JUSTICE
RESEARCH NOTES

Seeking a Just Response to Child Sexual Abuse: Bill C-15 and After

by Carolina Giliberti
Chief
Family Law Research Unit
Research Section

In response to what has become one of the most burning social issues of our time, the Department of Justice Canada has been conducting extensive research over the past five years on the sexual abuse of children and the response of the criminal justice system.

These initiatives have focused particularly on the impact of the landmark Bill C-15, proclaimed in 1988, which introduced sweeping changes to the *Criminal Code* and the *Canada Evidence Act* on child sexual abuse.

Impetus for these reforms can be traced back to the 1970s. In the early part of that decade, two standing committees of Parliament (the House of Commons committee on Health, Welfare and Social Affairs and the Senate committee on Health, Welfare and Science) reported on the lack of appropriate measures for prevention, identification, and treatment of child abuse and neglect. Both committees made numerous recommendations which included proposals for developing prevention strategies, establishing a database to provide for ongoing collection of statistics on the incidence of child abuse (including child sexual abuse), collecting up-to-date information on available programs, amending the *Criminal Code* and the *Canada Evidence Act*, and promoting public and professional education on these issues.

In addition to these recommendations, the Advisory Council on the Status of Women called for amendments to sections in the *Criminal Code* on sexual offences against women. Indeed, in 1983, major changes governing sexual assault were made both to the *Criminal Code* and to the *Canada Evidence Act*.

Also in the 1980s, the Canadian Commission for the International Year of the Child was established to identify and support activities designed to advance the rights and well-being of children. The Law Reform Commission of Canada called for reform of the sections of the *Criminal Code* on sexual offences. Following the tabling of the Commission's report, the federal government established the Child Abuse Information Program at Health and Welfare Canada (now Health Canada), which was later incorporated into the mandate of the National Clearinghouse on Family Violence.

The Badgley Report Provides Impetus for Change

Despite the abundance of consultations with experts, research studies in Canada and abroad, and critiques of the effectiveness of the *Criminal Code* in dealing with the problem, little was known about the actual incidence and nature of child sexual abuse in Canada.

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In the early 1970s, research had tended to focus on the broader areas of child abuse and neglect. Toward the end of the decade, however, the legislative committees and lobby groups shifted their attention to child sexual abuse and the need for radical changes to the *Criminal Code*.

In 1981, the federal government established a committee under the chairmanship of Dr. Robin Badgley to review the problem. Dr. Badgley was asked to inquire into the extent of child sexual abuse, juvenile prostitution, and child pornography. Specifically, the committee's mandate was to determine the adequacy of the laws and other means used by the community to protect children against sexual offences and to make recommendations for improving such protection. The committee reported in August 1984. Its 52 recommendations ranged in scope from the promotion of health and social awareness and public education to the need for changes in the *Criminal Code* on sexual offences and principles of evidence.

Justice Research Notes is produced by the Research and Statistics Directorate of the Department of Justice. Its purpose is to provide, in summary form, results of projects carried out under the Department's program of research into various areas of justice policy, as well as information and articles on other socio-legal matters.

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Before 1988, young victims of unwanted sexual acts encountered a number of difficulties with the criminal justice system. One problem was the fact that girls and boys were given different protection under the law. For example, in many offences, the victim had to be female and the offender male, and much of the legal wording — such as buggery, or seduction of a female — did not reflect current usage.

The old law prohibited only vaginal sexual intercourse and did not encompass the range of sexual activities that normally constitute child sexual abuse, such as fondling, masturbation, and oral intercourse. In addition, unless the accused had touched the child, he or she could not be charged with sexual assault. For example, if the child touched the offender by performing fellatio, the accused was not considered to have assaulted the child. Similarly, if the offender asked the child to perform a sexual act, this did not constitute an offence. Sexual exploitation by someone in a position of trust or authority, such as a teacher or a caregiver, was also not an offence before 1988.

The courts had encountered several problems in the presentation of evidence by children required to testify in court. Offenders often take care to be alone with the child to ensure there will be no one to verify the child's story. In many cases, usually where the offender is closely related to the victim (such as a parent or step-parent), the abuse may occur over a number of months or, in some instances, years before the child discloses the abuse to someone he or she trusts. As a result, material evidence is often either nonexistent or, through the passage of time, has been destroyed (such as traces of semen on clothing). Under the old law, corroboration of a child's unsworn testimony by other material evidence was required, and as this evidence often was not available, it was pointless to proceed to trial.

The research produced for the Badgley report strongly indicated a reluctance on the part of some police officers and prosecutors to have children testify. The main reason was that before the amendments, the *Canada Evidence Act* specified that if a child was to give sworn evidence, he or she had to understand the nature of an oath. If the trial judge was not satisfied that the child understood the nature of an oath, a further inquiry had to be made to determine whether the child had sufficient intelligence to understand the duty of speaking the truth. If the child gave unsworn evidence, that evidence had to be corroborated for there to be a conviction, even though the judge or jury was satisfied beyond a reasonable doubt that the accused had committed the offence. If there was no corroboration, it was essential to have the child "sworn"; otherwise, as a matter of law, there could be no conviction.

Even in cases where a child under 14 years of age testified under oath, the judge first had to warn the jury about the possible unreliability of the child's evidence. In fact, very few cases where the victim was under the age of 12 ever got to court. For those cases in which the child testified, the trier of fact assumed the testimony suffered from certain frailties that would render the trier of fact reluctant to make a legal determination in the absence of corroborating evidence.

Given the nature of the offence, the child's actual disclosure of the abuse may occur quite some time after the incident has taken place. In many instances before 1988, the fact that the child did not complain to someone immediately after the event was used by the defence as evidence that the offence may not have occurred at all. In addition, the law required that certain sexual offences had to be prosecuted within one year.

Because of the time delays between the event, the disclosure, and the trial, children often found it hard to remember the details of the incident. Many professionals argued that children might refuse to testify, or would testify without giving full disclosure, because of acute discomfort in the presence of the accused.

The New Laws of 1988

After extensive consultation with provincial officials and the private sector, *An Act to Amend the Criminal Code and the Canada Evidence Act with Respect to Sexual Offences against Children* (Bill C-15) was proclaimed by the federal government on January 1, 1988.

The purpose of the legislation was to increase the protection of children from sexual abuse while still ensuring that the fundamental rights of the accused were upheld. The goals were to provide better protection to child sexual abuse victims and witnesses, to increase the successful prosecution of child sexual abuse cases, to improve the experience of child victims and witnesses, and to bring sentencing in line with the severity of the offence.

In addition to the legislative changes, the government established the position of special advisor on child sexual abuse to the Minister of Health and Welfare Canada (now Health Canada). It also provided for the development of public and professional awareness and education programs and the allocation of $25 million over a five-year period to be spent on social, legal, and educational activities that would assist victims of child sexual abuse.

The Act did three things: it created new laws on these offences, it refined existing offences, and it created new provisions for giving evidence. Parliament also required that a review clause be placed in the Act — which is only the second time that a piece of criminal legislation

has ever contained this provision. The Department of Justice Canada was mandated to report to Parliament, four years after proclamation of the Act, on the impact of the legislation on the victims and on the criminal justice system generally.

A Six-Point Research Program Is Developed

Anticipating the child sexual abuse amendments, the Research Section of the Department of Justice Canada had begun to gather data well before 1988 on sexual offences involving adults and children in Canada. After proclamation of the legislation, research efforts intensified and a series of studies were conducted.

It should be noted that a number of problems were encountered in assessing the impact of the law.

First, as with any legislation, many factors — such as changes in public awareness, the availability of support services, and the response by the public to media news stories — influenced the application of the law. Researchers therefore had to distinguish between the operation of the law and the many forces that influenced its impact.

Second, undertaking sociolegal research to measure the effectiveness of legislation is relatively new and a number of problems came to the fore that had a bearing on the research methodology. For example:

▲ There was a lack of documented information before Bill C-15.

▲ As new laws produce new offences, comparisons were difficult to make between offences that occurred before Bill C-15 and those that followed it.

▲ Police and social service agencies are managed differently across the country, making it difficult to compare findings.

▲ Each province and territory has its own set of laws on the safety and protection of children, all of which had to be taken into account.

▲ There were problems in identifying the objectives and goals of the law.

▲ The Research Section of the Department had limited resources and time allocations to conduct the research.

▲ The interviewing of children raised ethical questions.

▲ There were privacy issues relating to confidentiality of data.

Taking account of these problems, the Department developed a four-year program of research, 1988 to 1992, that included six components:

1) A multisite research project was designed to provide comparable data on the processing of child sexual abuse cases through the social service and criminal justice systems in selected centres — Edmonton, Calgary, Saskatoon, Regina, and Hamilton. In addition, information from less extensive studies in Quebec, Ontario, and New Brunswick augmented the findings from the multisite research.
2) Case law emanating from the courts was reviewed and analyzed.
3) Pilot projects funded by the Department to help implement the legislation were evaluated.
4) A series of research projects were developed to examine specific elements of the new law.
5) Consultations were held with selected judges, Crown counsel, defence lawyers, social workers, and police.
6) A final report summarized the results of the research.

The Justice System's Response to Child Sexual Abuse Cases

Because of regional variations across the country in processing child sexual abuse cases, it is impossible to make blanket statements about how the criminal justice system responds. Nonetheless, the information gathered from the site studies shows certain trends.

▲ Changes Observed During the Four-year Study Period, 1988-92

More cases of child sexual abuse (141 per 100,000) were reported to the police during the study period. Overall, the reporting rates for child sexual assaults in the site studies are higher compared to the national reporting rates for all sexual assaults. For children and adults in 1990, for example, the rate was 100 reports per 100,000 people for sexual assault under *Criminal Code* section 271.

Police laid charges in more situations because the new law covers a broader range of inappropriate sexual behaviour involving children.

Less violent and intrusive abuse situations were prosecuted.

More cases involving younger complainants (between four and nine years of age) were prosecuted.

More younger complainants were allowed to testify in court.

▲ ***Who Were the Victims?***

From 70 percent to 80 percent of the victims of child sexual abuse were females.

Between 20 percent and 30 percent of victims were males. Persons consulted in the field reported an increase in the number of cases involving males coming into the criminal justice system.

Victims were most often under 12 years of age.

From 15 percent to 22 percent of victims were under the age of five.

▲ ***What Type of Abuse Usually Took Place?***

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

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

Vaginal penetration with a penis occurred in 11 percent to 20 percent of cases; anal penetration with a penis, 2 percent to 6 percent.

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

More than 85 percent of cases involved one accused. Saskatoon and Regina had the highest number of multiple-offender cases at 14 percent.

▲ ***Who Was Charged?***

In more than 94 percent of cases the accused in a child sexual abuse case was male.

Most of the accused were adults, though a significant proportion (between 16.8 percent and 29 percent) were under 18 years of age.

The accused was related to the victim in a range of 30 percent of cases in Saskatoon, Regina, and Edmonton to 57 percent of cases in Calgary.

The highest proportion of cases involving a stranger was in Edmonton — 25 percent. In Hamilton, only 7 percent of the cases involve an accused person unknown to the child.

▲ ***What Happened to Cases Coming to Police Attention?***

The rate of unfounded cases ranged from a low of 5 percent in Saskatoon to a high of 22 percent in Hamilton.

The reason given for finding a complaint unfounded was most often "lack of evidence."

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

Many substantiated cases reported to police did not make it all the way to trial. (Cases do not go forward for a variety of reasons, such as a victim being unable or unwilling to testify or there being insufficient evidence.) Information about some cases was not available because they were not completed during the time of the research.

Charges were laid in 46 percent of Saskatoon cases in which the police decided the charges were founded, in 44 percent of Calgary cases, 31 percent of Hamilton cases, and 25 percent of Edmonton cases (note these are "clearance rates," the rate of clearance through the police system).

The accused pleaded guilty before trial in a range of 22 percent to 28 percent of cases in which charges were laid.

▲ ***Were the Accused Convicted?***

When cases went to trial, the accused was convicted in a range of 25 percent of cases in Edmonton to 49 percent in Hamilton.

The overall conviction rate (guilty pleas before and during trial and convictions at trial) varied from 59 percent in Edmonton to 83 percent in Hamilton.

▲ ***Were Offenders Sent to Prison?***

Incarceration rates ran from 51 percent of convictions in Edmonton to 74 percent in Hamilton.

Overall Impact of the Legislation

▲ ***Defence of Consent***

The Act established the defence of consent for sexual crimes against girls and boys under the age of 18. Under the law, children under 12 can never consent to sexual activity and, for certain offences, children under 14 cannot consent. However, the defence of consent is available to an accused who is 12, 13, 14, or 15 if there is less than two years' age difference between the accused and the complainant and the complainant is at least 12 years old. The Act also provides that the accused cannot be in a position of trust over the complainant, and that the victim cannot be in a relationship of dependency with the accused.

Generally, the research suggests that the defence of consent properly protects young people and that most people did not experience problems with this section of the law. (The number of times in which the issue of consent was raised ranged from 10 percent in Hamilton to 48 percent in Calgary.)

▲ ***Removal of the One-year Limitation Period***

The amendments removed the one-year limitation period on the laying of charges and permitted charges to be laid at any time after commission of the offence. The research indicates that up to 20 percent of the cases had been reported more than a year after the last incident, and the amendments therefore facilitated the laying of charges in these cases.

A problem noted by a number of participants in the consultations was the issue of historical abuse, where victims report an offence many years after the incident. Such cases present problems for justice personnel, and some defence counsel and police officers suggested that consideration be given to invoking a limitation period in these cases.

▲ ***New Offences***

Three new offences were created:

1) "Sexual interference" (section 151), which makes it a crime to touch a young person under the age of 14 for a sexual purpose;

2) "Invitation to sexual touching" (section 152), which makes it an offence for someone to encourage, for a sexual purpose, a child under 14 to touch his or her own body or someone else's body; and
3) "Sexual exploitation" (section 153), which makes it an offence for a person who is in a position of trust or authority to touch, or incite to touch, for a sexual purpose, a young person aged 14 or older but under 18.

The findings suggest that although there has been an increase in the application of all sexual assault legislation, the courts continue to use the more general sexual assault legislation — *Criminal Code* section 271 (Level 1, sexual assault). Officials also indicated that the introduction of the new offences has resulted in more charges being laid, because these offences capture a broader range of criminal conduct against children.

Findings of the multisite research indicate that significantly fewer charges were laid and prosecuted under the "invitation to sexual touching" section than under the "sexual interference" section. This was attributed to the limited range of sexual activity that could be captured under the "invitation to sexual touching" section. An analysis of the nature of the abuse involved in these charges supports this finding. The pattern of behaviour reported was generally very broad for the three new offences. However, the behaviours of exposure and invitation to touching were most frequently noted in cases where the accused was charged only under the "invitation to sexual touching" section.

▲ ***Revisions to Sections on Anal Intercourse and Bestiality***

Bill C-15 amendments included changes to the sections of the *Criminal Code* on anal intercourse and bestiality. Briefly, the old sections on anal intercourse were replaced by gender-neutral crimes, and the age of consent was reduced from 21 to 18. Two new offences were added covering sexual activity with animals.

The research indicated that the constitutional validity of the anal intercourse (section 159) provision is currently under challenge. Also at issue is subsection 159 (3), which limits the defence of consent when the complainant is a person with a mental disability. A number of the study participants indicated that this provision discriminates against disabled persons, who should have the same freedom to participate in sexual acts as other adults.

Findings of the multisite research indicate that no charges were laid under the sections on bestiality.

▲ ***Sections on the Procuring of Sexual Activity, Juvenile Prostitution, and Exposure***

Bill C-15 included a number of changes to the law on pimping, prostitution, and exposure. Simply put, it is an offence

a) if a parent or guardian acts as a pimp for a person under the age of 18;
b) if someone knowingly permits a person under 18 to be party to a sexual offence described in Bill C-15;
c) if one exposes one's genitals to a child under 14 for a sexual purpose;
d) if a convicted sex offender loiters where children are routinely found, such as a playground or park.

Generally, the findings of the multisite research indicate that no charges were laid under provisions a, b, and d: "procuring," "householder permitting sexual activity," and "loitering."

Exposure occurred in 5 percent to 21 percent of the substantiated cases, though charges were rarely laid. The perception of numerous participants during the consultations was that exposure may be the first act in a developing pattern of abusive sexual acts. Usually, more serious charges are laid under other sections of the

Criminal Code. Persons were charged with this offence where exposure was the only activity involved.

On the juvenile prostitution provisions, very few charges were laid in the sites covered in the research. Justice officials interviewed said they felt this provision is only enforceable when a prostitute complains to the police about a pimp or when the buyer of the sexual services is caught in the act. Because of these narrow criteria, they felt this provision is essentially unenforceable.

▲ ***Corroboration Not Required***

Before the Bill C-15 amendments, corroboration was required in cases where a child gave unsworn evidence in court. Under the new law, it is possible to convict a person accused of a sexual abuse crime on the basis of the child's testimony alone.

Generally, the research suggests that the change has improved the possibility of successfully prosecuting these offences. However, numerous participants indicated that criminal justice personnel are still having difficulty assessing credibility without corroborating evidence (i.e., forensic, medical, witnesses).

▲ ***Use of a Screen and Closed-circuit TV***

Because the experience of testifying and providing detailed evidence can be very traumatic for children, Bill C-15 included a provision whereby judges can allow complainants to testify behind a screen or by some other means, such as closed-circuit television.

Generally, the research indicates that screens are not routinely used in court because there is a lack of resources to buy equipment, the arrangement is difficult to set up, and testimony given in the normal manner is seen to have more impact.

Nonetheless, most participants indicated that provision of a screen was helpful, even if it was not always used, and that it provided an option should the need arise.

Closed-circuit television was rarely used, despite general agreement that provision for it in Bill C-15 was useful.

▲ ***Videotaped Evidence***

To preserve the evidence of children who might have difficulty remembering details of the abuse, and to save children from repeatedly having to "tell their story," Bill C-15 included a provision allowing the court to accept a videotape in which the complainant describes the incident. The law requires that the videotape be made within a reasonable time after the offence, and the complainant must adopt the contents.

In early 1989, this provision met with a challenge under the Charter of Rights and Freedoms, and a case involving its constitutionality is currently on appeal to the Supreme Court of Canada. As a result, the multisite research found that videotapes were entered and accepted as evidence in very few cases.

However, findings indicate that although tapes are seldom used in court, they are frequently made by the police or social workers during investigation of allegations. In Quebec, for example, 300 tapes were made in 1989. The general perception of justice personnel is that videotapes are useful for purposes other than as evidence in court and, as such, should continue to be part of the investigative process.

▲ ***Testimony under Oath, Solemn Affirmation, Promise to Tell the Truth***

Recognizing that children are credible witnesses and are capable of telling the truth, new provisions to the *Canada Evidence Act* allow children under the age of 14 to testify if the court is satisfied that the child understands the nature of an oath or a solemn affirmation and is able to communicate the evidence. Children who do not understand the nature of an oath or a solemn affirmation may still testify, provided they promise to tell the truth. Along with the

removal of the rule for corroboration, this change makes it possible for more children to testify.

Generally, the multisite research found that most older victims/witnesses (those over nine) gave testimony after being sworn (the range was from 50 percent in Edmonton to 80 percent in Hamilton), and that the remainder gave evidence on promising to tell the truth. In addition, a number of the justice officials who participated in the consultations indicated that they felt the average age of the victim/witness was lower than before Bill C-15. The new law therefore is seen as allowing younger children to testify.

▲ ***Exclusion of the Public and Ban on Publication***

Presiding judges may exclude members of the public from court proceedings if they believe it is in the interests of the public morals or the maintenance of order. Generally, the research indicated that children find it difficult to testify in the presence of strangers. Interestingly, however, exclusion of the public was not often requested. When it was, judges varied in the extent to which they would grant the request: the range was from 44 percent to 100 percent of the time.

As a result of Bill C-15, a judge may order a ban on publication of any information that could identify the complainant or a witness under 18. If the complainant, the Crown, or a witness requests the ban, the judge must order it.

The research indicated that, on average, a ban on publication was requested in more than 50 percent of cases. The consultations revealed that this provision appears to be useful and may encourage more victims to come forward. A number of participants also suggested that consideration be given to expanding the provision to also allow a ban on publication of the name of the accused until after a finding of guilt. They felt that unsubstantiated accusations could possibly ruin a career or family relations.

▲ ***Recent Complaint***

As a result of Bill C-15, the rules on "recent complaint" were abolished.

The research results are mixed on the usefulness of this amendment. A number of individuals who participated in the consultations indicated that a rule prohibiting the court from holding against the victim the failure to complain immediately is important. However, this rule, subject to the interpretation of some fine points of law, could work against the complainant. Nonetheless, some participants said that the provision is useful and essential, given what is known about the difficulties that children have in telling someone about sexual abuse.

▲ ***Evidence on Complainants' Reputation and Past Sexual Activity***

Bill C-15 included amendments to the effect that complainants cannot be questioned at the trial about their past sexual relations with anyone other than the accused.

Generally, the research found that although evidence about a complainant's sexual history was rarely raised at the trial, the amendments on these issues are seen to be useful.

A Need for Further Study and Action

Overall, the research indicated that most provisions in Bill C-15 have been useful in processing and prosecuting cases of child sexual abuse.

The main benefits of the legislation are as follows: both girls and boys are protected because of the gender-neutral provisions of the bill; more charges are being laid under the new sections; younger children are testifying; conviction rates are generally quite high; convictions are being obtained in the absence of corroborating

evidence; evidence on a complainant's sexual reputation and sexual history is seldom raised at trial; children do remarkably well and are competent witnesses in court even though, like adults, they find the experience traumatic; and the level of cooperation and coordination between social service and justice system officials, particularly the police, is very high, compared with four to five years ago.

The research also dispelled a number of myths. For example, most sexual assaults were found to involve fondling, not sexual intercourse, and, in the vast majority of cases, the perpetrator was known to the victim. Assaults by strangers were, in fact, somewhat rare, in the range of 7 percent to 25 percent.

The following areas of concern were identified for further study and action.

1) There are still a number of cases that do not go through the court process.
2) Almost a quarter of the offenders are young offenders.
3) Options for treatment are limited and their effectiveness is not clear.
4) Although their use is generally supported, screens and closed-circuit TV are not used in many courtrooms. The screen provision is currently under constitutional challenge to the Supreme Court of Canada.
5) In this study it was seen that a videotape of an early interview with a child, following a disclosure of sexual abuse, was offered as evidence in court in only a few cases. Nonetheless, police and social service officials will often complete a videotape as part of the investigative process. The general perception is that videotapes assist in obtaining guilty pleas and are useful to the Crown in preparing cases.
6) The provisions of the bill on juvenile prostitution are not enforceable and have therefore not had an impact on this problem.
7) The provision on anal intercourse is facing a constitutional challenge.
8) Some justice personnel interviewed in the study said that the section providing for a ban on publishing the identity of the complainant should be extended to the accused until after a finding of guilt.

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Is Bill C-15 Working? An Overview of the Research on the Effects of the 1988 Child Sexual Abuse Amendments, by Vicki Schmolka. Department of Justice Canada, September 1992.

Commons Committee Calls for Administrative Reforms to Aid Child Victims in Court

by Carolina Giliberti
Chief
Family Law Research Unit
Research Section

The House of Commons Standing Committee on Justice and the Solicitor General received submissions in April and May 1993 from specialists in the area of child sexual abuse and made recommendations to government for administrative reforms in this field.

The hearings were held in response to the requirement by Parliament (as noted in the preceding article in this issue) that the 1988 amendments to the *Criminal Code* and *Canada Evidence Act* (Bill C-15) be reviewed four years after proclamation of the Act. The purpose was

to determine the impact of these changes on the child sexual abuse victim, the offender, and the justice system.

From April 27 to May 13, 1993, the Commons committee, under the chairmanship of Dr. Bob Horner, M.P., received submissions from scholars, legal practitioners, child advocates, government officials, front-line agencies, and community organizations. The committee's report, released in June 1993, summarizes the results of the hearings and makes a number of recommendations to the federal government.

Overall, the committee found that the submissions overwhelmingly supported the Bill C-15 amendments. Many witnesses testified that the changes made a significant contribution to enabling children to participate more actively and effectively in the criminal justice process. Nonetheless, a number of witnesses also argued that further reform is needed.

Administrative Reforms Proposed

The committee made 17 recommendations for action that it considered necessary if victims/witnesses of child sexual abuse are to be better protected. These fall into two general categories.

First, the committee considered legislative reform. Discussions focussed on the operation of the specific *Criminal Code* offences on child sexual abuse, the efficacy of the various aids to testimony contained in Bill C-15, and the effectiveness of the legislated and common-law rules of evidence. In light of ongoing litigation under the *Charter of Rights and Freedoms* around various provisions in the Bill, the committee did not recommend comprehensive amendments. However, it did state that a further review of the legislation should be conducted in five years.

The second group of issues centered on the need for administrative reforms. Some witnesses were very critical of the manner in which child complainants are treated by the criminal justice system. They argued that rather than protecting children the process results in further victimization. Long court delays, inadequate court preparation, lack of continuity of Crown counsel, and intimidation by defence counsel were frequently cited as examples of factors that produce considerable stress on children who are already vulnerable.

Although the committee recognized that the administration of justice is a provincial responsibility, it pointed out that concern for child protection cuts across all jurisdictions. It therefore recommended that the federal government work with the provinces to expedite the prosecution of child sexual abuse cases, ensure adequate court preparation, develop policies to make courtrooms more child-friendly, provide for adequate professional training, and develop a code of ethics for dealing with child witnesses.

In addition, the committee recommended that the federal government consider the feasibility of

a) housing convicted sex offenders in separate correctional facilities with programs specifically designed for their rehabilitation, and

b) developing a national child abuse register.

Response from the government is expected on these recommendations in the upcoming months.

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Four-year Review of the Child Sexual Abuse Provisions of the Criminal Code and the Canada Evidence Act (formerly Bill C-15), Standing Committee on Justice and the Solicitor General, Dr. Bob Horner, M.P., chairman, June 1993.

For copies: Richard Dupuis, Clerk of the House of Commons, Standing Committee on Justice and the Solicitor General, Committees Directorate, Room 622, 180 Wellington Street, Ottawa K1A 0A6. Telephone: (613) 996-1553.

Study Profiles Young Sex Offenders

by Julie Lovely
Research Analyst
Criminal Law Research Unit
Research Section

Although a great deal of research has been done on the problem of adult sex offenders, there is little statistical and clinical information on adolescents and children who commit these offences.

The four-year research program conducted by the Department of Justice Canada on the implementation of Bill C-15 (see the lead article in this issue) included a research project that provided comparable data on the processing of child sexual abuse cases through the criminal justice system from 1989 to 1991 in five Canadian centres — Hamilton, Regina, Saskatoon, Calgary, and Edmonton. This research indicated that the proportion of adolescent sex offenders ranged from a low of 16.8 percent in Calgary to a high of 29 percent in Saskatoon. In response to the initial findings on adolescent sex offenders in the five study sites, the Department commissioned the Canadian Research Institute for Law and the Family to re-analyze the data generated from the site studies to focus specifically on accused individuals under the age of 18. The report of this analysis was completed in September 1993 and is available from the Department.

The researchers compared cases involving young and adult sex offenders processed through the criminal justice system in terms of offender and victim profiles and characteristics of the incidents. They also provided detailed statistical profiles of young sex offenders and developed an empirically based typology of the kinds of behaviour shown by young male sex offenders. Female offenders were not included in the final component of the analysis because of their limited number.

Following are some of the findings drawn from the analysis. As will be seen, they signal the need for further study and action to deal with the high incidence of young people who commit sexual offences against children.

Profile of the Victims

Most of the victims of child sexual abuse were female, regardless of whether the accused was an adult (82 percent) or a young person (68 percent). However, the proportion of male victims was significantly higher when the accused was young (32 percent, compared with 18 percent for the victims of adults). Victims of young accused persons were significantly younger than were victims of adults (22 percent were less than five years old, compared with 12 percent for the victims of adults). Young males tended to victimize females (71 percent), while young females tended to victimize very young males (65 percent).

Profile of the Accused

Over 90 percent of the young and adult accused persons were males, though there were more *young* females (8.4 percent) than *adult* females (2.8 percent). The young male accused tended to be older than the young females. The latter were mostly babysitters at the time of the incident (40 percent) or were siblings (23 percent). The young males, by comparison, were most often friends (32 percent), siblings (21 percent), or babysitters (15 percent). Only 4 percent of the young females accused and 8 percent of the young males were strangers.

Characteristics of the Incident

A substantial proportion of the incidents of sexual abuse involved more than one victim (35 percent of cases for the young accused and 37 percent of cases for adults). The proportion of cases involving more than one accused person was greater for young people than for adults (17 percent, compared with 7 percent). This proportion increased to 38 percent for young accused persons under 12 years of age.

Young accused persons used force much more frequently than did adults (35 percent of cases, compared with 26 percent for adults). Further, the use of force was most common for young males when the victim was female (46 percent of cases), followed by the use of force by young females with male victims (38 percent).

The most common form of behaviour of the accused, regardless of age and gender, was genital fondling (over 50 percent of cases). The young accused, regardless of age, showed significantly more of the intrusive behaviours such as oral sex (24 percent of cases) and anal penetration (8 percent), compared with the adults (20 percent and 5 percent, respectively). However, the rate of vaginal penetration was similar for both the young accused (16 percent) and the adults (18 percent).

Processing through the Criminal Justice System

Although the rate of cases considered unfounded was approximately the same for both the young and adult accused (8 percent and 7 percent of cases, respectively), those involving adults were more likely to be cleared by the police laying charges (71 percent for adults, compared with 55 percent for young people). Note that "unfounded" incidents are the reports that are identified as false or that are unable to be proved by the police during their preliminary investigation.

More cases involving young females accused of sexual abuse (26 percent) were deemed unfounded than those involving young males (7 percent). In addition, young females accused of abuse were less likely to be charged by police than were young males (30 percent compared with 57 percent). Among the young accused, 63 percent of those aged 16 and 17 were charged, compared with 44 percent of those aged 12 and 13.

Conviction rates for cases that went to trial were significantly higher for the young accused than for adults. Note that the "conviction rate" is computed by dividing the number of charges that result in a guilty plea or conviction in court by the total number of guilty pleas, convictions, acquitals, and charges discharged.

Recommendations for Research and Policy Development

Based on the findings of the study, the authors recommend that research be conducted to address the following issues:

- What is normal sexual exploitation among youth and children, and what is abnormal and criminal?
- What are the predictors of criminal sexual behaviour, particularly violent assaults, for young male and female offenders?
- What sentences and/or treatments are young male and female convicted offenders receiving?
- What happens to the accused young male and female offenders who are not convicted?
- What are the rates of re-offence among young male and female sex offenders?

- ▲ What treatments are successful at lowering the rate of re-offence?
- ▲ What are the short- and long-term effects of sexual abuse on child victims?

The authors also discuss areas for policy development that include educating the public and professionals who deal with child sexual abuse on the prevalence, nature, and circumstances of the sexual abuse of children by young persons, including children under 12 years of age.

They stress, further, that emphasis should be placed on the treatment and rehabilitation of first-time offenders, as opposed to retribution and incarceration, and that programs should be developed for the support and treatment of child victims of sexual abuse.

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Young Offenders and the Sexual Abuse of Children, by Joseph Hornick and Denise LeClaire, Canadian Research Institute for Law and the Family, and Floyd Bolitho, Faculty of Social Work, University of Calgary. Department of Justice Canada, Technical Report [TR1994-1e], December 1993.

Statistical Trends in Child Sexual Abuse Cases

by Lorri Biesenthal
Research Analyst
Criminal Law Research Unit
Research Section

Statistics on child sexual abuse have been reviewed by the Department of Justice Canada to complement its four-year analysis of the impact of the Bill C-15 amendments to the *Criminal Code* and the *Canada Evidence Act*. The lead article in this issue discusses the findings of this review.

The Department's statistical report, completed in May 1993, highlights and synthesizes key information contained in four criminal justice statistical databases provided by the Canadian Centre for Justice Statistics (CCJS), of Statistics Canada. Because of the aggregate nature of the data, most of the statistics represent frequencies, percentages, and cross-tabulations.

Four CCJS databases are used in the analysis. From the revised Uniform Crime Reports, profiles are constructed of both sexual abuse victims under 18 years of age, and of alleged offenders. The data used are for 1991. The Homicide Survey data are used to analyze trends in child sexual abuse that resulted in homicide for the years 1978 to 1991. Information on alleged offenders is drawn from the offender-based Youth Court Survey data for 1988-91, covering young people aged 12 to 17 inclusive, and from the Adult Criminal Court Survey data for 1990-91 on individuals 18 years of age and over.

The report does not provide a statistical depiction of the universe of child sexual abuse cases, given that not all such cases are reported to criminal justice authorities. Rather, it presents an analysis of cases that were both reported and captured in the four databases. The analysis was often restricted due to limited or missing data, though it was found that the statistical trends often supported research findings reviewed in the Department's four-year evaluation.

The statistical findings suggest over time more victims of child sexual abuse have reported the incidents to police. This is evidenced by the increased use of the new Bill C-15 provisions, as well as the significant use of the sexual assault legislation (*Criminal Code* section 271) in which the victim was identified as a young person.

Although the reasons for the higher level of reporting of child sexual abuse may be attributed to the Bill C-15 amendments, another factor may be the 1983 sexual assault legislative reforms (amendments to the *Criminal Code* and the *Canada Evidence Act*) which arose in response

to a changing social climate, marked by an increasingly condemnatory public attitude toward crimes of sexual violence.

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The Implications of Bill C-15: Child Sexual Abuse Statistics, by Lorri Biesenthal and John Clement. Department of Justice Canada, Technical Report [TR1992-14e], May 1993.

Project Funding Covers Wide Range of Child Sexual Abuse Issues

by Genevieve Sirois and Steve Dulude
Project Development
and Discretionary
Funds Section

Since the early 1980s, the Department of Justice Canada, under the general rubric of family violence, has been providing financial support to special projects on child sexual abuse.

Discretionary funds have been made available for the development and implementation of innovative projects — local, regional, provincial, or national in scope — that could provide information on new approaches to handling child sexual abuse situations.

Experimental projects have been designed to identify adequate mechanisms and procedures to assist child victims/witnesses and to assess the costs and effectiveness of particular solutions. Development projects have included two components: child victim/witness support and advocacy, and evidentiary rules and techniques. Experimental work on the provision of evidence has covered a variety of subjects such as the use of videotapes or closed-circuit television in court. Some projects have been designed to enhance existing services for the child victim/witness in prosecution offices and courthouses and to improve coordinating mechanisms between agencies. Others have focused on training for criminal justice practitioners and on developing coordinated approaches to the problems of child sexual abuse.

Videotaped Evidence, Witness Screens, Closed-circuit Television

The Department provided financial support to various demonstration and pilot projects on the use of videotaped evidence, closed-circuit television, and witness screens.

Some projects, such as those of the Manitoba Department of the Attorney General and the Saskatchewan Department of Justice, were designed to set out procedures and develop protocols and training materials for videotaping a child's testimony, and to improve videotaping expertise among criminal justice system personnel.

Closed-circuit television, witness screens, and a mobile closed-circuit television system to assist child witnesses in court by separating them from the accused were tested in provincially-sponsored projects in Saskatchewan and Ontario.

And in British Columbia, the Ministry of the Attorney General held a national conference of justice system personnel to discuss all of these electronic techniques.

A Coordinated Response to Child Sexual Abuse

Some projects focused on the development of a coordinated, effective, interdisciplinary response to situations of child sexual abuse.

In Ontario, the Institute for the Prevention of Child Abuse, for example, produced the publication "Bill C-15 Guidelines for Communities" to promote interprofessional collaboration.

Workshops, such as the one sponsored in Yukon by the Ad Hoc Committee on Child Sexual Abuse, aimed to foster a coordinated approach to investigating child complaints of abuse and to develop skills among agency personnel. Coordination was also the key in a conference of administrators, managers, and practitioners organized by the Saskatchewan Council for Children and Youth.

Training workshops, notably that of the Regina Child Abuse Prevention Committee, were designed to provide information and skills-development for participants from legal, medical, and social service backgrounds, and to study investigating and interviewing techniques, counselling for victims, and treatment for offenders.

Ways in which national associations can work together to promote and enhance interdisciplinary approaches to domestic violence were addressed by the Canadian Association of Chiefs of Police, with seven other national associations. The first three phases of this project embraced research, the development of interdisciplinary guidelines for professionals in the field of family violence, and the production and distribution of a resource kit for professionals on interdisciplinary approaches to domestic violence.

Public Legal Education

Funds have been provided to produce public legal education materials on changes to the law covering child sexual abuse (Bill C-15, *An Act to Amend the Criminal Code and the Canada Evidence Act with Respect to Sexual Offences against Children*).

Brochures, books, posters, and videotapes have been developed by agencies such as the Conseil de la Police amérindienne, in Pointe Bleue, Quebec, to inform particular audiences in their communities about child sexual abuse issues and the law.

An innovative approach was that of two communities in Manitoba and the Northwest Territories, where theatre productions were mounted on child sexual abuse issues aimed at teens, their teachers, and the community generally. The use of participational drama to highlight such issues was discussed in a seminar sponsored by the Legal Resource Centre of Alberta.

Community-based workshops were held to provide citizens with an opportunity to work out strategies to assist child victims of sexual abuse and to stop such offences against children. Two of these were sponsored by the Nishnawbe-Aski Nation in Sioux Lookout, Ontario. Another, a joint project of the Public Legal Education Society of Nova Scotia and the Nova Scotia Family and Child Welfare Association, brought together child protection workers, social workers, health and justice system workers, and teachers to discuss the new legislation and the issues related to it.

Research and Evaluation

Research funded by the Department has been directed toward various aspects of the new law and its effectiveness, including the implications of the law for child victim/witness support programs.

In the Child Victim/Witness Project of the Metropolitan Toronto Police Force, the Department supported the collection of police, Crown,and social service data. This information enabled the Department to evaluate the impact of the project.

In New Brunswick, the provincial Department of Justice set out to define a model strategy for responding to child sexual abuse and for training police, Crown attorneys, and child protection workers in implementing this strategy. The project provided information about child sexual

abuse and about ways to respond to abuse situations and the needs of victims. Further, it suggested appropriate procedures in such cases for police, prosecution, and child protection workers.

In another victim support project, the Family Services of Greater Vancouver continued its exploration of ways to reduce the stress and anxiety of child/adolescent victims of sexual abuse and assault who come into contact with the criminal justice system. This project was also designed to sensitize criminal justice personnel about the special needs of victims/witnesses.

A study by Catherine Mahoney of the University of Victoria, British Columbia, focused on the questioning of adults and children, with particular attention to the techniques of questioning and the ways to elicit reliable information from child witnesses.

In St. John's, an evaluation was conducted of the novel on child sexual abuse, *Ask Me No Questions*, by Linda Phillips and Peter Ringrose (Prentice Hall Canada, 1990), to determine its effectiveness in reaching a teenage audience. The novel was a project of the Public Legal Information Association of Newfoundland, and was co-funded by the Department.

In-house Evaluations and Ongoing Project Funding

The Research Section of the Department has undertaken its own evaluations of four of the projects funded.

Two child victim/witness support projects in Metro Toronto and Vancouver were the basis of separate studies on the impact of these types of projects on children who come in contact with the criminal justice system as victims or witnesses of child sexual abuse or sexual assault.

A project on the videotaping of evidence given by child victims in Manitoba provided insights into the ways videotaped evidence can be used and the impact of the tapings on child victims. Another evaluative study looked at the Child Advocacy Project in Manitoba and the handling of cases of child sexual abuse originating on Native reserves.

The Department continues to support projects on child sexual abuse through the Criminal Law Reform Fund and the Public Legal Education and Information Fund. In addition, funding is made available under the federal Family Violence Initiative for projects on child sexual abuse, spousal abuse, abuse of the elderly, and family violence generally.

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Further information on these and other projects managed by the Project Development and Discretionary Funds Section may be obtained from Geneviève Sirois at (613) 957-3537.

Department of Justice Canada — Research Publications Order Form

The following research reports have been described in this issue of Justice Research Notes. Please check off the items you would like to receive, and mail a copy of this form, along with your name and address, to: **Research Section, Department of Justice Canada, Ottawa K1A 0H8.**

☐ *A Review of the Implementation of the Child Sexual Abuse Legislation in Selected Sites,* by Joseph Hornick and Floyd Bolitho (Canadian Research Institute for Law and the Family). Department of Justice Canada, September 1992.

☐ *Is Bill C-15 Working: An Overview of the Research on the Effects of the 1988 Child Sexual Abuse Amendments,* by Vicki Schmolka. Department of Justice Canada, September 1992.

☐ *Program Review of the Child Victim-Witness Support Project,* by Campbell Research Associates, Social Data Research Limited. Department of Justice Canada, Working Document [WD1991-11E], December 1990.

☐ *Evaluation of the Videotaping Pilot Project in Winnipeg and Parklands,* by Rita Gunn. Department of Justice Canada, Working Document [WD1992-7E], February 1989.

☐ *Review and Monitoring of Child Sexual Abuse Cases in Selected Sites in Alberta,* by Joseph Hornick, Barbara A. Burrows, Debra Perry and Floyd Bolitho (Canadian Research Institute for Law and the Family), Department of Justice Canada, Working Document [WD1992-8E], July 1992.

☐ *Review and Monitoring of Child Sexual Abuse Cases in Hamilton- Wentworth, Ontario,* by Campbell Research Associates and Social Data Research Limited, Department of Justice Canada, Working Document [WD1992-9E], June 1992.

☐ *Review and Monitoring of Child Sexual Abuse Cases in Selected Sites in Saskatchewan,* by Donald Fisher, Greg Stevens, and Lisa Berg (Peat Marwick Stevenson & Kellogg). Department of Justice Canada, Working Document [WD1992-10E], July 1992.

☐ *Processing of Child Sexual Abuse Cases in Selected Sites in Quebec,* by Daniel Sanfaçon and Fabienne Presentey (La Boîte à qu'on-se-voir). Department of Justice Canada, Working Document [WD1992-11E], October 1992.

☐ *Review and Monitoring of Child Sexual Abuse Cases in Selected Sites in Rural Alberta,* by Donna Phillips and Joseph Hornick (Canadian Research Institute for Law and the Family). Department of Justice Canada, Working Document [WD1992-14E], July 1992.

☐ *Canadian Statistics on Child Sexual Abuse,* by Lorri Biesenthal and John Clement. Department of Justice Canada, Technical Report [TR1992-14E], 1993.

☐ *Young Offenders and the Sexual Abuse of Children,* by Joseph Hornick and Denise LeClaire (Canadian Research Institute for Law and the Family) and Floyd Bolitho (Faculty of Social Work, University of Calgary). Department of Justice Canada, Technical Report [TR1994-1E], December 1993.

For further information concerning these or other departmental research documents, please contact the Research Section at: (613) 941-2266.

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