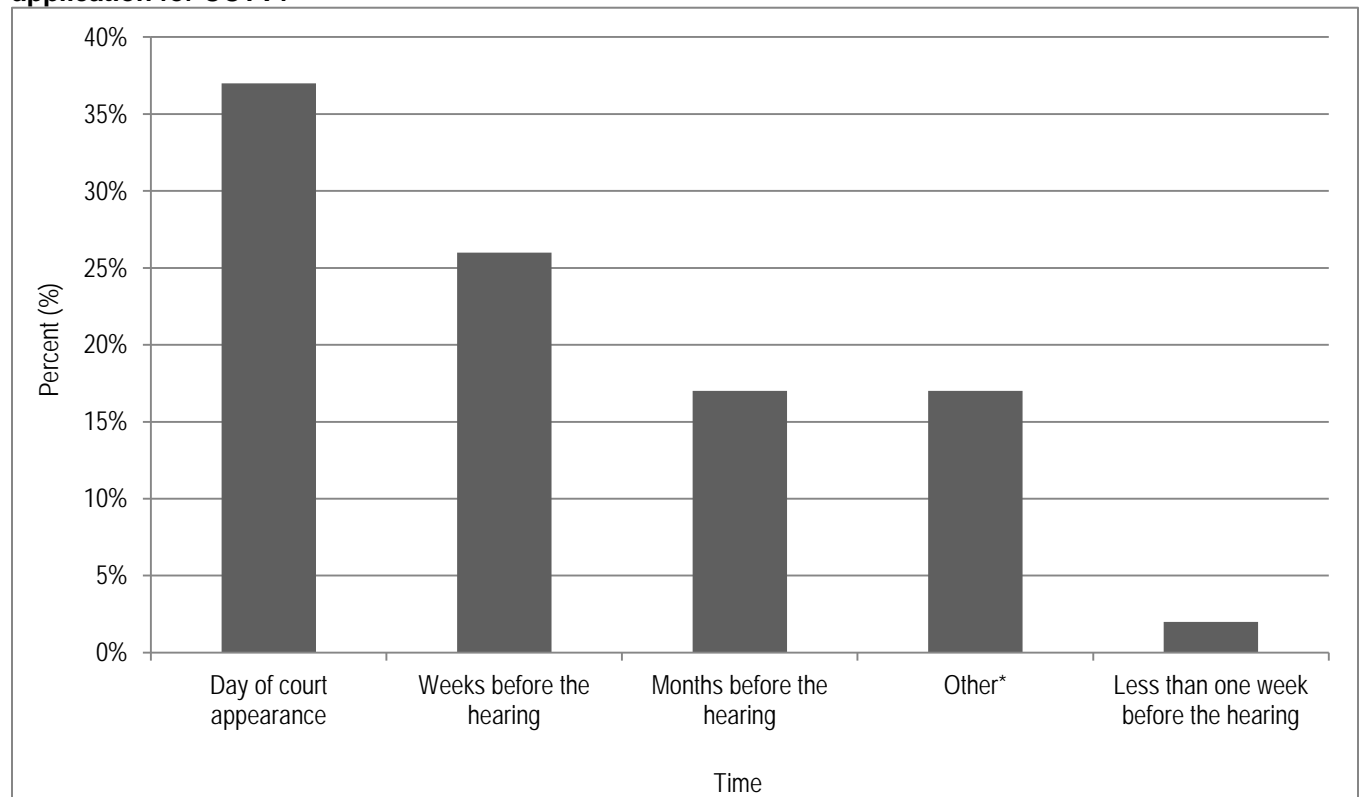


Slightly over half of the respondents (54%, n=25) indicated they would do so “when the file is first reviewed or screened.” Another 30% indicated they would do this either at the “first meeting with the witness” (n=7) or based on a “recommendation from V/WAP or CWP before the preliminary hearing” (n=7).



Crowns were also asked at what point in the proceedings they would make an application for CCTV for a witness under the age of 18. See Figure 3 below.

**Figure 3: In relation to the preliminary hearing/trial, what point in the proceedings do you make an application for CCTV?**



N=46

Other\* included: dependent on Ontario Court of Justice (OCJ) or Superior Court of Justice (SCJ); when trial date is set; and dependent on whether application is contested or on consent.

Some Crowns (37%, n=17) indicated they would do so the “day of the court appearance”, while 43% indicated they would do so either “weeks” (n=12) or “months” (n=8) before the hearing. Only one Crown indicated they would do so “less than one week before the hearing”. One reason for applications being made on the date of the court appearance may be due to an advanced indication by defence counsel that the application will not be opposed. Often such concessions are made at pre-trial conferences (Bellehumeur, 2015).

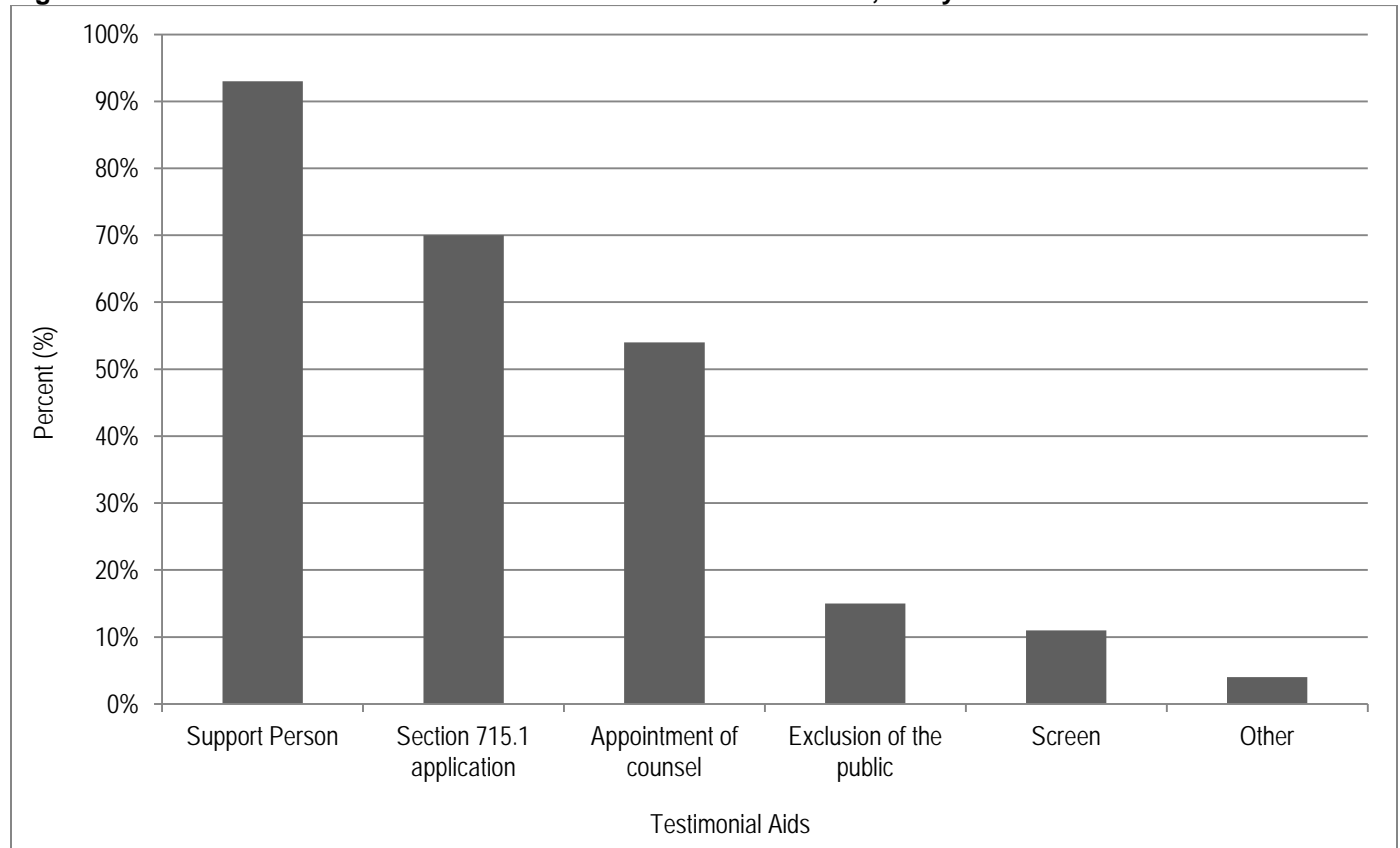
When Crowns were asked how often they make an application for the use of CCTV for witnesses under the age of 18 years, 60% indicated “often” (n=20) or “always” (n=8), 15% (n=7) indicated “sometimes” and the remaining 24% reported “not very often” (n=9) or “never” (n=2).

Consistent with the experience of the children and youth in this study, 91% of Crowns indicated that applications for the use of CCTV are approved “often” (n=16) and “always” (n=24). One Crown indicated “not very often” while three responded that they did not know. Furthermore, respondents were asked how often defence counsel object to the use of CCTV, 61% of respondents indicated “not very often” (n=26) or “never” (n=2), while one third (33%) indicated “sometimes” (n=11) or “often” (n=4). Additionally, two Crowns indicated they did not know.

When Crowns were asked whether they were aware of any cases where the witness or a representative of the witness made an application for the use of CCTV the majority (91%) indicated “no” (n=41). One Crown indicated “yes” and three indicated they did not know. Furthermore, 56% of Crowns (n=25) indicated that applications for CCTV have not resulted in adjournments while 33% indicated (n=15) applications for CCTV have resulted in adjournments. Four Crowns specified they did not know.

Crowns were asked in their experience, what testimonial aids were used in combination with CCTV. Figure 4 below illustrates that almost all (93%) of the respondents (n=43) indicated that a support person was used with CCTV.

**Figure 4: What Testimonial Aids are used in combination with CCTV, if any?**



N=46

Other includes: digital evidence viewed on screen and movement of public in body of court to avoid victim view.

Respondents could select more than one response.

**Note:** Testimonial aids refer to testimonial aids and ‘other measures’.

This finding is also evidenced in the interview portion of the current study, as all children and youth who used CCTV were also paired with a support person. Additionally 70% responded that CCTV was paired with “Section 715.1 application to play the witness’s video-recorded statement” (n=32) which was also mentioned by some children and youth during the interview portion of this study. More than half (54%) of the Crowns who responded (n=25) indicated

“Appointment of counsel for self-represented accused on cross-examination” was paired with CCTV.

#### *Challenges with CCTV (Crown Prosecutors)*

Crowns were asked to provide their opinion of the challenges that exist with the use of CCTV. Many of their responses were similar to those of the parents, children and youth interviewed for this study. Five prominent themes emerged from their responses and included: technical difficulties, procedural challenges, client challenges, lack of training and other challenges. The majority (89%, n=32) of respondents mentioned technical difficulties including equipment problems, poor sound quality and poor image quality. More than half (53%, n=19) of the respondents mentioned procedural challenges which included disagreements over who is in the CCTV room and the challenge of showing the video statement and the witness at the same time. Approximately 22% (n=8) of Crowns mentioned witness challenges which included keeping the attention of very young witnesses while on CCTV and ensuring the witness does not see the accused and his/her supporters either through the camera or outside the CCTV room. Four of the Crowns noted that a lack of training either for themselves or others who operate the CCTV equipment also presented challenges to ensuring that testimony was provided without glitches. Two Crowns mentioned “other” challenges including having to provide a written brief to apply for the use of CCTV, and that in cases where identification is an issue, the witness may still have to be brought into the courtroom to identify the accused.

When Crowns were asked whether they had received comments or feedback from witnesses under the age of 18 or their parents, 87% (n=20) explained that the feedback they receive is overwhelmingly positive from both children and their parents. Echoing the parent and child interviews, Crowns also identified that many parents and children felt the use of CCTV was very helpful, and that they appreciated the protection and distance from the accused, and found that it reduced stress and trauma associated with testifying.

Three of the Crowns also explained that parents and witnesses had provided feedback identifying some challenges with using CCTV. These challenges included frustrations regarding waiting due to technical difficulties with the CCTV equipment. One Crown indicated that some parents/witnesses do not appreciate being in such close proximity to the defense counsel in the CCTV room.

#### *Training*

When asked whether or not they had received training regarding working with child and youth witnesses, almost half of Crowns (49%, n=23) responded “yes”, while 51% (n=24) responded “no”. Of the 49% who did receive training, Crowns identified this training was provided by one or more of the following: the Ontario Crown Attorney’s Association (OCAA) the Ministry of the Attorney General (MAG) conferences, in-house learning sessions, and through other professionals (i.e. other Crown Prosecutors, V/WAP representatives, Child Witness Project representatives and professionals at the Children’s Aid Society). All (100%) of the Crowns rated the training that they received as “helpful” (n=13) or “very helpful” (n=10). Eighty-three percent (n=19) indicated that they would benefit from more training however three respondents did not agree with this statement, and one respondent indicated they did not know.

Crown Prosecutors were also asked whether they had received training on the law and CCTV and testimonial aids/other measures. Again, results were roughly equal with 49% responding “yes” (n=23) and 51% responding “no” (n=24).

Of those who received training on the law, CCTV and testimonial aids, Crowns identified this training was provided by one or more of the following: OCAA, MAG, from those who installed the CCTV equipment, Crown conferences, training sessions and unknown. The majority of Crowns (96%, n=18) rated the training as “helpful” or “very helpful” and one respondent rated the training as “neutral”. Many Crowns believed they would benefit from more training on this topic (74%, n=17) while four did not agree that they would benefit from more training and two respondents indicated they did not know.

## 6. Victim/Witness Assistance Program & Child Witness Project E-Survey Results

A total of 18 respondents answered the e-survey: 16 females (94%), one male (6%) and one who did not answer this question. Respondents were asked to indicate the number of years they had been working in the victim services field. Sixty-one percent of respondents (n=5) indicated they had “7 to 10 years” experience or “11 to 15 years” experience (n=6). Another 34% percent indicated having “16 to 20 years” (n=3) or “more than 20 years” (n=3) experience in the field, and the remaining respondent indicated having under two years’ experience.

### *Experience with CCTV*

When respondents were asked to identify in their area, how many different courtrooms exist where young witnesses testify, the majority indicated either one courtroom (44%, n=8) or two courtrooms (33% or n=6). Three respondents, however, indicated their area had five courtrooms, while one service provider identified that her area had four courtrooms. No respondents indicated having three courtrooms where young witnesses testify. Sixty-seven percent (n=12) of those who responded to the question experienced technical difficulties with CCTV with at least one court location.

Of the eight respondents who reported having one courtroom in their area, 88% (n=7) had access to CCTV with one person reporting no access to CCTV. All 7 of those respondents (100%) experienced technical difficulties with CCTV at this court location.

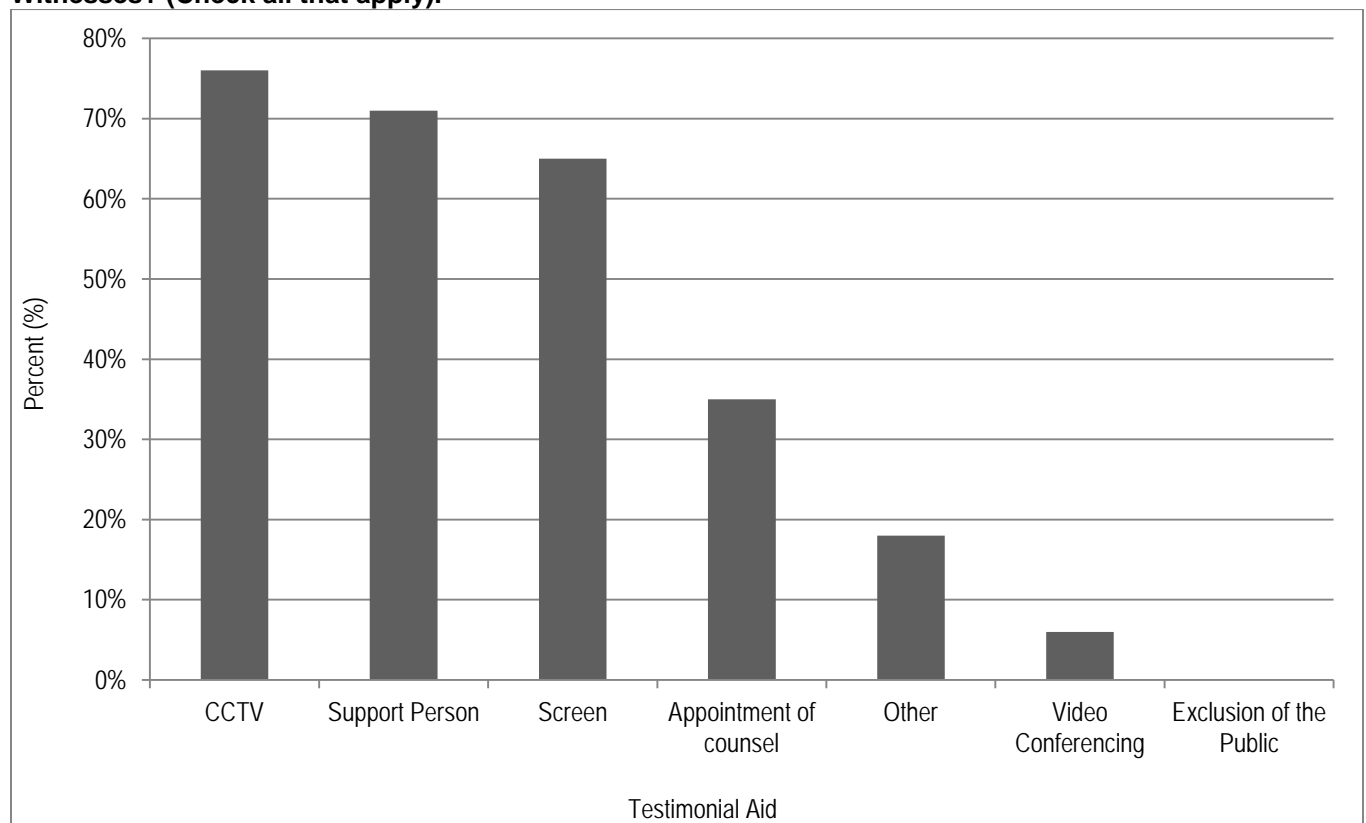
Six respondents reported having two courtrooms in their area; of these respondents, four indicated that they had access to CCTV at the first court location and two respondents indicated they did not have access to CCTV at this location. Three of these respondents experienced technical difficulties and one did not. At the second court location four respondents had access to CCTV and two respondents did not have access to CCTV. One person experienced technical difficulties and three did not.

All of the three individuals who reported having five courtrooms in their area had access to CCTV at all five locations. At all of these five court locations two individuals each reported having technical difficulties while one person did not.

Only one respondent reported having four courtrooms in their area; this person reported having access to CCTV at one court location where they did not experience technical difficulties. The respondent did not provide a response for the second court location. The respondent reported not having access to CCTV at court locations three and four.

When asked how often the respondent accompanies a child when he or she is testifying in court, the majority (89%) of respondents indicated “sometimes” (n=3), “often” (n=4) or “always” (n=8). The remaining two respondents indicated “not very often” (n=1) and “never” (n=1). Figure 5 below shows the frequency of use of different testimonial aids and other measures.

**Figure 5: Which Testimonial Aid(s) is/are used most often in your Court Location(s) with Child Witnesses? (Check all that apply).**



N=17

Other included: encouraging children to bring a stuffed animal and using a videotaped statement as examination-in-chief.

**Note:** Appointment of counsel appeared on e-survey as “appointment of counsel for self-represented accused on cross examination”; testimonial aids include “other measures”. Percentages may not add to 100%, as respondents were able to select more than one choice.

Seventy-six percent of respondents (n=13) indicated that “CCTV” is most often used in their court locations. “Support person” was reported by 71% of respondents (n=12) while 65% (n=11) indicated a witness “screen” was the testimonial aid most often used. No respondents indicated the exclusion of the public as a measure most often used in their court location(s).

Nine respondents provided reasons why they thought CCTV is not frequently used in their court location. These reasons included technical difficulties (n=4), that CCTV is simply not available (n=3) and the remaining two respondents felt it is not frequently used because the Crown or Judge is reluctant to use it.

Finally, V/WAP victim/witness services workers /CWP representatives were asked if they were aware of any cases where the witness or a representative of the witness (other than the Crown) made an application for the use of CCTV, 88% (n=15) responded “no,” while two respondents indicated “yes”.

#### *Challenges with CCTV (V/WAP & CWP)*

Respondents were asked about the challenges they see with the use of CCTV; their responses were organized into four categories: technical difficulties, logistic challenges, reluctance to use CCTV and other challenges. Technical difficulties (77%, n=10) included unreliable/malfunctioning equipment, poor sound quality, microphone quality and the complicated nature of the system. Four of the respondents mentioned logistic challenges which included the location of the victim, camera positioning, and competition for courtrooms or the CCTV room. Three V/WAP and CWP representatives mentioned that Crowns and Judges will avoid using the equipment if they have previously experienced technical difficulties. Two respondents also noted other challenges which included a requirement for more training for court staff who use the equipment and more equipment being needed.

Thirteen respondents provided a response when asked what feedback they had received from child or youth witnesses or their parents. Eight confirmed information received from Crowns and parents who indicated that the use of CCTV decreased the anxiety and discomfort with testifying or seeing the accused and also increased the child and youth’s sense of safety, security, relief and support. Six respondents indicated that parents, children and youth appreciated using CCTV and four respondents specified that without CCTV testifying would not be possible. Two V/WAP/CWP representatives indicated that parents felt CCTV is superior to other testimonial aids including screens and two other respondents provided feedback concerning the technical challenges of using CCTV.

#### *Training*

Half (50%, n=9) of the respondents indicated they received training on the use of CCTV, while 44% of respondents (n=8) indicated that had not. Of those who indicated the year they received training (n=7), the range of this training spanned from year 2000 to the year 2014, with one person indicating that they had received training “several times over the years”. The most frequent response was year 2013 (n=2). Four respondents who had received training indicated they would benefit from further training, while an equal proportion (n=4) indicated they would not benefit from further training. One respondent did not know if they would benefit from further training. When asked about further training, two respondents indicated they would like a “refresher”.

## 7. Final Thoughts

### *Children and youth*

At the end of the interviews, children and youth were asked for their thoughts on what would make it easier for a young person to testify. A repeated theme in their responses was to not have to see the accused during their testimony. Some of their other answers included:

- Use CCTV
- Ask questions in a non-legal way; in a way that kids can understand
- Kids should have a choice in how they testify; ask their opinion
- Meet the Crown before the court date
- Have a different way of questioning kids – rules for lawyers
- Have separate entrances in the courthouse for witnesses
- Make sure the equipment works
- Provide more space between the witness box and where the accused sits in the courtroom
- Court preparation
- Not to have to wait so long

### *Parents*

Parents were also asked how they thought things could be made easier for children and youth who testify. Reducing the length of time it took for cases to reach completion and the number of delays or adjournments was a repeated theme, as was alleviating the pressure of cross-examination on young witnesses. Their responses also included:

- Court preparation and support before, during and after court
- Availability of CCTV
- Meeting with the Crown before court
- Listen to the child/youth's wants, needs and insecurities
- Prepare parents to help prepare children
- Make sure the accused is kept away from the child
- Lawyers should be more considerate (during cross-examination)
- Make accommodations for parents, who are also witnesses in the case, to be in the courtroom while their child is testifying
- The child/youth should only testify once

Case management where there are child and youth witnesses to reduce the time to trial and limit delays during the trial.

### *Crown Prosecutors*

At the end of the e-survey, Crowns were asked to provide any comments they wished to share. Some Crowns mentioned challenges relating to the CCTV technology:

*We need new equipment.*

*The technical difficulties encountered make it extremely difficult for the child who is left waiting most of the day, to testify. I have had many disappointing days in court, frustrated myself at the current state of technology.*

*This technology is hardly new. Why does it always fail on trial day?*

*This is an excellent and essential resource for the presentation of child evidence in a case. However, difficulties with technology often slow proceedings and lessen the impact of this important evidence.*

*There are constant issues with the equipment and setting up the CCTV room in advance of the moment of trial. There are always last minute technical issues that often cause the judge to have to stand down the trial for at least 30 min. in order for a technical support officer to assist.*

Some Crowns mentioned procedural issues and/or suggested solutions:

*Spell out that the applications need only be made orally. Fund all courthouses to have this done, and done right!*

*The requirement for children to testify in criminal proceedings is already so difficult for them to begin with. If we could find ways to improve these difficulties it would make the process much easier, more efficient and less anxiety-inducing for them.*

*Crowns should have unrestricted access to these [CCTV] rooms in a courthouse. We have run into roadblocks in the past where our passes do not allow us into the area and this is difficult when we are trying to set up before court or show the rooms to a witness as part of courtroom prep.*

*V/WAP Victim/Witness Services Workers /CWP Representatives*

As with Crowns, V/WAP/CWP representatives were given the opportunity to include comments at the end of the e-survey. Many respondents praised the technology:

*... CCTV is an integral part of ensuring child victims are able to provide full and candid testimony. The fact that fewer adults are present in the room, there is always a support person present, as well as not having to see the accused, makes a difficult process much more comfortable for the children we work with.*

*This technology should be available to all young vulnerable victims of crime*

*What a long way we have come in the past few years – having children/youth provide their evidence via CCTV has made a huge difference on the witness's ability to tell their story. Our CCTV room has recently been remodeled, which*



*ultimately has assisted court staff; however there are still technical difficulties. The more the equipment is used the easier time staff have troubleshooting issues if they do arise.*

*I would like to see the equipment available in each court...*

One respondent highlighted one issue that exists with the CCTV technology:

*There needs to be training for crowns and court staff on the use of CCTV and they need technical support...*

A few respondents also touched on procedural issues:

*While having CCTV and other testimonial aids is wonderful – getting the child to the CCTV room/secure waiting area without seeing the accused is very challenging...In order to protect the child or vulnerable person - there should always be a way to get them into and out of the courthouse without exposing them to the accused or family and friends of the accused...*

*...every effort should be made to get YOUNG Victims testimony in as quickly as possible. Often lengthy opening remarks or other legal discussion are done first, leaving the victim waiting in a very small waiting room – wondering why they aren't being heard. Often without their family there as a support for them.*

## 8. Discussion

Several decades of research have led to a deeper understanding of the emotional impact testifying can have on children and youth. Over the years, there have been significant changes to policy and practice to protect child and youth victims from secondary victimization within the criminal justice system. Legislation has been put in place to ensure that children and youth can provide a full and candid account of the alleged criminal incident and reduce the stress related to testifying. Court preparation services inform, support and prepare children and youth for the task of testifying. Education and training programs have been developed for justice professionals on special issues related to child/youth witnesses and use of testimonial aids. Most recently, in July 2015, the *Canadian Victims Bill of Rights* came into force, creating statutory rights in four areas: information, protection, participation and restitution for victims of crime.<sup>15</sup>

A significant contribution to our understanding of the experiences of child and youth victims and witnesses has come directly from children and youth themselves, and also their parents or guardians. The purpose of this study was to better understand the availability and use of CCTV and explore how, or if, use of CCTV helps facilitate giving evidence, improve the quality of evidence, and minimize stress for children and youth. As has been well documented in the literature, testimony outside the courtroom using CCTV addresses two of the most salient court-related worries for children and youth: being face-to-face with the accused and testifying in an adversarial, public environment.

The findings of this study identified that CCTV was available to the majority of the child/youth participants, and that most were given the option to use this testimonial aid, with 87% (n=13) using it at least once. All children and youth who testified via CCTV, as well as their parents, considered the aid to have been helpful during their testimony. All of the children and youth received court preparation and had a support person with them while they testified. Challenges that remained were (i) the length of time they spent waiting for the case to reach conclusion, and (ii) cross-examination.

### CCTV Benefits

The findings in this study indicated that CCTV was well perceived and appreciated by parents, child and youth witnesses, Crowns and victim/witness service workers. This finding is supported by literature authored by Bala, Lindsay and McNamara (2001), who found that judges, Crowns and victim-witness workers found CCTV to be both “useful” and “beneficial” (pp. 464-465). As well, over half of the defence counsel in this 2001 study also found CCTV to be useful.

Testimony outside of the courtroom is a protective measure because it removes two significant testimony-related stresses for children and youth -seeing the accused and testifying in a public adversarial courtroom environment. Facing the accused is rated as one of the most salient fears children and youth have about testifying (Sas, Hurley, Austin & Wolfe, 1991; Bala, Lindsay, & McNamara, 2001; and Hanna, Davies, Henderson Crothers & Rotherham, 2010). Being hurt by the accused, or that their family may be angry with them, are also among the potential fears a

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<sup>15</sup> For more information about the *Canadian Victims Bill of Rights*, please see the Justice Canada website at [www.justice.gc.ca](http://www.justice.gc.ca).

child or youth may have about testifying (Plotnikoff & Woolfson, 1998). This stress or fear can inhibit a child or youth's ability to provide a complete and accurate account of evidence. Stress can also interfere with a child or youth's ability to access memories of events that are before the court (Fivush, 1993). As well, children or youth who are frightened or distressed may lose focus, which may impact their ability to answer questions accurately while testifying. Testifying from a separate room protects children and youth witnesses from the ongoing activities in the courtroom, which may be distracting for witnesses, especially children or youth who have attention difficulties (Cunningham & Hurley, 2007).

The participants in this study who used CCTV reported that the aid reduced their testimony-related stresses such as fear of seeing the accused, being in the courtroom environment and being stared at by strangers within the courtroom. Participants also attested that without use of CCTV, providing accurate testimony would have been much more difficult and they would not have been able to say everything they had wanted to.

Some of the child and youth witnesses in this study indicated that being able to choose how to testify gave them an opportunity for their opinions and wishes to be heard. When child and youth witnesses are given the opportunity to choose how they give evidence, it can further reduce the stress they feel about testifying (Cashmore & De Haas, 1992). Being able to testify in court about their victimization may also become an important aspect of recovery for some children and youth. Some follow-up studies of children have identified that children who did not testify reported more negative feelings about their case than children who gave evidence (Goodman et al., 1992; and Quas et al., 2005).

One youth interviewed in this study reflected that testifying was a positive experience as she had *never said it out loud before*. Where a child or youth feels emotionally ready, testifying can be a validating and empowering experience, as this youth reflected:

*I am proud of myself. Even though he got off, I showed him that I stood up and was not afraid of him anymore.*

- female, 15

### **CCTV Challenges Experienced by Child and Youth Witnesses**

Despite the benefits of CCTV, there were also several challenges identified with testifying including long delays and waiting for trials, aggressive and confusing cross-examination and technical problems with CCTV.

#### *Delays at Trial*

The interviews in this study, as well as recent research (Plotnikoff & Woolfson, 2009; and Hayes, Bunting, Lazenbatt, Carr & Duffy, 2011), identified that the use of CCTV could not buffer two stressful aspects of participation in the justice process i) the negative impact associated with delays and waiting for trial, and ii) cross-examination.

The idea in a child or youth's mind of waiting endlessly for the court day to arrive builds emotional pressure and takes on a special significance for children and youth who have to testify about sexual victimization or other personally traumatic experiences that occurred in many cases,

years earlier. Several studies have shown that waiting for trial can greatly impact children or youth's mental health and that they often exhibit at least one of the following symptoms: significant worry, anxiety and panic; sleep problems; appetite changes; decreased academic attendance and performance; depression; and self-harm (Plotnikoff and Woolfson 2009; Hanna et al., 2010; Hayes et al., 2011; and Hayes and Bunting 2013).

Many children and youth remain emotionally “stuck” until their testimony is heard and the court process is completed. The literature has identified that child and youth witnesses who disclose abuse or victimization should be assessed by a mental health professional and receive direct and abuse-focused treatment (Lipovsky & Hanson, 2007); some children and youth, however, are not able to access therapeutic services until after the trial is over (Davies & Seymour, 1997; Humphreys, 1995).<sup>16</sup> This delay in receiving appropriate treatment can exacerbate the original impact, intensify symptoms and even create resistance to treatment later on (Saywitz, Mannarino, Berliner & Cohen, 2000).

Awareness that they can use CCTV when testifying can help reduce the witness' anticipatory anxiety during the pre-trial period. In this study, 84% of Crowns indicated that they identified the need for CCTV early on in the process (Fig. 2) and 43% of Crowns indicated that they would make an application well in advance of the court date. Thirty seven percent of Crowns indicated they would make an application for CCTV on the day of court appearance, and where the Crown knows that the application will be granted with the consent of defence counsel, this approach can work by limiting delays. In cases where there is a contested application, Crown has indicated that it is good practice to make this application in advance of the scheduled testimony of a child or youth. It is important to note that in many jurisdictions long delays can result when adjournments or motions need to be scheduled. Applications under s. 486.2 of the *Criminal Code* must be made before the presiding judge or justice or, ahead of the proceedings to the judge or justice who will preside at the proceedings. One other point about making an application on the day of court is that the CCTV equipment or designated courtroom may have already been reserved for another case. As such, if Crowns make a last-minute application for CCTV, child and youth witnesses might go without the testimonial aid in order to avoid delaying the trial. This is important to consider when evaluating the policies in place and the best practices for using testimonial aids such as CCTV.

### *Cross-Examination*

Interviews with children, youth and parents clearly identified that CCTV could not completely reduce the stress and anxiety experienced during cross-examination. This finding is supported by numerous studies around the world as cross-examination has been the focus of considerable controversy and debate in child witness research for many decades (see Brennan, 1995; Cashmore and Trimboli 2005; R. v. F. (W.J), 1999; and Zajac & Hayne, 2003). Studies have highlighted the difficulties children and youth have responding accurately and completely to leading, suggestive and complicated questions (Davies & Seymour, 1997; Keane, 2012; Lyon et al., 2012; Powell 2013; Scurich 2013; and Spencer, 2012). Many child and youth witnesses also

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<sup>16</sup> This can be for a number of reasons including: long waiting lists for services; request from Crown that counselling wait until after the trial to avoid contamination of the evidence; and the child or youth and/or parent is not ready for counselling.

report feeling humiliated, shamed, mislead, harassed and exposed to intimidating, confusing, offensive and repetitive cross examination (Eastwood, 2003).

As a result, several countries have implemented new policies or best practices in regards to cross-examination with child and youth witnesses (Jordan, 2014). In Australia and New Zealand, legislation dictates that improper questions during cross-examination of children and youth are either restricted or are monitored and judges can intervene to request re-phrasing or not allow them at all (Jordan, 2014). In South Africa, intermediaries are utilized for child and youth witnesses under the age of 18 in order to provide an additional buffer against aggressive questioning and to translate the defense's questions in an age-appropriate way that the witness will understand (Jordan, 2014). In the UK, a witness intermediary scheme for vulnerable witnesses (includes vulnerable adults as well as children and youth) was implemented between 2004 and 2005, and evaluated in 2007 (Plotnikoff & Woolfson, 2007). Registered intermediaries have been available to vulnerable witness in England and Wales since 2008 (Victims and Witnesses Unit, Ministry of Justice, 2012).

In a large study conducted in the UK, 172 children were interviewed about testifying in criminal proceedings. Two thirds of those interviewed reported having difficulty with comprehension, with the complexity and the pace of questions and with interruptions (Plotnikoff and Woolfson, 2009). Two thirds of the sample reported negative feelings, including being scared, shaky, tired and frustrated while testifying (Plotnikoff and Woolfson, 2009). In a smaller scale study involving 37 interviews, children who had testified in criminal proceedings in Northern Ireland reported similar experiences with almost half of them having problems understanding all of the questions asked during cross-examination (Hayes et al., 2011). Studies also suggest that testimony is less accurate after cross-examination (Fogliati and Bussey, 2013) and that children may answer erroneously to leading questions or those they do not understand (Spencer & Lamb, 2012).

These two studies, as well as the larger body of literature, match the experiences of many child and youth witnesses in this study who reported that they did not understand many questions posed by the defense counsel and, that the defense counsel confused them, acted aggressively and raised his/her voice during cross-examination.

### Technical Problems

Another main finding of this study is the presence of technical difficulties while operating the CCTV equipment. Problems with equipment were identified by half of the child and youth witnesses and contributed negatively to both their experience of testifying, as well as the ability for Crowns to maximize their witness' representation. Many participants and respondents in this study indicated that technical difficulties with the equipment delayed the trial for several minutes, hours or even to a different day. These equipment and technical problems with CCTV, however, are not unique to Ontario's West Region. In the UK study (Plotnikoff & Woolfson, 2009) mentioned above, technical difficulties were experienced by 62 young witnesses (48%) who used CCTV and in the smaller Northern Ireland study, 42% of the cases where the TV link was used experienced technical difficulties (Hayes, Bunting, Lazenbatt, Carr & Duffy, 2011).

## CCTV is commonly paired with a Support Person

In addition to the use of CCTV, both interview participants and the e-survey respondents indicated that having a support person(s) present while testifying is common and is much appreciated by child and youth witnesses. Other studies, such as Hanna et al. (2010, p.5), have also identified that a support person was also simultaneously used with the CCTV aid. All children and youth in this study received court preparation services before and after testimony and these were reported as very helpful. Both interview and e-survey data indicated that respondents want these supports to be available, and where necessary, enhanced for children and youth who face the prospect of testifying about their victimization. Providing victimized children and youth with supportive services, from time of disclosure until the completion of their case can be crucial in promoting resilience and facilitating emotional recovery for them and for their families.

## Implications

The findings of this study, taken with the findings from other studies of child and youth witnesses, have several implications for the criminal justice system and society as a whole. First of all, a criminal justice system that is sensitive to the needs of child and youth witness may serve to encourage more children and youth victims to come forward to report or disclose physical and sexual abuse. Knowledge that there are special testimonial aids and court preparation programs in place to help children and youth testify is reassuring. On the other hand, awareness that the case may take many months and sometimes years to reach an outcome, which might or might not lead to a conviction, and a concern about potentially difficult and demeaning cross-examination, may be factors that could discourage children, youth and their families from participation in the criminal justice system.

In other respects, participating in the criminal justice system can instill confidence in child and youth victims, as well as their parents or guardians and other family members. This public confidence is important in order to uphold the rule of law. In polling, victims of crime consistently report the lowest levels of confidence in the criminal justice system (see Latimer & Desjardins, 2007<sup>17</sup>).

At a practice level, the findings of this study identify numerous good practices including:

- 1) CCTV has been endorsed by child and youth witnesses, Crowns, V/WAP and CWP representatives as a testimonial aid that reduces anxiety and facilitates evidence. Children and justice professionals in this, and many other studies, have identified that technical problems with equipment cause delay and frustration. Ensuring that equipment is in good working order for every case is a preventative measure.
- 2) The child and youth witnesses interviewed endorsed having the opportunity to have a choice as to how they testify and input around the testimonial aids they would use. Informing children and youth of these aids at an early stage can encourage participation and reduce anxiety.
- 3) It is important to prevent lengthy delays and adjournments around court. Research findings in this study and others have identified that a prolonged waiting period prior to

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<sup>17</sup> [http://www.justice.gc.ca/eng/rp-pr/csj-sjc/jsp-sjp/rr07\\_4/rr07\\_4.pdf](http://www.justice.gc.ca/eng/rp-pr/csj-sjc/jsp-sjp/rr07_4/rr07_4.pdf)

the start of the trial, can have detrimental impacts on children, youth and their families. In this study, the average wait for a child or youth to testify was two years.

- 4) Cross-examination has been identified by the children and youth in this study and in the research literature as one of the most negative experiences for child and youth witnesses in the criminal justice system. Children and youth can be confused and intimidated by some questioning styles. Guidelines on cross-examination of children and youth for Crown and the judiciary could lead to the provision of more complete and accurate testimony.
- 5) Court preparation has been identified as a core service to child and youth witnesses and their families. Early identification and referrals of child and youth witnesses ensure that children and youth are informed, prepared for their role as witnesses and supported throughout the justice process, and beyond.
- 6) The role of the Crown in meeting with the child and youth witness before the court date was identified by those interviewed, both parents/guardians and children and youth, as helpful and positive.
- 7) Access to mental health interventions for children, youth and their families was noted by participants as critical to recovery. Treatment should not be delayed until the trial is completed.
- 8) A secure, comfortable waiting area in, or adjacent to, the courthouse protecting the child from contact with the accused can reduce anxiety while waiting to testify.

## 9. In Sum

To summarize, this study examined the personal experience and opinion of children, youth, their parents, Crown Prosecutors, V/WAP and CWP representatives who were either involved in, or work in, the criminal justice system of the West Region of Ontario. Participants were either interviewed or e-surveyed and specifically asked to comment on their experiences and opinion of the use of testimonial aids, specifically closed-circuit television (CCTV). The overarching opinion and comments from the participants in this study were unanimous.

Twelve children and youth used CCTV at least once. Only two children/youth testified using a screen and two children/youth chose to testify in open court. Two children/youth who used CCTV at preliminary hearing did not do so at trial; one because of equipment problems and the other as she felt emotionally ready to testify in front of the accused at the trial. Many interview participants reflected on the importance of child and youth witnesses having the opportunity to state their wishes and preferences about testifying. The majority of children and youth stated that they would not want to testify again. This sentiment was echoed by their parents who had concerns about the emotional turmoil testifying had on the children. However, children and youth showed remarkable courage and resilience in undertaking the responsibility of testifying.

The overwhelming majority of participants highlighted the importance of having CCTV available to all child, youth and/or vulnerable witnesses. Those who used CCTV expressed appreciation for the aid. In addition, they commented that having a support person with them in the CCTV testimony room was reassuring and helped reduced anxiety. Crowns, V/WAP and CWP representatives also strongly endorsed the use of CCTV and indicated that many of their clients' expressed appreciation for its existence.

Challenges identified around the use of CCTV included frustration with the technical difficulties which often caused delays and/or having to testify without the aid. Some Crown Prosecutors mentioned problems with the simultaneous use of CCTV and Section 715.1 video-recorded statements; the technology itself or training in the use of the technology were noted as important issues that remain to be addressed. Some Crowns addressed the issue of both counsel being present in the CCTV testimony room. Several stated their own preference to question the child or youth witnesses in the testimony room, rather than from the courtroom. Differences in set-up of the testimony room were also mentioned, and may depend on jurisdiction.

In sum, the findings in this study identified that the majority of child and youth witnesses interviewed did have access to CCTV, and that most had been informed about the testimonial aid well ahead of the court date and were given the option to use it. The findings also identified challenges with the use of CCTV, mainly technical problems, which caused delays and increased stress for child and youth witnesses and their parents. All participants and respondents viewed CCTV as an aid which facilitates testimony by providing a physical barrier between child and youth witnesses and the courtroom and child and youth witnesses and the accused, thereby creating a more protective and positive environment in which to testify.



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