



Virtual Testimony from Child Advocacy Centres and Child and Youth Advocacy Centres

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Executive Summary

Children's Advocacy Centres (CACs) started in the United States in the mid-80s. In 2010, the Department of Justice Canada announced funding to support the development or enhancement of these multi-disciplinary organizations under the slightly different name, Child Advocacy Centres (CACs) and later, Child and Youth Advocacy Centres (CYACs). CACs/CYACs strive to reduce the re-traumatization of children and youth who disclose violent victimization by employing a coordinated and collaborative multi-disciplinary team (MDT) approach in the services and supports they offer to children, youth and their families, ideally in one location. MDTs generally include: law enforcement officers, child protection workers, mental and physical health practitioners, a family/victim advocate, victim services and on some teams, trained forensic interviewers and prosecutors. In the spring of 2023, there were 39 CACs/CYACs in operation across the country with nine in development, and one undertaking a feasibility study. In addition, there were two exploring a CAC/CYAC proposal.

Method

Through the 2022/23 CAC/CYAC Operational Survey (n=35), researchers were able to identify those organizations with rooms for virtual or remote testimony, those considering rooms for virtual or remote testimony, and those not considering rooms. Researchers reached out to these different organizations, prioritizing those already using virtual testimony rooms to participate in semi-structured, qualitative interviews. Interview topics included the development or history of virtual testimony at the CAC/CYAC (renovations, funding, partnerships, etc.), experiences using the room(s) to date, challenges, successes, as well as data collection. CACs/CYACs not considering the use of virtual testimony were asked specifically about the various challenges they faced in implementing such a space (funding, partnerships, layout of the community or centre, etc.).

A total of 20 interviews were completed in the summer of 2023: nine with CACs/CYACs already using dedicated spaces for virtual testimony; eight interviews for those considering using dedicated spaces for virtual testimony; and three with CACs/CYACs not considering the use of virtual testimony.

Findings

All the organizations interviewed stressed that the purpose of testifying remotely from the CACs/CYACs is to reduce the risk of re-traumatization of young victims/witnesses during criminal court processes. Their focus is on what is best for the child or youth and how best to prioritize their needs.

- Allowing virtual testimony to be provided from a dedicated space at the CAC/CYAC ensures a safe and comfortable space for the victim/witness to facilitate a full and candid account of their victimization.

- Allowing virtual testimony also eliminates the risk of seeing the accused – and their support people – in person, which could happen if attending the court (particularly in rural communities and small courthouses).

Several CACs/CYACs had been considering virtual testimony prior to the COVID-19 pandemic. All those interviewed acknowledged that the pandemic helped to speed up the acceptance, and in some cases the championing, of this approach by key stakeholders.

Other findings included steps the CACs/CYACs took to ensure the safety and confidentiality of the children and their families, funding sources, experiences with virtual testimony including challenges, and solutions to those challenges.

Key to the success of these initiatives have been the strong relationships the CACs/CYACs have fostered with criminal justice partners such as Crown prosecutors and judges, as well as court administrators and ongoing communication, awareness raising and education.

For many of the CACs/CYACs, they intend to collect data on their virtual testimony rooms – how and when they are used and outcomes of those cases. There had been only a few cases at the time of the interviews so little data was available. Some of the larger CACs/CYACs have researchers on staff or more experience with data management systems and using data collected for research purposes and not just performance metrics.

Conclusion

Overall, CACs/CYACs agreed that using virtual testimony rooms could have a positive impact on the well-being of the children and youth who might be able to testify in a safe, familiar space and without the fear of seeing the accused in person. While virtual testimony from a space outside of the courthouse is still relatively limited, there is no doubt that the commitment of CACs/CYACs to virtual testimony rooms will facilitate the growing acceptance of this practice in the years to come.

Virtual Testimony from Child Advocacy Centres and Child and Youth Advocacy Centres

This report describes the findings from a small research study conducted by Department of Justice Canada (JUS) researchers in the summer of 2023 that examined the use of virtual testimony from Child Advocacy Centres (CACs) and Child and Youth Advocacy Centres (CYACs) in Canada. In this first section (1.0 Background), a definition of virtual testimony is provided, along with some of the research literature on virtual testimony from the past decade, the criminal justice context and background on CACs/CYACs, and the legal framework for virtual testimony.

Sections 2.0, 3.0 and 4.0 include the methodology, findings and discussion.

1.0 Background

Section 1 will provide background to understand the very specific context for this research study. The section begins with a short discussion on the term chosen for this study – “virtual testimony” – with more information provided in Appendix 1. A review of Canadian research about virtual testimony and hearings in general, as well as challenges identified before and during the pandemic, is followed by a review of research on testimonial aids, CACs/CYACs in Canada, decreasing the risk of re-victimization by participating in the criminal justice system, and the legal framework for witnesses to provide their testimony virtually.

1.1 Virtual Testimony

1.1.1 Definition

For the purposes of this report, “virtual testimony” is the term used to describe:

Testimony provided during a court or administrative tribunal hearing from outside of the courtroom where the proceedings are being held. The witness may be located in another room in the courthouse, at another location, or at the witness’ place of residence. The testimony can be relayed using whatever technology provides the best audio and visual possible depending on the court’s requirements.

The researchers reviewed websites for the courts of justice of each province and territory and for federal courts, as well as websites for key justice stakeholders such as the Canadian Bar Association and the Association of Law Societies of Canada (see [Appendix 1](#)) for their use of the terms “virtual testimony” and “remote testimony.” The review showed that at the time (fall 2023), the term “virtual testimony” is more commonly used by stakeholders and so it is the term that this study uses; however, “remote testimony” is also used in some instances by courts and by one or more CACs/CYACs. One study participant indicated that the purpose for using the term “remote testimony” is to distinguish testimony within the courthouse, but from a different room as the trial proceeds, from testimony that is provided from a location outside of the courthouse, such as a CAC/CYAC.

1.1.2 Research on virtual testimony

For many people, virtual testimony appeared to arrive during, and because of, the COVID-19 pandemic. It has actually been available for several decades, but the technology required was quite expensive. A presentation by Troussel in 2022 showed prior to the pandemic, the literature mainly reflected concerns for individual rights, analysis of the use of virtual hearings in immigration law, analysis of which technology should be used and how, and general reflections about the transformation of law.¹ Since that time, the literature has focused on reviews of virtual hearings which were implemented as a response to the pandemic.

During the pandemic, an abrupt shift was noted where “the physical space went into cyberspace” (Lederer 2021). Hearings became virtual hearings. There was no longer a physical space to ground the proceedings as before the pandemic where maybe one or two witnesses would appear virtually; everyone involved appeared on the screen.

Two things changed with the pandemic. Multiple participants were now “remote”, including the lawyers and sometimes judicial officers. There was also a dramatic growth in the use of cheaper and more accessible software-based video conferencing platforms (e.g., Webex, Zoom, Skype, Kinly CVP and Microsoft Teams) and many courts used more than one platform. (Rossner, Tait and McCurdy 2021)

The website remotecourts.org was set up by Professor Richard Susskind in March 2020. Puddister and Small (2020) reviewed the practices at 44 courts in Canada and found that 90% of them had used technology to move urgent matters forward. Overall, courts in Canada were able to fulfill their essential service mandate by providing access to matters deemed essential. This said, Puddister and Small found that Canadian courts are not necessarily providing “trial by Zoom.” Courts are just as likely to suggest teleconferencing alongside videoconferencing. How the decision as to what technology will be used has varied. For some courts, a judicial administrator will canvass for the availability of technology among counsel and judges, while others allow the presiding judge to choose.

This pandemic period gave a boost to the credibility of virtual hearings, as well as virtual testimony. With the pandemic seemingly over, and based on the interviews conducted with CACs/CYACs, different courts have made different decisions around virtual hearings with respect to how to move forward.

Overall, the courts have done well with these fundamental changes, but challenges do remain. Three key challenges have been raised by Puddister and Small (2020): i) the digital divide; ii) privacy and cyber-security; and iii) quality and reliability of technology.

¹ The research findings in this section are largely drawn from a June 2022 presentation by Aurore Clément Troussel, PhD Candidate at the Cyberjustice Laboratory, Faculty of Law, University of Montreal.

Digital divide

According to the Canadian Radio-television and Telecommunications Commission, at the end of 2022, 93.1% of households in Canada had access to **high-speed**² internet. In rural areas, this percentage dropped to 67.4% (or 1.1 million households without access); in the North, the percentage was 57.5% (or 20.8K households without access); and on First Nations reserves the percentage was 50.1% (or 67.8K households without access).³

The digital divide—the inequalities between those who have regular and quality access to digital technologies and those who do not, as well as inequalities in technical competence and skill. Many Canadians, particularly those in rural and remote areas, do not have adequate access to broadband, nor do many Indigenous communities (CRTC 2020; Hyslop 2019).

These challenges could be potentially insurmountable for an individual attempting to access the court system (Puddister and Small 2020).

Where there is an over-reliance on technology, access to justice will remain out of reach of many. Some individuals lack internet access, especially high-speed internet, or have limited access to phone data or email, etc. These people in particular will face multiple challenges in trying to access a virtual hearing.

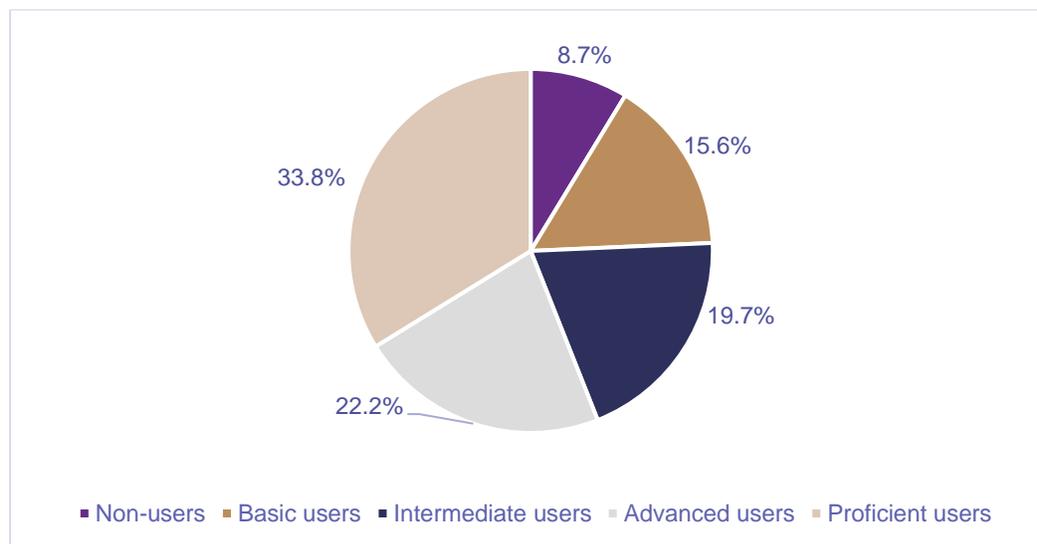
Understanding that access to the internet – although not high speed – is nearly universal and that access may be through a phone rather than a computer, analysts from Statistics Canada (Wavrock et al. 2021) developed a typology of internet users in Canada to distinguish their activities and skills. The five categories are non-users, basic users, intermediate users, proficient users, and advanced users.⁴ Figure 1 below shows a breakdown of Canadians and their internet usage by category. While advanced and proficient internet users together make up more than half (56%) of Canadians aged 15 years and older, non-users make up almost a tenth of Canadians. It is important to remember this category of non-users when making access to justice reliant on technology, specifically internet usage.

² According to the Canadian Radio-television and Telecommunications Commission's Broadband Fund, high-speed refers to broadband speeds of at least 50 Mbps (megabits per second) download and 10 Mbps upload and access to unlimited data. See: <https://crtc.gc.ca/eng/internet/fnds.htm>

³ See <https://crtc.gc.ca/eng/publications/reports/PolicyMonitoring/ban.htm>

⁴ Please see Wavrock et al. 2021 for definitions of the different categories of internet users. Categories were determined by the skills used and activities undertaken by respondents. The 2018 Canadian Internet Use Survey was completed by a nationally representative sample of almost 14,000 Canadians aged 15 years and older living in the 10 provinces, excluding full-time residents of institutions.

Figure 1: Distribution of Canadians aged 15 or older across Internet-use typology, Canada, 2018



Source: Canadian Internet Use Survey, Statistics Canada 2018

Privacy and cybersecurity

Courts function on the basic premise of “open court” whereby a court is open to the public unless there is a specific reason why the court should not be (see Cameron 2003). The use of software, such as Zoom, opened up courtrooms to a plethora of incidents that caused great concern for privacy and for victims’ safety. In the cases being handled by CACs/CYACs, there would be automatic publication bans on identities because the victims are under the age of 18 years. Nonetheless, these issues remain at the top of the list of challenges for virtual testimony and for virtual hearings.

Quality and reliability of technology

At the outset of the pandemic, there were many interrupted or failed sessions due to limited bandwidth. Issues with connectivity were also rampant and the federal government itself needed to remedy these challenges in order for its own employees to work from home. The limited bandwidth challenges have been resolved in large part, at least in urban centres, although glitches continue to interrupt virtual activity. In the criminal justice context, the most salient issue is whether the technology is truly user-friendly.

1.1.3 The criminal justice context

In Section 1.4 below, the legal framework for virtual testimony will be laid out. Here, it is noted how virtual testimony has been used in the criminal justice context in Canada prior to the pandemic, mostly to support the testimony of children and vulnerable adults. There are three types of testimonial aids: a witness may testify from i) behind a screen, ii) from outside the courtroom via closed-circuit television (CCTV), and iii) alongside an accompanying support person (see section 1.4 *infra*). In addition to these traditional aids, the *Criminal Code* and the *Canada Evidence Act* also authorize publication bans and video-taped testimony, along with

appointment of counsel to cross-examine a witness and orders to exclude the public from the courtroom (McDonald 2018, 5). For at least the past decade, the use of a support dog or other support animal has become more accepted and common, especially with children and other vulnerable witnesses (see McDonald and Rooney 2014; McDonald and Poulin 2022).

Following the coming into force of amended testimonial aids provisions in 2006,⁵ the Department of Justice Canada, through the Victims Fund, encouraged provinces and territories to:

- purchase equipment (CCTV and screens);
- facilitate training on the use of that equipment for all justice professionals; and
- raise awareness about testimonial aids through public legal education and information and workshops at conferences.

An evaluation of those funding efforts found that:

[F]unding for testimonial aids has increased victims' access to a greater number of higher quality testimonial aids, which have helped reduce the stress of testifying, the stress and anxiety of parents and supporters during the course of the proceedings, and have given child witnesses and their supporters choices and a sense of empowerment in the criminal justice process. (Department of Justice Canada 2011, iv)

As noted in Hurley (2015), it is generally accepted that testimonial aids have improved the experience of children in the courtroom. Studies from the United Kingdom and the United States have reported the benefits of witnesses testifying from outside the courtroom to facilitate the process of giving evidence (Davies and Noon 1993; Goodman et al. 1998). The Department of Justice Canada has undertaken its own research that supports this general finding (see Bala et al. 2009; Hickey 2015; 2016; Hurley and Hickey 2015; Hurley 2016; McDonald 2018; Hickey and McDonald 2019).

In 2018, the Department hosted a Knowledge Exchange on testimonial aids to reflect on what researchers, policy makers, judges, Crown prosecutors, and victim services had learned over time (see McDonald 2018) and what challenges remained. As one might imagine, CCTV was more readily available in urban areas, and less so in rural, remote and Northern parts of the country. Based on a survey of the 80 participants, the following challenges were identified (Hickey and McDonald 2019):

- i. Resistance to the use of testimonial aids;
- ii. Lack of availability/resources;
- iii. Technology issues;
- iv. Process issues including when to make an application; and
- v. Problems with screens including issues around storage and transporting them due to their size and bulkiness.

⁵ See *infra*, Text Box 1.

Knowing the research on the use of testimonial aids – specifically CCTV use – in the Canadian criminal justice context and the more general research on internet use and virtual testimony helps to situate this particular study on virtual testimony in CACs/CYACs.

1.2 Child Advocacy Centres

Children's Advocacy Centers (CACs) started in the United States in the mid-80s. In 2010, the Department of Justice Canada announced funding to support the development or enhancement of these multi-disciplinary organizations under the slightly different name, Child Advocacy Centres (CACs) and later, Child and Youth Advocacy Centres (CYACs). A CAC or CYAC is a collaboration between law enforcement, child protection, medical and mental health professionals, and victim advocates in a child-friendly facility where children, youth, and their families can receive an individualized response and services after the occurrence of child abuse. Services provided include prevention, intervention, prosecution, treatment and support for victims and their families.

CACs/CYACs bring together a multi-disciplinary team (MDT) to provide a coordinated and comprehensive response to address the needs of children, youth, and their families in cases where abuse is suspected. CACs/CYACs seek to minimize system-induced trauma and support longer-term well-being by providing a child-friendly facility for young victims and their families to seek services, ideally under one roof.

A CAC/CYAC is a community-based program, designed to meet the unique needs of the particular community in which it is located. Consequently, no two centres are alike, but each CAC/CYAC has a number of key elements in common, including:

- A multi-disciplinary team that includes law enforcement, child protection services, victim advocacy and support services, mental health services, medical services, staff of the CAC/CYAC and where appropriate, prosecutions;
- Child and family-friendly facilities;
- Forensic interviewing services;
- Victim advocacy and support, including court preparation and support;
- Specialized medical support and treatment;
- Specialized mental health services;
- A process for case review; and,
- Organizational capacity.

Training and education for professionals working with child abuse victims and community education and outreach are also considered important activities that are undertaken by CACs/CYACs.

Research on CACs has been led by American academics with the most prominent study by Theodore Cross, Lisa Jones and colleagues from the University of New Hampshire's Crimes Against Children Research Centre. The study examined four American CACs comparing their services and outcomes for children and families to services and outcomes for children and families in comparable, nearby non-CAC communities (Cross et al. 2008). This research found

that, although CACs and comparison communities feature similar rates of prosecution and conviction, CACs offer more coordinated investigations, better access to medical exams, more referrals for mental health services, and higher levels of caregiver satisfaction with investigations. While children's satisfaction did not differ between CAC and non-CAC communities, evidence suggested that CACs might reduce children's fears during interviews.

In 2016, a paper by Australian academics James Herbert and Leah Bromfield was released with the results of a meta-study of the effectiveness of CACs. The review found that there was a lack of research on the effect of the model on child and family outcomes. Although some modest outcomes were clear, there was a lack of empirical research, and too great an emphasis on measuring program outputs.

In Canada, there has been some research on the specific model undertaken over the past decade (see for example, Research and Statistics Division 2017; Louden and Glynes Elliott 2018; Price et al. 2019). The JUS study of six CACs/CYACs developing over five years found three key elements in those CACs/CYACs to be essential: a physical site for operations, the co-location of partners (MDT) whenever feasible, and an active victim/family advocate. Additional aspects that were found to be extremely helpful for developing CACs/CYACs were:

- access to mental health services for clients and MDT members;
- providing case updates and sharing information with clients, especially youth;
- clients benefitting from having both female and male staff in the CACs/CYACs; and
- access to private spaces within CACs/CYACs enhances the experience for clients (Research and Statistics Division 2017, 6).

Overall, the study found that CACs/CYACs reduced both non-financial and financial hardship for clients. They reduced stress and re-victimization by providing a single, safe, and child-friendly place for victims and their families to obtain interviews, information, and support (for five of the six locations); reducing the number of victim interviews (e.g., by videotaping); providing a single point of contact through the victim advocate who provided emotional support, information, referrals to services, and/or assistance navigating intimidating systems; and in some sites providing emergency cell phones, bus tickets, taxi slips, and/or food vouchers (Research and Statistics Division 2017, 7).

A Social Return on Investment (SROI) report (2017) for Boost Child and Youth Advocacy Centre in Toronto found that the organization provides \$4.6 million in annual, city-wide benefits including integrated services, faster responses for victims, better justice and health outcomes and lasting benefits to society.⁶ These net benefits to society were lower rates of trauma related symptoms in victims, less impact on caregiver employment, and quick access to counselling services. For every \$1 spent, the return in societal benefits is \$3.

⁶ See [Social Value of Boost CYAC Report, 2017](#) and https://boostforkids.org/wp-content/uploads/2018/10/The-Social-Value-of-Boost-CYAC_Infographic.pdf

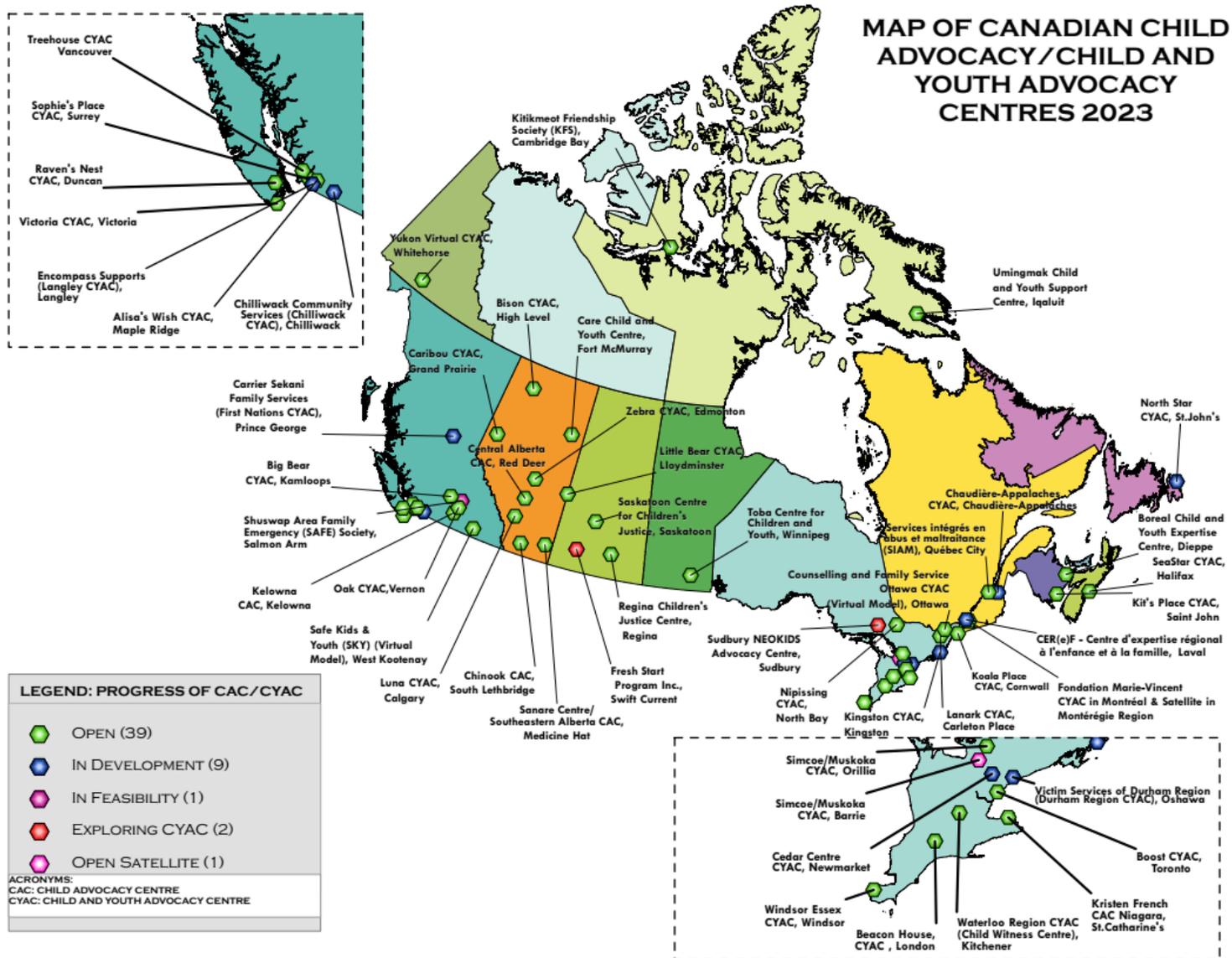
In 2022, the BC Network of Child and Youth Advocacy Centres released its own SROI report. The SROI revealed a ratio of 1:5.54, which indicates that for every dollar invested in CYACs, approximately \$5.54 in social and economic benefit is returned. The main benefits include: wellbeing and quality of life changes for children and their families; improved quality of work for CYAC management and staff, Multi-Disciplinary Team (MDT) members, and partner agencies; and realized efficiencies with BC's systems of care which span healthcare, education, justice, child protection, and policing.

The CACs/CYACs have also worked to address gaps in the system which affect their clients, including access to medical examinations, availability of prosecutors with expertise working with child victims, use of testimonial aids (e.g., screens and CCTV), and access to child-friendly environments for forensic interviews and court appearances (Research and Statistics Division 2017, 7).

This large research project remains significant, but at the same time, more research in the Canadian CAC/CYAC context would be valuable. The current research study is one example of efforts to fill gaps in data and understanding about how CACs/CYACs are addressing the needs of their clients and their families.

In the spring of 2023, there were 39 CACs/CYACs **in operation** across the country with nine in development, and one undertaking a feasibility study. In addition, there were two exploring the CAC/CYAC model. See Figure 2 below.

Figure 2: 2023 Map of Canadian CACs/CYACs



1.3 Reducing risk of additional trauma

Today, the importance of trauma-informed practice in the development and implementation of policies, procedures and programs is seen as a basic requirement for work with victims and survivors of violence and abuse. Indeed, two decades ago Professor Judith Herman noted that:

If someone set out to design a system to provoke symptoms of post-traumatic stress disorder, it might look very much like a court of law (Herman 2003, 159).

Even before getting to a court of law, however, victims and survivors must go through reporting the incident and any investigation. A JUS report that examined the impact of trauma on adult sexual assault victims explained the neurobiology of the impact of trauma on the brain and why forensic interviewing, investigations, and even questioning in the courtroom need to be re-imagined (Haskell and Randall 2019). For children, chronic abuse and other forms of trauma can have significant impacts on the development of their brains. In the past two decades, there has been significant research undertaken to understand these impacts and apply those learnings – by applying a trauma-informed approach or perspective – to settings like the criminal justice system.⁷

As the National Child Traumatic Stress Network (NCTSN) notes on its website:

A service system with a trauma-informed perspective is one in which agencies, programs, and service providers:

1. Routinely screen for trauma exposure and related symptoms.
2. Use evidence-based, culturally responsive assessment and treatment for traumatic stress and associated mental health symptoms.
3. Make resources available to children, families, and providers on trauma exposure, its impact, and treatment.
4. Engage in efforts to strengthen the resilience and protective factors of children and families impacted by and vulnerable to trauma.
5. Address parent and caregiver trauma and its impact on the family system.
6. Emphasize continuity of care and collaboration across child-service systems.
7. Maintain an environment of care for staff that addresses, minimizes, and treats secondary traumatic stress, and that increases staff wellness.

There are many resources – including training, manuals, videos, and articles – that have been developed in the past ten years or so to support victim services providers, Crown prosecutors, and judges to approach prosecution in a more victim-focused and trauma-informed manner.⁸ The criminal justice system in Canada must always balance the constitutionally protected rights of the accused with the rights of the victim(s); this is not always straightforward, nor easy (see Cameron 2003). CACs/CYACs work in the best interests of the child and recognize the importance of minimizing or

⁷ To reference but a few resources that address these essential issues, see the National Child Traumatic Stress Network which has a long list of resources (<https://www.nctsn.org/>); the recently formed (2020) Canadian Consortium on Child and Youth Trauma (<https://www.traumaconsortium.com/en/>); the Child Trauma Research Centre at the University of Regina (<https://www.childtraumaresearch.ca/en/websites/>); or reports from the Public Health Agency of Canada on [Trauma and violence-informed approaches to policy and practice - Canada.ca](https://www150.comma.ca/trauma).

⁸ Some examples include: Werner 2021; <https://jimhopper.com/>; [Being Trauma Aware](#)

eliminating re-victimization of the child or youth, and their family, in the contexts of both the criminal justice and child protection systems. The objective of reducing trauma for children and their families is present in all ten of the Canadian guidelines (see Child and Youth Advocacy Centres 2021). A further example of this is found in a recent article in an American law journal entitled “Avoiding the second assault: A guidebook for trauma-informed prosecutors” (Werner 2021). Overall, the author notes that four key principles support a good trauma-informed prosecution: i) choice and voice, ii) transparency, iii) privacy, and iii) connection (2021, 590-592).

Werner notes that for healing to occur, victims/survivors need: i) social acknowledgement of what has happened; ii) control over their lives; and iii) an opportunity to tell their story the way they wish to tell it (2021, 575). Yet a criminal proceeding is out of the victims or survivors’ control; it is something done to them with rules that are hard to understand about how and when they can speak.

At the same time, participating in a criminal proceeding can be beneficial for victims/survivors, regardless of their age or experience. Being believed in a public forum can be very powerful and healing (Young and Dhanjal 2021).

The question remains, however, as to whether these trauma-informed approaches really make a difference. A meta-analysis of studies on CACs/CYACs (Herbert and Bromfield 2015) found that most evaluations have focused on outputs, and there is little research examining whether the CAC model leads to recovery from trauma.

Considering the stated mission of CACs to reduce systemic trauma, it is concerning that no studies have measured these benefits against standard service delivery (Herbert and Bromfield 2015, 348).

The authors provide recommendations at the end of their study, noting:

There is a clear need for more rigorous empirical research of the CAC model, particularly on the impact of the services on child trauma symptoms, both in terms of therapeutic interventions, and to demonstrate reduced child trauma resulting from coordinated/co-located services; (Herbert and Bromfield 2015)

This study does not take on the evaluation of virtual testimony and whether, or how, it reduces re-victimization for children and other vulnerable witnesses. It is hoped that in the coming years, the topic will be studied rigorously.

1.4 The Legal framework

Testimonial aids for children and for vulnerable adults have existed since 1988 in Canada (see Bala 2018; Bala et al. 2009). In 2006, the provisions in former Bill C-2⁹ came into effect making testimonial aids for children mandatory upon request.

⁹ *Bill C-2: An Act to amend the Criminal Code (protection of children and other vulnerable persons) and the Canada Evidence Act.* See [C-2 \(38-1\) - LEGISinfo - Parliament of Canada](#) for details on the Bill and its passage.

In July 2015, the *Canadian Victims Bill of Rights* (CVBR)¹⁰ came into force giving victims of crime a right to protection and specifically a right to request testimonial aids (see Appendix 1). Former *Bill C-32: An Act to enact the Canadian Victims Bill of Rights and to amend certain Acts*¹¹ also introduced amendments to the *Criminal Code* and the *Canada Evidence Act* to further operationalize the rights enshrined in the CVBR.

Reviews of case law since 2006 have shown that trial judges generally have good awareness of the challenges for children when testifying in a criminal trial (Bala 2023; 2018; Bala et al. 2009). The Supreme Court of Canada rendered several decisions¹² that facilitated the use of accommodations and also recognized the need to give deference to trial judges who have the very difficult task of assessing the credibility of children.

¹⁰ *Canadian Victims Bill of Rights*, S.C. 2015, c. 13.

¹¹ See C-32 (41-2) - <https://www.parl.ca/legisinfo/en/bill/41-2/C-32>

¹² See *R. v. J.S.* 2018 ONCA 675 (CanLII), <https://canlii.ca/t/ht91c>; *R. v. L. (D.O.)* [1993] 4 S.C.R. 419.

2.0 Method

2.1 Data sources

The primary data source for this study were the recorded and transcribed interviews with staff from 20 CACs/CYACs across the country. In addition to the qualitative, semi-structured interviews, information was drawn from CAC/CYAC funding proposals to the Victims Fund, Department of Justice Canada. In addition to research literature, reports from the media were utilized to provide updates on the use of virtual testimony rooms at Homefront in Calgary.

2.2 The interviews

Through the 2022-2023 CAC/CYAC National Operational Survey (see Stumpf 2023), researchers were able to identify those organizations currently using virtual or remote testimony rooms, those considering spaces for virtual or remote testimony, and those not considering such spaces. Researchers reached out to these different organizations, prioritizing those already using virtual testimony rooms, to participate in semi-structured, qualitative interviews.

A total of 20 interviews were completed in the summer of 2023. Nine out of 11 of the CACs/CYACs who are using dedicated spaces for virtual testimony participated. Eight out of the 11 CACs/CYACs who are considering using dedicated spaces for virtual testimony participated, and three out of the four CACs/CYACs who are not considering the use of virtual testimony at this time participated.

Interview questions were shared in advance and those participating were asked to sign a letter of consent. Interviews were conducted using MS Teams and lasted approximately 30 to 60 minutes. They were recorded and transcribed to support note taking. Interview topics included the development or history of virtual testimony at the CAC/CYAC (renovations, funding, partnerships, etc.), experiences using the space(s) to date, challenges, successes, as well as data collection (see [Appendix 2](#) for the interview guide).

Transcripts, notes and recordings were reviewed and analyzed thematically. Findings are presented thematically in this report and include: Purpose of the dedicated spaces; Development; Steps towards implementation; Testifying at the courthouse; Funding; Awareness and education; Experiences to date; and Data collection.

2.3 Limitations

Not all the CACs/CYACs that were invited to participate opted to do so. Ultimately, a total of 20 out of the 28 operational centres who responded to the National Operational Survey participated in this study. Additionally, since CACs/CYACs were recruited based on their participation in the 2022-2023 CAC/CYAC National Operational Survey and only 28 out of the 39 operational CACs/CYACs responded to the survey, not all operational CACs/CYACs in Canada were invited to participate in an interview. So overall, eleven (11) CAC/CYACs out of the 28 who responded to the National Operational Survey, or approximately 40%, are using dedicated spaces for virtual testimony.

3.0 Findings

This section describes the findings from the semi-structured interviews undertaken with representatives of 20 CACs/CYACs. In some areas, the interview data is complemented by information from funding proposals for example, or media reports. The findings are presented here thematically.

3.1 Purpose of virtual testimony

All the organizations interviewed stressed that the purpose of testifying remotely from the CACs/CYACs is to reduce the risk of re-traumatization of young victims/witnesses during criminal court processes.

Their focus is on what is best for the child or youth and how best to prioritize their needs. Almost all those interviewed noted that virtual testimony helps address the very real needs of the young victim/witness. For example, allowing virtual testimony to be provided from a room at the CAC/CYAC ensures a safe, familiar and comfortable space for the victim/witness allowing them to speak without fear and to facilitate a full and candid account of their victimization. Similarly, virtual testimony also eliminates the risk of seeing the accused – and their support people¹³ – in person, which could happen if attending the court (particularly in rural communities and small courthouses or where other community buildings, such as the school or community centre, are used for court).

3.2 Steps towards implementation

Several CACs/CYACs had been considering virtual testimony prior to the COVID-19 pandemic. All those interviewed acknowledged that the pandemic helped to speed up the acceptance, and in some cases the championing, of this approach by key stakeholders.

Many CACs/CYACs considering virtual testimony reached out to other organizations already doing virtual testimony, especially Luna CYAC in Calgary. This particular CAC/CYAC had spoken about their work in this area through a national webinar during the 2021 National Victims and Survivors of Crime Week held in November of 2021.

For all organizations using dedicated spaces for virtual testimony, and many of those considering or developing it, there were specific steps followed, although not necessarily in a chronological order:

- Ensuring that key stakeholders – primarily Crown prosecutors and judges – are supportive. All those interviewed agreed that having a Crown prosecutor as a champion was necessary to move the proposal forward. Many noted that ideally, there would be a local champion in the judiciary as well to help with different aspects of the proposal such as awareness raising and continuing education.
- Developing the proposal collaboratively with key stakeholders, particularly with Indigenous community members if a CAC/CYAC is located within or near Indigenous communities.
- Ensuring that if an existing room, such as a forensic interviewing room, is to be used, it meets all the requirements for a virtual testimony room. Additional requirements could be dedicated high-speed internet and the necessary computer equipment.

¹³ The term support people here is not used in the sense of the *Criminal Code* testimonial aid, but rather the family and friends who are in the court to support the accused throughout the trial.

- Considering the requirements, costs and funding options carefully where renovations are needed, and securing the appropriate funding. For example, access to a washroom and kitchen is important, but in the short and the longer term, it might be easier and less costly to move to a new location rather than completely re-doing a floor plan.
- Additional considerations may be needed to determine entry and exit points so that families are not running into each other, and to ensure that families have separate waiting areas. For example, one CAC/CYAC noted that when booking for testimony, they book three spaces at their CAC/CYAC: i) the testimony room; ii) the secure waiting room; and iii) another waiting room for caregivers.
- Booking only one client testifying at a time for smaller centres (and no other clients for other appointments) due to limited waiting room space.
- Creating awareness for staff on how to use the equipment, test, and re-test it, provide tours to both Crown prosecutors and judges, and develop processes for booking rooms and staff.

3.2.1 Barriers to implementation

For CACs/CYACs considering virtual testimony, funding was often the step missing, but many also noted that they just did not have the physical space in their current locations. Two CACs/CYACs were planning to move to a bigger space in the coming year and one CAC/CYAC had recently moved to a bigger space. These larger offices would allow them to have several rooms for forensic interviewing, as well as dedicated spaces for virtual testimony, among other key areas. Other barriers included ensuring reliable internet service and figuring out the right technology required by the courts.

The decision about whether victims/witnesses can testify from a CAC/CYAC via virtual testimony depends upon the judge who is responding to an application made by the Crown prosecutor. After discussing the matter with victim services, the Crown prosecutor responsible for the case will submit a motion to the court. Depending on the position of the defence, the motion could be approved on consent, or could be more contentious, although there is little evidence of this in the case law (see Bala forthcoming). Those interviewed reported that defence counsel more often opposed the introduction of testimony by video.

Two CACs/CYACs spoke about waiting for the “perfect case”. A few CACs/CYACs noted delays with using the virtual testimony space, as their Crown prosecutor was concerned that judges may refuse to grant permission for virtual testimony, thereby setting a case law precedent for their jurisdiction. As a result, the Crown prosecutor wanted to wait for a “perfect” case with a strong justification to use virtual testimony.

When probed about what the “perfect case” would be, participants noted that there are situations that would highly favour the use of virtual testimony. For example, a child has moved out of province to another part of Canada or to another country altogether. The cost of travelling back to the location of the criminal hearing, as well as the added stress of travel, disruption to the family’s new routines, and seeing the accused could be viewed as barriers to the child testifying in the case. Another clear example would be if the child had a disability that the courthouse could not easily accommodate. The thinking is that there would be no objections to the use of a virtual testimony room at a CAC/CYAC in these – or other – “perfect case” scenarios and the case would demonstrate how useful and important this tool could be to ensuring a full and candid account of what happened to the victim.

At the time of the interviews, CACs/CYACs who offer or are considering virtual testimony did not have a formal protocol, standard or policy in place with respect to providing virtual testimony. A few CACs/CYACs noted that they do have instructions on how to use the virtual testimony equipment such as, how to troubleshoot the technology. Organizations communicated that formalized protocols would be helpful, and they would be exploring this in the future, for example, how to go about reserving the space and what needs to be in place before the testimony starts.

3.3 Description of the dedicated spaces

The dedicated spaces for virtual testimony are all similar in size and how they are decorated. The 20 CAC/CYACs described rooms as follows:

- They are small (8' x 10', 10' x 12' or so) rooms painted in neutral, soft colours (cream, pale blue, gray, etc.);
- Sound proofing has been done;
- If there are windows in the room, there are blinds that can be pulled for privacy and to reduce glare from sunlight;
- There are few, or no, distracting pictures or photos on the walls, with simple furniture of one small sofa, loveseat or chair with a table and the computer equipment as required;
- The equipment includes a large screen (sometimes mounted on the wall), camera, computer, sometimes additional speakers, and a microphone;
- There is (and this is often a requirement¹⁴) a dedicated, high-speed internet connection;
- Rooms are the same or have similar requirements as the forensic interviewing rooms.

At one centre, the room included Indigenous items such as drums and in addition, there was access to a separate Elders/Indigenous space.

3.4 Safety and confidentiality

Most of the CACs/CYACs interviewed, whether or not they offer virtual testimony, spoke about the importance of ensuring the safety of the families using the services, including guaranteeing them confidentiality.

A few of the steps that CACs/CYACs have taken include:

- During virtual testimony, the CACs/CYACs ensure that those in the courtroom cannot see any identifying features that could reveal the location of the organization (such as the view looking out a window).
- Windows are shaded or frosted and also all have blinds that can be pulled down and released quickly.
- Rooms are sound proofed to the extent possible.

¹⁴ The BC Provincial Court released guidelines to the profession early in the course of the COVID-19 pandemic. These provide guidance to anyone attending remotely or virtually. Appendix 1 provides guidelines and notes for the profession. The key requirement for the BC CACs/CYACs was having dedicated high speed internet connection.

- Most CACs/CYACs do not have a lot of signage on their building; some are located in residential areas, in houses, for this reason.
- The naming of the CACs/CYACs was purposeful to protect the privacy of the clients and help them feel more at ease. For example, Treehouse, Raven’s Nest, and Koala Place are names that do not describe what the organization does, but rather invoke images that a young person can understand.
- Law enforcement, when visiting the location, do not wear uniforms.

3.5 Testifying from a separate room at the courthouse

While most of the courts near CACs/CYACs are equipped with rooms from which victims can testify via CCTV, this approach still requires the victim to go to the courthouse and possibly see or run into the accused or the accused’s supporters. As well, one CAC/CYAC mentioned that the CCTV room at the courthouse might already be booked so it is helpful to have another option.

Even where the capacity to offer virtual testimony at a CAC/CYAC exists, those interviewed noted that Crown prosecutors, as well as judges, prefer to have the young victims/witnesses in the courthouse, rather than testifying from a different location such as the CAC/CYAC. CACs/CYACs noted that Crown prosecutors prefer to have physical access to the victim to be able to talk to them before the trial starts or while on break. As a possible solution, one centre mentioned that they can set up a Teams meeting or a phone call in a different room from the virtual testimony room – allowing the Crown and victim to connect. One CAC/CYAC also shared that there was pushback from judges concerning their inability to observe the victim or witness’ body language (e.g., fidgeting) in a virtual testimony setting.

For Boost CYAC, in Toronto, there is a new court facility at 10 Armoury Street with state-of-the-art technology for virtual testimony. Ontario considers such facilities as designated spaces for virtual testimony. As such, there is little reason, or interest, on the part of Crown and judges to support testifying from a location outside of the courthouse except in cases where the victims/witnesses live far from Toronto, e.g. BC or Ireland.

One CAC/CYAC mentioned that the child-friendly courtrooms are not wheelchair accessible and so using the virtual testimony room at the CAC/CYAC would be a solution if this type of accessibility was needed. The CAC/CYAC had not experienced such a situation at the time of the interviews.

3.6 Alternate uses of the dedicated spaces

CACs/CYACs were mixed in how they use their dedicated spaces. All the organizations prioritize child and youth¹⁵ clients, as well as children and youth who are not clients of the CAC/CYAC. Adults with developmental disabilities¹⁶ and other vulnerable adults may be considered on a case-by-case basis.

Municipal police and RCMP do sometimes ask to use the space for reaching families who live farther away and if the space is available, CACs/CYACs may agree.

¹⁵ Up to 18 or 19 years depending on the age of majority in that jurisdiction.

¹⁶ Adults, where their developmental age might be that of a young child, while their chronological age is over 18 years, may be served at CACs/CYACs.

Most CACs/CYACs said they would be open to having expert witnesses testify from the CAC/CYAC, but that their priority is the child and youth clients or children and youth having to testify – regardless of whether or not they are a client.

3.7 Funding

Most dedicated spaces have been funded through different government grants and contributions programs.

A review of proposals to the Victims Fund at the Department of Justice Canada found that 12 CACs/CYACs¹⁷ have received funding for their dedicated spaces. Most of this funding came from “end of year” funding where funds become available late in the fiscal year when recipients cannot spend them before the end of the fiscal. End of year funding generally focuses on projects that are ready to go and can be implemented quickly. One of the projects was funded through COVID-19 grant funding; this was funding temporarily available to victim-serving organizations to address additional needs that had emerged during the pandemic. Two of the projects were part of an already approved provincial or territorial contribution agreement.

The amount of funding varied from \$5,000 for equipment only to \$47,500 for a complete renovation of the dedicated space, as well as purchasing the required equipment. Some of the CACs/CYACs use their forensic interview rooms, which were already sound-proofed, meaning few additional changes had to be made and thus requiring fewer resources. As CACs/CYACs learned during the pandemic, good internet is essential, specifically a dedicated high-speed internet connection. Other equipment needed is a computer, screen, microphone, and camera. For the most part, virtual testimony occurred using Microsoft Teams, which is what many of the courts were using.

Some CACs/CYACs in BC were able to access the Civil Forfeiture Grant program through the Community Safety and Crime Prevention Branch. These are one-time grants from civil forfeiture funds to support community-driven projects that complement existing services and meet the unique needs of individual communities.

The Alberta government consolidated its Community Initiatives Program (CIP), project-based grant stream, which supports projects that enhance and enrich communities throughout Alberta by supporting non-profit organizations for technology, portable equipment and other specific items that must be purchased and implemented within 18 months.

Only one organization indicated that the renovations and technology for their virtual testimony rooms were funded by a private donor. Another CAC/CYAC noted that they had fundraised the funds needed to develop their virtual testimony space.

¹⁷ CACs/CYACs receive funding from multiple sources including provincial, territorial, or municipal governments, private donors, foundations, fundraising efforts, etc. At least one of the CACs/CYACs that received funding from the Victims Fund for virtual testimony did not participate in the 2022-2023 CAC/CYAC National Operational Survey where only 11 CACs/CYACs identified that they were currently operating a dedicated space for virtual testimony.

CAC/CYAC partners have also supported the dedicated spaces. One local police foundation provided the technological equipment for a BC CAC/CYAC, and a local child abuse prevention committee provided the funding for the technological equipment for one ON CAC/CYAC.

3.8 Experiences with virtual testimony to date

Findings from the 2022-2023 CAC/CYAC National Operational Survey noted that CACs/CYACs with dedicated spaces for virtual testimony have had limited experience thus far with actual cases. At the time of the interviews for this study, summer 2023, those interviewed reported that the number of cases where virtual testimony was used ranged from 1 to 8.

This low number of cases per CAC/CYAC is due to a number of factors:

- Many of the dedicated spaces had only recently opened in 2022/23;
- Many cases do not go to trial; and
- For those cases that do go to trial, there are lengthy delays meaning cases may be booked far ahead, through 2024.

While the equipment is tested prior to each testimony, lessons are being learned with each experience. Some examples while testifying:

- the child was drinking from a juice box with a straw and the slurping noise was considered distracting by those in the courtroom;
- the child got up to use the restroom without requesting a break;
- microphones were left on in the courtroom and defence counsel could be heard speaking.

CACs/CYACs gave examples of cases where the victim had moved from the location where the trial would be heard (e.g. within the province) or even from the province where the case was being heard (e.g. the child moved to BC, while the case was moving forward in Ontario). These cases proved how valuable the virtual testimony rooms were and became excellent “first cases” or as discussed earlier “perfect cases”.

Even with excellent first cases, having champions – a judge or Crown prosecutor – makes a significant difference. Advisory groups, whether to support the specific issue of virtual testimony, or to support the work of the CAC/CYAC more generally, are essential in order to work through challenges and understand the perspectives of the different stakeholders in the criminal justice system, as well as in the other systems of mental health and child protection.

Another CAC/CYAC noted that it had used its virtual testimony room for three trials with a total of four witnesses and had worked out most of the challenges in pre-testing. Regardless, staff indicated that they would continue to pre-test before every trial.

3.9 Data

CACs/CYACs agreed that there is a strong need for good data. All further agreed that it will be important to capture details of virtual testimony when numbers of cases increase – and to capture outcomes of those cases.

The CACs/CYACs seem to be at very different stages in terms of data collection, which has an impact on what they are currently able to collect on virtual testimony. The larger centres have been using their information management systems to meet their research needs (i.e., not just performance metrics) and are adding to the data currently collected to cover virtual testimony. The larger centres also have dedicated research staff and are undertaking research projects, often in collaboration with universities; at least one CAC/CYAC has started research on virtual testimony. Smaller centres often have fewer resources, including funding for a customized database and staffing to collect, input and manage the data, which can make it a challenge to collect additional data outside the purview of performance metrics. A couple of CACs/CYACs that offer virtual testimony report not collecting any specific data on virtual testimony cases, in part, due to the infrequent use of virtual testimony at their centre. Most CACs/CYACs that offer virtual testimony do collect some data, for example, the use of the virtual testimony room, the number of people who have accessed the space, and the length of the time that the room was used.

3.10 Relationships, education, and awareness

All CACs/CYACs interviewed noted the importance of raising awareness about the benefits of virtual testimony and continuing education for all criminal justice professionals. This would include law enforcement, Crown prosecutors, judges, court staff, and even the defence bar. CACs/CYACs gave many examples of continuing education for the different justice stakeholders – lunch n’ learn events, specific presentations at judicial education events, written materials with photos of the virtual testimony room and ongoing, frequent communication between the CAC/CYAC and key partners.

This relationship-building and awareness raising always forms part of the first steps in establishing a dedicated space for virtual testimony. It is also seen as work that needs to be on-going. For example, it is essential that Crown prosecutors and judges are supportive of the use of dedicated spaces in CACs/CYACs for virtual testimony before moving forward with plans; building this support can take time.

A number of CACs/CYACs noted that recommending virtual testimony to a Crown prosecutor is more difficult when there is not a dedicated team of Crown prosecutors working on child abuse cases and there is a new prosecutor with each case. As well, with RCMP detachments, members may rotate in for a period of time and then move on to another assignment, which means that raising awareness needs to be an on-going activity. And this turnover of staff is also similar for child protection services. The key partners need to understand the importance of this trauma-informed approach to testifying.

3.11 Challenges and solutions

The challenges and the solutions identified by the CACs/CYACs doing virtual testimony, as well as those considering it, were similar. These are included below. Considering that virtual testimony is still a new service provided by some CACs/CYACs, CACs/CYACs providing a dedicated space for virtual testimony are still learning how to overcome some of these challenges, especially at the time of the interviews. Where solutions were proposed by CACs/CYACs, they are provided alongside the challenges.

- 1) Exhibits – Three CACs/CYACs spoke about the challenge of managing exhibits when they need to be put in front of the witness when at the CAC/CYAC. One solution identified was that documents can be delivered to the CAC/CYAC by the police or other secure method.
- 2) Testimony of adult witnesses, especially a non-offending caregiver – This was a fairly common challenge wherein the judge, Crown prosecutor and defence counsel want adult witnesses to appear in person. So, a caregiver may have to be at the courthouse ready to testify, rather than at the CAC/CYAC waiting for their child to complete their testimony. This is emotionally – and sometimes logistically – difficult for both child/youth and adult witnesses.
- 3) Technology– All those interviewed spoke about the challenges of technology. These challenges were sometimes due to poor internet, glitches in the technology, but also due to human error where court staff were not familiar with how to work the technology. Many CACs/CYACs told us that the best solution was to practice, practice and practice some more. While they could ensure that everything worked well at the CAC/CYAC, they had less or little control over the technology located in the courtroom. Here, good communication and relationships between court staff and the CACs/CYACs are essential as is having enough time in the day to troubleshoot or help out if needed.
- 4) Space – In some of the smaller CACs/CYACs, those interviewed noted that they cannot handle more than one trial at a given time. Luckily for these CACs/CYACs, the number of cases going to trial is small, so this challenge was, at the time of the interviews, a hypothetical one.
- 5) Turnover/frequent changes in personnel – There is a great deal of turnover in police and child protection services. These changes require ongoing time and resources to re-establish relationships and ensure there is a high level of awareness amongst all key stakeholders.
- 6) Establishing a good case precedent – As noted earlier, a few CACs/CYACs noted delays with using the virtual testimony space, as the assigned Crown prosecutor was concerned that judges could refuse to grant permission for virtual testimony, thereby setting a case law precedent for their jurisdiction. As a result, the Crown prosecutor wanted to wait for a “perfect” case with a strong justification to use virtual testimony.
- 7) Funding – Almost all the CACs mentioned funding as a challenge, especially those that do not have sustainable funding. The process of finding, applying and reporting on grants or contributions is a full-time job. Participants noted that establishing a national organization to advocate for permanent funding for CACs/CYACs would be an important step forward, but that there would always be the need for innovation through project funding at the local level. Several CACs/CYACs spoke about looking at non-traditional funding sources such as law foundations as well as private foundations and individual and corporate donors.

In some areas, there is still a push for the young victim/witness to go to court. This highlights the ongoing need for education for everyone (criminal justice stakeholders, clients and families, the broader public, and CACs/CYACs considering virtual testimony) and the importance of learning from the CACs/CYACs who are already doing virtual testimony.

Researchers asked representatives of the CACs/CYACs who had experience with developing dedicated spaces for virtual testimony about what advice would they give to centres that are in development. Some of this advice is summarized below:

- There is strength in collaboration. Contact other CACs/CYACs when there are questions.
- Find a champion in the judiciary or among Crown prosecutors from the start whenever possible. The champion should understand the purpose of virtual testimony and be able to speak up and support the initiative often.
- Invest in high quality, reliable audio and visual equipment and ensure that everyone who needs to use it can use it and troubleshoot effectively when glitches arise.

As recognized by CACs/CYACs from the North, virtual testimony is particularly suited for Northern and remote communities. CACs/CYACs, as do many services, struggle to meet the needs of their clients and families who live far from a central location. As one CYAC noted:

Really, we're the only child advocacy centre in the North, and the need here is identified as being, you know, the highest in Canada for the types of issues we're talking about. So we're really just starting to tap the surface of that issue and build trust in the communities. And without the centre and without the awesome sort of staff that are coming on board, I don't know what a lot of these families would do. There would literally be nowhere for them to be able to come forward and get support and advocacy for additional help.

Another CAC described the challenges of only having one CAC for an entire province, and also of serving the territories as well. No immediate solution was offered for these dilemmas.

4.0 Summary and final thoughts

This report began by providing some background to set the context for the interviews with representatives from CACs/CYACs. Virtual testimony did not start with the pandemic. Indeed, virtual testimony has been permitted by the *Criminal Code* for almost two decades. For the most part, virtual testimony has been approved for vulnerable victims/witnesses – primarily children, but also some adults who were victims of violence such as intimate partner violence or trafficking, or who could have a developmental disability. Section 714 of the *Criminal Code* also permits testimony from outside the courtroom – audio or video – for reasons of efficiency, cost savings, and ease. This provision might be used for the expert witness who lives in another country and providing testimony virtually makes the most sense. When the pandemic hit, criminal, as well as family and some civil, proceedings went completely on-line. So, while the pandemic is not the cause of virtual testimony, it certainly helped improve awareness around using technology for criminal proceedings, in particular testimony.

A total of 20 interviews were conducted over the summer of 2023. In some instances, there were two or more representatives from the CAC/CYAC and in other cases, there was only one representative. In some cases, information was sent, including photos of the virtual testimony spaces, after the interview. The interviews were recorded and transcribed and the results have been presented thematically in this report.

CACs/CYACs have learned from the experiences of those were already doing virtual testimony. Challenges included funding, technology, specific logistics such as getting exhibits in front of a witness and adult caregivers needing to be in two places at once, and ongoing education and awareness for all criminal justice system stakeholders. Those interviewed were able to offer solutions to many of the challenges raised, such as the need for continuous communication, relationship building and practice with the equipment.

Testifying from outside a courtroom is one of three primary testimonial aids available to all witnesses. And the decision to permit virtual testimony rests with the judge, as do other decisions in the criminal justice process. This is why collaboration, relationships, and education and awareness are so critical to the success of virtual testimony. As seen with other vulnerable victims – victims of intimate partner violence, sexual assault, trafficking, etc. – the criminal justice system itself is not designed to meet their needs and it has taken years of advocacy and raising awareness amongst system players to aim for a more trauma-informed system.

When applying an access to justice lens to virtual testimony, it is important to remember that there is still a digital divide in Canada, and in other industrialized countries. While it is the CAC/CYAC that is responsible for the high-speed, reliable internet service, there can still be reluctance on the part of some criminal justice professionals of relying on technology, that they themselves do not use. Other challenges with virtual testimony and virtual hearings are privacy and cybersecurity, and the quality and reliability of the technology itself.

In April 2023, a women's shelter in Calgary, Homefront, announced that it had set up a virtual testimony room on site.¹⁸ It will be interesting to monitor the expansion of this approach to testimony in Alberta which has set up several pilot project for testimony from vulnerable victims/witnesses. While virtual testimony from a space outside of the courthouse is still relatively limited, there is no doubt that the commitment of CACs/CYACs to virtual testimony from their dedicated spaces will facilitate the growing acceptance of this practice in the years to come. As the practice grows, it will be equally important to undertake outcome evaluations to learn about the impact of using virtual testimony from CACs/CYACs and other locations that support victims.

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¹⁸ See [Remote testimony room gives victims of domestic violence a safe space | Calgary Herald](#) April 7, 2023; and [Remote testimony room now available for domestic violence victims in Alberta | Globalnews.ca](#) April 6, 2023.

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Appendix 1: Legislation

Canadian Victims Bill of Rights

The Right to Protection

Security

9. Every victim has the right to have their security considered by the appropriate authorities in the criminal justice system.

Testimonial aids

13. Every victim has the right to request testimonial aids when appearing as a witness in proceedings relating to the offence.

Criminal Code

Testimony outside court room — witnesses under 18 or who have a disability

486.2 (1) Despite section 650, in any proceedings against an accused, the judge or justice shall, on application of the prosecutor in respect of a witness who is under the age of 18 years or who is able to communicate evidence but may have difficulty doing so by reason of a mental or physical disability, or on application of such a witness, order that the witness testify outside the court room or behind a screen or other device that would allow the witness not to see the accused, unless the judge or justice is of the opinion that the order would interfere with the proper administration of justice.

Application

(2.1) An application referred to in subsection (1) or (2) may be made, during the proceedings, to the presiding judge or justice or, before the proceedings begin, to the judge or justice who will preside at the proceedings or, if that judge or justice has not been determined, to any judge or justice having jurisdiction in the judicial district where the proceedings will take place.

Conditions of exclusion

(5) A witness shall not testify outside the court room in accordance with an order made under subsection (1) or (2) unless arrangements are made for the accused, the judge or justice and the jury to watch the testimony of the witness by means of closed-circuit television or otherwise and the accused is permitted to communicate with counsel while watching the testimony.

No adverse inference

(6) No adverse inference may be drawn from the fact that an order is, or is not, made under subsection (1) or (2).

Other witnesses

(2) Despite section 650, in any proceedings against an accused, the judge or justice may, on application of the prosecutor in respect of a witness, or on application of a witness, order that the witness testify outside the court room or behind a screen or other device that would allow the witness not to see the accused if the judge or justice is of the opinion that the order would facilitate the giving of a full and candid account by the witness of the acts complained of or would otherwise be in the interest of the proper administration of justice.

Factors to be considered

(3) In determining whether to make an order under subsection (2), the judge or justice shall consider

- (a) the age of the witness;
- (b) the witness' mental or physical disabilities, if any;
- (c) the nature of the offence;
- (d) the nature of any relationship between the witness and the accused;
- (e) whether the witness needs the order for their security or to protect them from intimidation or retaliation;
- (f) whether the order is needed to protect the identity of a peace officer who has acted, is acting or will be acting in an undercover capacity, or of a person who has acted, is acting or will be acting covertly under the direction of a peace officer;
- (f.1) whether the order is needed to protect the witness's identity if they have had, have or will have responsibilities relating to national security or intelligence;
- (g) society's interest in encouraging the reporting of offences and the participation of victims and witnesses in the criminal justice process; and
- (h) any other factor that the judge or justice considers relevant.

Same procedure for determination

(4) If the judge or justice is of the opinion that it is necessary for a witness to testify in order to determine whether an order under subsection (2) should be made in respect of that witness, the judge or justice shall order that the witness testify in accordance with that subsection.

Criminal Code - PART XXII.01

Audioconference and videoconference — witness in Canada

714.1 A court may order that a witness in Canada give evidence by audioconference or videoconference, if the court is of the opinion that it would be appropriate having regard to all the circumstances, including

- (a) the location and personal circumstances of the witness;
- (b) the costs that would be incurred if the witness were to appear personally;
- (c) the nature of the witness' anticipated evidence;
- (d) the suitability of the location from where the witness will give evidence;
- (e) the accused's right to a fair and public hearing;
- (f) the nature and seriousness of the offence; and
- (g) any potential prejudice to the parties caused by the fact that the witness would not be seen by them, if the court were to order the evidence to be given by audioconference.

Videoconference — witness outside Canada

714.2 (1) A court shall receive evidence given by a witness outside Canada by videoconference, unless one of the parties satisfies the court that the reception of such testimony would be contrary to the principles of fundamental justice.

Notice

(2) A party who wishes to call a witness to give evidence under subsection (1) shall give notice to the court before which the evidence is to be given and the other parties of their intention to do so not less than 10 days before the witness is scheduled to testify.

Attendance

715.21 Except as otherwise provided in this Act, a person who appears at, participates in or presides at a proceeding shall do so personally.

Appendix 2: Use of Virtual vs. Remote Testimony by Courts and Legal Organizations

Table of Virtual vs. Remote Terminology Used (as of August 2023)

Jurisdiction	Court or Legal Organization Name	Terminology: Virtual vs. Remote	Source
Federal	Canadian Bar Association	Virtual	Canadian Bar Association – Virtual Hearings (cba.org)
	House of Commons	Virtual	Guide for Witnesses Appearing Before House of Commons Committees – Procedural Info – House of Commons of Canada (ourcommons.ca)
	Supreme Court of Canada	Virtual	Supreme Court of Canada – Speech by Richard Wagner – Annual News Conference with the Parliamentary Press Gallery (scc-csc.ca)
	Tax Court of Canada	Virtual	Virtual-Proceeding-Guide.pdf (tcc-cci.gc.ca)
Alberta	Alberta Court of Appeal	Virtual	procedure-guide-for-attending-in-person-virtual-hearings-and-other-matters.pdf (albertacourts.ca)
	Court of King’s Bench of Alberta	Remote	Remote Hearings Protocol & Troubleshooting (albertacourts.ca)
	Law Society of Alberta	Remote	Microsoft Word – 2020-05-05 Alberta Protocol for Remote Questioning (cba-alberta.org)
British Columbia	Canadian Bar Association: British Columbia Branch	Virtual	Best Practices in a Virtual Hearing FINAL (cbabc.org)
	Law Society of British Columbia	Remote	Reminder on remote appearances by lawyers in the Provincial Court The Law Society of British Columbia
	Supreme Court of British Columbia	Virtual & Remote	Statement from Chief Justice Hinkson April 30 2020.pdf (bccourts.ca) ; Supreme Court – Application to Change the Method of Attendance at Specified Criminal Proceedings (bccourts.ca)
	The Provincial Court of British Columbia	Remote	M E M O R A N D U M (provincialcourt.bc.ca)
Manitoba	Manitoba Court of Appeal	Remote	practice direction rule change re remote hearings.pdf (manitobacourts.mb.ca)
	Manitoba Courts	Virtual	Virtual Hearings – Manitoba Courts

	The Law Society of Manitoba	Remote	Remote-Witnessing-Checklist.pdf (lawsociety.mb.ca)
	The Manitoba Bar Association	Virtual	Canadian Bar Association – Best Practices in Virtual Court (cba-mb.ca)
New Brunswick	Law Society of New Brunswick	Remote	DIRECTIVES FOR REMOTE EXECUTION AND WITNESSING OF WILLS AND POWERS OF ATTORNEY IN THE CONTEXT OF COVID.pdf (lawsociety-barreau.nb.ca)
	The Court of King’s Bench of New Brunswick	Virtual	participant-guidelines-for-video-court-appearances.pdf (courtsnb-coursnb.ca)
	Court of Appeal of New Brunswick	Virtual	Updated COVID-19 Directive (courtsnb-coursnb.ca)
Newfoundland and Labrador	Law Society of Newfoundland & Labrador	Virtual	Virtual Appearances – Practice Notes – The Law Society of Newfoundland and Labrador (lsnl.ca)
	Supreme Court of Newfoundland and Labrador	Virtual	COVID-19 Information and Updates – Supreme Court of Newfoundland and Labrador
Nova Scotia	Nova Scotia’s Barristers’ Society	Remote	COVID-19 FAQs: Practice Management – Nova Scotia Barristers’ Society (nsbs.org)
	Nova Scotia Courts	Virtual & Remote	Virtual Court The Courts of Nova Scotia
Ontario	Court of Appeal for Ontario	Remote	General Practice Direction Regarding All Proceedings in the Court of Appeal – Court of Appeal for Ontario (ontariocourts.ca)
	Law Society of Ontario	Remote	Remote Hearings: Practical Considerations LSO Store
	Ontario Bar Association	Remote	OBA.org – Best Practices for Remote Hearings
	Ontario Court of Justice	Remote	Remote Appearance Code of Conduct – Ontario Court of Justice (ontariocourts.ca)
	Ontario Superior Court of Justice	Virtual & Remote	Guidelines on Access to Hearings During the COVID-19 Pandemic Superior Court of Justice (ontariocourts.ca)
Québec	Barreau du Québec	Virtual	Système de justice – Quand la pandémie s’invite à la cour Espace A (barreau.qc.ca)
	Superior Court of Québec	Virtual	Virtual Hearings – cour-superieure (coursuperieureduquebec.ca)
Saskatchewan	Court of Appeal for Saskatchewan	Remote	COVID-19 UPDATE Saskatchewan Courts (sasklawcourts.ca)
	Law Society of Saskatchewan	Remote	OC390-2020.pdf

Yukon	Supreme Court of Yukon	Virtual	General-11 Use of Electronic Equipment During Court Proceedings- amended sept 3 2021.pdf (yukoncourts.ca)
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Appendix 3: Interview Guide

Interview Guide for CACs/CYACs Doing Virtual Testimony

1. What type of CAC/CYAC model is the centre using? Tell us a bit about the decision to set up a dedicated space?
2. Please describe the setup of the space and the technology used in the space dedicated to virtual testimony. For example,
 - a) Is the remote testimony room in a separate space or is it a multi-purpose space?
 - b) Do you have any photos that you could share?
 - c) What was the overall cost?
 - d) What is working well?
 - e) What, if any, are the remaining challenges?
3. What has your CAC/CYAC learned regarding the use of virtual testimony? Please consider the following aspects:
 - a) Resources, processes and supporting tools such as protocols/policies – what needs to be in place?
 - b) How is virtual testimony facilitated/accessed? Who requests it?
 - c) Partnerships – who needs to be involved and when/how?
 - d) Impacts on the child and their family/supports
 - e) To the extent you can comment, impacts on the CJS professionals - Crown, defence, judge, court administration, etc.
4. If you do not use your virtual testimony facilities regularly, why not?
 - a) What are the barriers to increasing their use?
 - b) What are some potential solutions to overcoming these barriers?
5. Who has used the dedicated space to provide virtual testimony? For example, beyond child and youth clients of the CAC, have other professionals testified, or family members, or adults with disabilities?
 - a) If so, how often have these requests occurred? Who initiated them?
 - b) Were you able to accommodate these requests?
 - i) If so, what process was followed? Were there any challenges?
 - ii) If not, what were the barriers to proceeding?
 - c) Based on your experiences so far, what are the benefits and challenges in allowing other witnesses to testify from your CAC/CYAC?
6. Do you currently collect any data on the use of virtual testimony in your facilities (e.g. frequency of use, type of offence, outcomes, impacts/ perspectives of witnesses and their supports (support person, support animal, etc.))?
 - a) If so, what data do you collect? How is it collected? Is it shared with partners?
 - b) If not, would you have the capacity to collect such data? If so, how could this be facilitated? If not, what are the key barriers?

Note - The interview guide was adapted for CACs/CYACs considering virtual testimony or not considering it.