House of Commons
Canada

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.
Chair

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HOUSE OF COMMONS

Issue No. 101

Thursday, May 13, 1993
Thursday, June 3, 1993

Chairperson: Bob Horner

CHAMBRE DES COMMUNES

Fascicule nº 101

Le jeudi 13 mai 1993
Le jeudi 3 juin 1993

Président: Bob Horner

Minutes of Proceedings and Evidence of the Standing Committee on

Justice and the Solicitor General

Procès-verbaux et témoignages du Comité permanent de la

Justice et du Solliciteur général

RESPECTING:

Order of Reference of Monday, May 11, 1992:

Four-year Review of the *Act to amend the Criminal Code* and the *Canada Evidence Act* (Sexual Offences), Chapter 19, 3rd Supplement, revised statutes of Canada, 1985, (formerly Bill C-15)

INCLUDING:

The Seventeenth Report to the House

CONCERNANT:

Ordre de renvoi du lundi 11 mai 1992:

Examen de quatre ans de la *Loi modifiant le Code criminel* et la *Loi sur la preuve au Canada* (infractions d'ordre sexuel), chapitre 19, 3e supplément, Lois révisées du Canada, 1985, (anciennement le projet de loi C-15)

Y COMPRIS:

Le dix-septième rapport à la Chambre

WITNESSES:

(See back cover)

TÉMOINS:

(Voir à l'endos)

Third Session of the Thirty-fourth Parliament,
1991-92-93

Troisième session de la trente-quatrième législature,
1991-1992-1993

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The Standing Committee on Justice and the Solicitor General has the honour to present its

SEVENTEENTH REPORT

In accordance with its Order of Reference of Monday, May 11, 1992, your Committee has considered the Four-Year Review of the *Act to amend the Criminal Code* and the *Canada Evidence Act* (Sexual Offences), Chapter 19, 3rd Supplement, Revised Statutes of Canada, 1985, (formerly Bill C-15) and has agreed to report it with the following recommendations which read as follows:

Order of Reference

Extract from the Votes & Proceedings of the House of Commons of Monday, May 11, 1992.

By unanimous consent, it was ordered,—That pursuant to section 19 of *An Act to amend the Criminal Code* and the *Canada Evidence Act* (Sexual Offences), Chapter 19, 3rd Supplement, Revised Statutes of Canada, 1985, the Standing Committee on Justice and Solicitor General be the committee to review the Act.

ATTEST

ROBERT MARLEAU
Clerk of the House of Commons

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INTRODUCTION

The protection of children from sexual abuse and exploitation has been under review in Canada since the early 1980's. In 1981, the federal government established the Committee on Sexual Offences Against Children and Youths, chaired by Dr. Robin Badgley. The mandate of the Committee was "to enquire into the incidence and prevalence in Canada of sexual offences against children and youths and to recommend improvements in laws for the protection of young persons from sexual abuse and exploitation."[1] To this end, the Committee (known as the Badgley Committee) designed and carried out broad-ranging social and legal research that produced the first interdisciplinary and national perspective in this country on the problems related to the sexual abuse of children. Its final report included 52 recommendations, many of which dealt with needed amendments in the laws for the protection of young victims of sexual abuse. However, the Badgley Committee was critical of the ineffectiveness of both legal and social measures to protect children against sexual offences. It wrote:

> On the basis of our findings about some 10,000 cases of sexual offences against children and youths, our principal conclusions are that these crimes occur extensively and that the protection now afforded these young victims by the law and the public services is inadequate. The law is inequitable in its application. Sharp inequalities exist, often occurring in the same community, in the provision of assistance and protection for the victims of these offences.[2]

The Committee on Sexual Offences Against Children and Youths reported in 1984. Subsequently, the federal government, which has exclusive jurisdiction over criminal law in this country, introduced amendments to the provisions of the *Criminal Code* dealing with child sexual abuse. On 1 January 1988, an Act to amend the *Criminal Code* and the *Canada Evidence Act* with respect to sexual offences against children (Bill C-15), was proclaimed. The federal government's legislative initiative in this area sought to remedy a number of the problems child victims experienced when they sought justice in the criminal courts.[3] These problems included:

- individuals were not accorded equal protection of and responsibility under the law because a number of sexual offences were gender-specific, i.e. the victim had to be female and the offender male.
- the law offered adequate protection only from non-consensual sexual intercourse as opposed to other forms of sexual violation including fondling, masturbation and oral penetration.

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1 Report of the Committee on Sexual Offences Against Children and Youths, *Sexual Offences Against Children*, Volume 1, Supply and Services Canada, Ottawa, 1984, p. 3.

2 Ibid., p. 39.

3 For a more detailed discussion of the background to Bill C-15, see Carolina Giliberti, "Overview of the Research Pertaining to Bill C-15", Department of Justice, Ottawa, p. 2-3.

- no offence was deemed to have occurred if a child touched an offender in a sexual manner; if an offender requested a child to perform sexual acts; or if a person in a position of trust or authority towards a young person, or a person upon whom a young person is dependent, engaged in sexual acts with the young person.
- material evidence pertaining to sexual offences against children, while rarely available, was required to corroborate a child complainant's unsworn testimony for a conviction to occur.
- if a child did not disclose the sexual abuse at the first reasonable opportunity after the abuse occurred, the complainant's silence could be raised by the defence to suggest that the abuse may not have taken place.
- certain sexual offences had to be reported within a year of their occurrence or no charges could be laid.
- at trial, the defence was permitted to cross-examine the child complainant about his or her prior sexual history with persons other than the accused in order to impeach the credibility of the young complainant's evidence.

The amendments contained in Bill C-15 created new laws concerning child sexual abuse offences and new evidentiary provisions, and refined some existing offences. They were enacted to improve the protection and experiences of child victims and witnesses, facilitate the prosecution of child sexual abuse cases and balance penalties with the gravity of sex crimes against children.

Bill C-15 extended greater protection to persons under 14 by voiding their consent to sexual activity with an adult (ordinarily a defence in sexual assault cases). Sections 151, 152 and 153 created the new offences of "sexual interference" (touching a person under 14 for a sexual purpose), "invitation to sexual touching" (involving a person under 14) and "sexual exploitation" (sexual touching or invitation of persons over 14 but under 18, by a person in a position of trust or authority).

The legislation also created new and special procedural rules for the trial of sexual offences involving complainants under 18. For example, section 486(2.1) allows a young complainant to testify in sexual offence proceedings from behind a screen or from outside the courtroom (ordinarily by means of closed-circuit television). Under section 715.1, victims under 18 may also give evidence in such proceedings by videotape made within a reasonable time after the commission of the offence, so long as the complainant adopts the contents of the videotape during testimony at trial. At trial of various sexual offences, the complainant and any witness under the age of 18 has the right to seek an order banning publication of identifying information. The presiding judge must inform them of that right and grant the order, upon application by either the witness, complainant or prosecutor.

Under section 274, corroboration of the victim's testimony is no longer required for conviction in sexual offences. Section 276(1) removed the right of defence counsel to question the complainant at trial about sexual activity with someone other than the accused. Section 4(2) of the *Canada Evidence Act* renders an accused's husband or wife a competent and compellable witness in the prosecution of the aforementioned *Criminal Code* offences, a provision which may have particular application in cases of abuse by a parent. Under section 275, recent complaint with respect to child sexual abuse offences was abolished. Finally, section 16 of the *Canada Evidence Act* allows an unsworn child, who is able to communicate his or her evidence, to testify in court on a promise to tell the truth.

The *Criminal Code* amendments required that a Committee of the House of Commons conduct a review of the child sexual abuse provisions after 4 years in operation. The Standing Committee on Justice and the Solicitor General received an Order of Reference from the House of Commons to undertake the review on 11 May 1992. From 27 April to 13 May 1993, the Committee heard and received written submissions from witnesses. They included academics, legal practitioners, child advocates, government officials, front-line agencies and community organizations.

In preparation for the statutorily-mandated review, the Department of Justice undertook research studies in a number of Canadian jurisdictions to assess the impact of the new legislation on the processing of child sexual abuse cases by the criminal justice system. The results of this evaluation research were presented to the Committee and are discussed in the next section of this report. In the remainder of the report, the Committee's findings and recommendations, on both legal and administrative issues it believes are in need of reform, are set out.

SUMMARY OF DEPARTMENT OF JUSTICE EVALUATION RESEARCH FINDINGS[4]

A. Offences

- Over time, charges under the new offences increased. Charges were laid with greater frequency under s. 151 (sexual interference) than under s. 152 (invitation to sexual touching) or s. 153 (sexual exploitation). Most child sexual assaults involved genital fondling, not sexual intercourse.
- The victim was identified as male in 20 to 30 percent, and female in 70 to 80 percent, of the child sexual abuse cases reviewed.
- A significant number of child sexual abuse cases did not result in charges being laid or they dropped out of the system before trial.
- Of the cases in which charges were laid, the accused pleaded guilty before trial in between 22 and 28 percent of the cases.
- Conviction rates were high due, in part, to a large percentage of guilty pleas. Conviction rates ranged from 59 percent to 83 percent.
- Incarceration rates ranged from 51 to 83 percent.

B. Perpetrators

- In the majority of cases, the perpetrator was known to the victim. Sexual abuse by a stranger occurred in 7 to 25 percent of the cases reviewed.

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

- In over 94 percent of the child sexual abuse cases, the accused was male. Typically, he was the child's father, stepfather or the common-law partner of the child victim's mother.

- More than a third of offenders were young offenders.

C. Rules of Evidence and Procedure

- Most child sexual abuse victims are under 12 years of age, and between 15 and 22 percent are under five. In the view of criminal justice system practitioners, increasingly young children are testifying.

- In many cases, convictions were obtained in the absence of evidence corroborating the child's complaint.

- Screens blocking the victim's view of the accused when testifying in the courtroom, and closed-circuit televisions allowing the child to testify outside the courtroom, were rarely used.

LEGISLATIVE ISSUES FOR REFORM

In the course of this review, submissions were overwhelmingly in support of the Bill C-15, in general, and many witnesses testified to the benefits accruing to young persons from its implementation. For example, the Institute for the Prevention of Child Abuse said that Bill C-15 "seems to have made a very significant contribution to enabling children to participate more actively in the criminal justice process." (90:6)[5] While acknowledging the progress achieved by Bill C-15, Professor Nicholas Bala argued that there was need for still further reform. (90:9) In particular, suggestions were made to improve the experience of young complainants who become involved in the workings of the criminal justice system.

Some aspects of Bill C-15 attracted little or no comment from witnesses, suggesting that those provisions are working well and not creating any noticeable difficulties in implementation or application by the courts. Lack of comment may also stem from the fact that some of the offence provisions have seen little or no use. In any event, the Committee's comments will focus on those areas that have consistently been identified by witnesses as requiring attention. In the Committee's opinion, those C-15 amendments not canvassed do not require any specific attention or amendment at this time.

The recommendations heard by the Committee can be separated into three general aspects of Bill C-15. Testimony tended to focus on the operation or shortcomings of specific *Criminal Code* offences dealing with child sexual abuse and on the efficacy of various aids to testimony, both legislated and informal. A third important aspect involved legislated and common-law rules of evidence.

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[5] Note: (90:6) refers to testimony contained in the Committee's *Minutes of Proceedings and Evidence*. The first number indicates the Issue number and the second number refers to the page at which the source referred to can be found.

A. Offences

1. Section 150.1 — Consent as a Defence

Prior to Bill C-15, the *Criminal Code* made it an offence for any male person to have sexual intercourse with a female, not his wife, who was under the age of 14. Belief that the female was over 14 was not a defence to the charge, nor was her consent. A separate section exempted males under 14 from liability for this offence.

Section 150.1 extended the law to remove the defence of consent from various newly-created sexual offences (discussed below) and from the sexual assault provisions for both girls and boys under 14. An honest mistake about the age of the young person is still not a defence unless an accused has taken "all reasonable steps" to determine his or her age.

In recognition of sexual activity between peers, section 150.1 allows consent as a defence to sexual activity with a young person over 12 but under 14, if the accused is under 16 and less than two years older than the complainant. Likewise, persons under 14 are protected from prosecution for some of the new offences involving those under 14.[6] However, neither of those exemptions apply in situations where the accused is in a position of trust or authority towards the complainant or the complainant is in a relationship of dependency with the accused.

Section 150.1 was passed in response to the need to make offences against young persons gender neutral and to make it clear "that children under 12 are not old enough to consent to any sexual activity with anyone."[7]

The Committee heard a number of suggestions for reform of this provision. For example, Citizen's Against Child Exploitation believed that the age at which a young person's consent is valid should be raised from 14 to 16, with three years being the permissible age difference between consenting adolescents. The National Association of Women and the Law took the position that a 12 or 13 year old should not be exempt from prosecution for those sexual offences mentioned above. In order to be consistent with the *Young Offenders Act* treatment of other offences, the age of criminal responsibility for those offences should also be 12. (100:30) Professor Nicholas Bala thought that s. 150.1 was in need of redrafting to make it more comprehensible to young persons. (90:10)

Although the language of s. 150.1 could be clearer, the Committee is not persuaded that this provision is in need of any substantive change. Achieving a consensus on suitable age limits for certain adolescent behaviours and responsibility is probably impossible and any legislation that draws a line based on chronological age is bound to be somewhat arbitrary. In the course of its review, the Committee was not made aware of any serious problems with the section, nor was it provided with sufficient testimony to justify changing the age limits currently established by the legislation.

Therefore the Committee recommends:

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[6] Those offences include s. 151 (sexual interference), s. 152 (invitation to sexual touching) and s. 173(2) (exposing genitals for a sexual purpose).

[7] Schmolka (1992), p. 27-28.

That section 150.1 of the *Criminal Code* be retained in its present form.

2. *Sections 151, 152, 153 — Major New Offences*

These provisions, introduced by Bill C-15, created new gender neutral offences in response to identified shortcomings in the old law. All three can be prosecuted either summarily or by indictment.

Section 151 created a new offence of "sexual interference" that prohibits touching a person under the age of 14, for a sexual purpose. It "describes a broad range of inappropriate touching that was not covered in the old law."[8] Section 152 created the offence of "invitation to sexual touching" that prohibits inviting someone under 14 to touch himself or herself, or another, for a sexual purpose. That section replaced the old offence of "gross indecency" that could only be prosecuted as an indictable offence.[9]

Section 153 replaced the old law that made it an offence for a male to have sexual intercourse with a female over 14 but under 16 who was of "previously chaste character." Under the old law, failure to prove that the accused was "more to blame than the female person" could result in an acquittal. Section 153 prohibits sexual interference or invitation to sexual touching (the same behaviour forbidden by ss. 151 and 152), involving young persons between the ages of 14 and 18, where the accused is in a relationship of trust or authority towards the complainant or the complainant is in a relationship of dependency with the accused. Again, an honest mistake about the age of the young person will not be a defence unless an accused has taken "all reasonable steps" to determine their age.[10] Under the new law, previous sexual experience or consent are no longer relevant where this special relationship exists.

The Committee heard a number of recommendations on these three provisions. In its original brief on Bill C-15, the Canadian Bar Association had said that s. 151 was unnecessary since the behaviour involved in "sexual interference" was already covered by sexual assault or gross indecency. The Canadian Bar Association had also said that s. 153 was unnecessary since an abuse of trust was already taken into account in sentencing as an aggravating factor. They were also of the view that the element of consent should not be eliminated from the definition of this offence. During this review of Bill C-15, the Canadian Bar Association expressed concern that s. 153 seeks to punish consensual sexual activity on the basis of relationship, alone, without any requirement that there be any exploitation. (99:19) Finally, the Canadian Bar Association recommended that sections 151 and 153 be reviewed again in four years to determine whether they are necessary. (p. 83-88)[11]

In contrast, the brief submitted by the Victim/Witness Assistance Program of the Ontario Ministry of the Attorney General made the following argument in support of retaining these particular offences:

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[8] Ibid., p. 31.

[9] Ibid., p. 34.

[10] *Criminal Code*, s. 150.1 (5).

[11] Bracketed page numbers in the text refer to pages in the brief submitted by that witness.

> All three offences cover fact situations that would not necessarily be prosecutable by the more general offence of sexual assault. The existence of these charges recognizes the varying ways with which sexual harm can be perpetrated against a child. As a result, it holds individuals criminally accountable for a much broader range of damaging and sexually intrusive behaviour than before.
>
> Further, these offences are easily recognizable on a criminal record as offences against children as opposed to the generic charge of sexual assault. (p. 16)

The Committee also notes that the Ontario communities study researchers found that "Crowns, CAS workers, and police commented that the new offences have resulted in more charges being laid because the new offences have expanded the range of criminal conduct against children."[12]

Although the research also indicated that charges continue to be laid under the sexual assault provisions instead of, or in addition to, these new sections the Committee is not persuaded that either s. 151 or s. 153 is unnecessary. For reasons best expressed by the Ontario Ministry of the Attorney General, the Committee finds itself in agreement with those in favour of retention.

Therefore the Committee recommends:

That sections 151, 152 and 153 of the *Criminal Code* be retained in their present form.

3. *Section 159 — Anal Intercourse*

Prior to Bill C-15, the *Criminal Code* prohibited "buggery," except in private between a husband and wife, or between two consenting individuals who were both 21 years of age or more. The new provision retains anal intercourse as an offence, but excludes acts "engaged in, in private, between husband and wife, or any two persons, each of whom is eighteen years of age or more, both of whom consent to the act." Section 159 also says that consent is deemed to be lacking where it is obtained by force, threats, fear or misrepresentations, or where consent is not possible "by reason of mental disability."

A number of different concerns were raised about this provision during the Committee's review. The Institute for the Prevention of Child Abuse called for removal of the specific offence of anal intercourse from the *Criminal Code*, on the ground that it discriminates on the basis of sexual preference. (p. 4) Professor Nicholas Bala agreed, so long as s. 265 of the *Criminal Code* was amended to protect persons with severe mental disabilities.[13] (p. 3) However, the Canadian Association for Community Living argued for repeal of at least that part of s. 159 that identifies mental disability as a bar to the defence of consent "because of the implication that a person with a mental disability is incapable of consensual sexual activities." (p. 10) Finally, the National Association of Women and the Law also called for repeal of s. 159, to be replaced by a new offence of "penetration" which would include anal intercourse in non-consensual circumstances. (p. 11)

The Committee is aware that the constitutional validity of this offence has been challenged under s. 7 of the *Canadian Charter of Rights and Freedoms*, with varying results. It has been upheld in Alberta Provincial Court and, more recently, held to be an unjustified infringement of s. 7 by the

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[12] Schmolka (1992), p. 33-34.

[13] Section 265(3) sets out various circumstances under which no consent is obtained in assault cases.

Ontario Court, General Division.[14] At the time of writing, it appears that s. 159 may soon be considered by the Ontario Court of Appeal.[15] Apart from the constitutional question, some witnesses expressed concerns about the fairness of criminalizing a particular kind of sexual activity between persons who could validly consent to other acts.

However, there was no consensus on whether repeal of all or part of s. 159 would necessitate additional or substitute provisions. While s. 159 may ultimately be held to be unconstitutional, the issue has yet to reach a final resolution. In the meantime, the Committee has not heard sufficient evidence to conclude that s. 159 is of no utility in providing children with the protection that Bill C-15 was intended to deliver. For those reasons, it is not prepared to recommend repeal of this section. Rather, the Committee believes that the matter should be allowed to work its way through the courts. In the event that legislative reform is eventually called for, Parliament would be in a better position to respond having had the benefit of judicial reasoning on the issues.

Therefore the Committee recommends:

That section 159 of the *Criminal Code* be retained in its present form.

4. *Section 179(1)(b) — Vagrancy*

Section 179(1)(*b*) applies to those persons who have been convicted of certain listed sexual offences or a "serious personal injury offence," as defined by the Dangerous Offender provisions of the *Criminal Code*.[16] Anyone convicted of such an offence would be guilty of the summary conviction offence of vagrancy, if he or she is "found loitering in or near a school ground, playground, public park or bathing area."

This is another of the Bill C-15 provisions that has come under constitutional attack and a number of witnesses have made suggestions for reform. The Institute for the Prevention of Child Abuse recommended that s. 179 be reworded to better reflect the intention of the legislation. (p. 5) The Metropolitan Toronto Special Committee on Child Abuse also thought that a more specifically worded offence would offer better protection to children. (94:27) Other reform suggestions involve recently introduced legislation which has a similar application and may be intended to replace s. 179(1)(*b*).[17] For example, the Canadian Bar Association recommended repeal of s. 179(1)(*b*), arguing that provisions included in Bill C-126 would be a step in the right direction. (p. 74) The Barreau du Québec argued that s. 179(1)(*b*) does not provide the protection it was expected to provide and that the objectives of the provision would be better served by specific probation orders, as contemplated by Bill C-126. (95:16-17)

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[14] Nicholas Bala, Wendy Harvey, Hilary McCormack, *The Prosecution of Sexual Offences Against Children and Bill C-15: A Case Law Research Project*, Department of Justice, Canada, Ottawa, 1992, p. 20.

[15] See *R.* v. *C.M.* (1992), 75 c.c.c. (3d) 556 (Ont. Ct. Gen. Div.).

[16] Those listed sexual offences include the aforementioned sections 151, 152 and 153, as well as s. 160(3) (bestiality involving a child), s. 173(2) (exposing genitals to a child) and the three levels of sexual assault.

[17] Bill C-126, introduced 27 April 1993, contains a provision that would require a sentencing court to consider making a prohibition order against any offender convicted of specific sexual offences involving persons under 14. The order could prohibit attendance at a school ground or public park where those under 14 are likely to be present, or it could ban the offender from paid or unpaid work involving "a position of trust or authority towards persons under the age of fourteen years."

Notwithstanding differing opinions on how it might be accomplished, witnesses generally acknowledged the need for legislation that protects children by keeping known sex offenders away from them. However, the Committee notes that s. 179(1)(*b*), as enacted by Bill C-15, has been found unconstitutional by the British Columbia Court of Appeal.[18] Once again, the Committee is reluctant to suggest amendment or reform of a *Criminal Code* provision that is currently *sub judice*, not the least because of the value of judicial comment on legislative provisions of this nature.

In the event that the Supreme Court of Canada does not uphold the validity of s. 179(1)(*b*), the provisions of Bill C-126 may provide a constitutionally viable alternative. However, the Committee notes that Bill C-126 is currently being reviewed by a Legislative Committee that will have the benefit of reaction and comment on proposed *Criminal Code* s. 161 from a number of interested parties. Therefore, it would be premature for this Committee to endorse that aspect of Bill C-126 at this time.

Furthermore, the Committee believes that s. 179(1)(*b*) should be retained in its present form, at least until its constitutional validity is finally determined.

Therefore the Committee recommends:

That section 179(1)(*b*) of the *Criminal Code* be retained in its present form.

B. Witness Testimony/Protection

1. Sections 486(2.1)&(2.2) — Screened/Closed-Circuit Testimony

These two provisions in Bill C-15 were intended to alleviate those situations where young complainants were unable to testify due to the trauma they experienced on simply being in the presence of the accused. Section 486(2.1) initially allowed complainants under the age of 18 to testify from outside the courtroom or behind a screen, at a preliminary inquiry or trial of listed sexual offences.[19] Before making such an order, the judge must form the opinion that "exclusion is necessary to obtain a full and candid account of the acts complained of from the complainant." As a result of subsequent amendments, s. 486(2.1) now extends the same protection to a complainant who "is able to communicate evidence but may have difficulty doing so by reason of a mental or physical disability."[20] According to s. 486(2.2), a complainant may testify outside the court room only if the accused, the judge and the jury are able to watch the testimony, ordinarily by means of closed-circuit television, and the accused is able to communicate with counsel while watching.

The Institute for the Prevention of Child Abuse recommended that s. 486(2.1) be amended to allow any child witness the opportunity to testify from behind a screen or via closed-circuit television and that the test for use of such aids be expanded to include consideration of the general

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[18] See *R.* v. *Heywood*, 10 December 1992, (B.C.C.A.) Application for leave to appeal to the Supreme Court of Canada was filed 19 January 1993.

[19] The list includes offences under sections 151, 152, 153, 155, 159, 160(2) or (3), 170, 171, 172, 173, 271, 272 and 273.

[20] *An Act to amend certain Acts with respect to persons with disabilities*, S.C. 1992, Chap. 21, s. 9.

well-being of the child. (p. 6) The Barreau du Québec argued that access to screens or remote testimony should be automatic for any witness under 14 and at the discretion of the court for those over 14 but under 18. (95:6) They were particularly critical of the lengthy hearings conducted by courts applying the legislated test for the use of screened or remote testimony.

The Child Witness Project of the London Family Court Clinic argued that the test for use of screens or closed-circuit testimony should be abolished and their use should be at the option of the complainants. (p. 16-17)

Niagara Family and Children's Services, objected to young witnesses being required to testify in order to establish the probability of serious emotional trauma if he or she is forced to face the defendant. They felt that expert testimony should be sufficient and that "the court should relieve the child of the necessity to demonstrate distress to the court in order for the court to exercise discretion to protect the child." (p. 2)

The Canadian Bar Association argued that because this provision is currently under constitutional challenge, it would be premature to amend at this time. Should this section pass constitutional muster, a number of reform suggestions were made by the Canadian Bar Association, including legislated criteria to assist the court in determining when, and if, screened or closed-circuit testimony should be allowed. In addition, a child victim in need of that option should be a competent but not compellable witness on a *voir dire* conducted to make that determination. (99:10)

The Committee is aware that this part of Bill C-15 is currently on appeal to the Supreme Court of Canada. The Committee also notes, however, that the Ontario Court of Appeal has held that s. 486(2.1) does not infringe an accused's right to fundamental justice but, if it did, would be justified as a reasonable limit under s. 1 of the Charter.[21] The Court also held that s. 486(2.1) does not undermine the presumption of innocence or prejudice the rights of an accused to a fair trial, so long as the jury is properly instructed that "no adverse inference should be drawn against the accused" because of the use of a screen.[22]

The Committee believes that the operation of s. 486(2.1) is made unnecessarily cumbersome and time consuming by the need to establish that remote or screened testimony is "necessary to obtain a full and candid account of the acts complained of from the complainant." The impact of delays caused by protracted arguments and the possibility of having to testify at a *voir dire* to establish the need to testify out of sight of the accused could be particularly harmful to younger witnesses. Moreover, the Committee sees no need to restrict the ambit of the provision to cases of sexual abuse.

The Committee is of the view that victims of physical as well as sexual abuse who are under the age of 14 should testify from behind a screen or outside the court room, as a general rule. In those instances where the child wishes to face the accused, the Crown should be empowered to seek the court's permission to dispense with the use of those aids. The use of screened or remote testimony should continue to be at the discretion of the courts for those victims who are over 14 but under 18 years of age.

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[21] See *R.* v. *Levogiannis* (1990), 2 C.R. (4th) 355 (Ont. C.A.).

[22] Ibid., p. 380.

Therefore the Committee recommends:

That Section 486(2.1) of the *Criminal Code* be amended to provide that any victim of physical or sexual abuse under the age of 14 years will testify from behind a screen or outside the court room unless the Crown asks the court to order otherwise.

2. *Section 715.1 — Videotaped Evidence*

Section 715.1 allows complainants under 18 to give evidence of a sexual offence by way of videotape so long as it was made within a reasonable time after the offence was committed and provided that the complainant adopts the contents of the videotape during testimony. Before this provision that was enacted as part of Bill C-15, testimony of this nature would ordinarily have been inadmissible as a previous consistent statement. Section 715.1 was intended to preserve the evidence of children who might not otherwise recall events that took place months or years before and also to remove the need for them to repeat their story many times, both in and out of court.[23]

Although witnesses generally supported the use of videotaped evidence to assist children in testifying, a number of shortcomings in legislation and practice were identified. The National Association of Women and the Law recommended amendments to allow the admission of videotapes made soon after disclosure since that may be much later in time than the commission of the offence which is the controlling event in the present legislation. (p. 19-20) Other witnesses, including the Metropolitan Toronto Special Committee on Child Abuse, recommended that videotaped evidence should be admissible for all child victim-witnesses appearing before the courts. (p. 4) The Canadian Association for Community Living thought that videotaped testimony of persons with communication disabilities should also be admissible. (p. 8) The Institute for the Prevention of Child Abuse, among others, recommended that children be examined and cross-examined in advance of the trial, in the presence of the judge, so that the proceedings could be videotaped and presented at trial in place of the child's testimony. (p. 7)

On the other hand, Professor Bala argued that further legislative action might be premature at this time since the constitutional validity of s. 715.1 is currently under attack. (p. 4) However, in the event that s. 715.1 is declared inoperative by the Supreme Court of Canada, the Canadian Bar Association suggested a redrafting of the provision to strike the appropriate balance between the needs of child witnesses and the rights of the accused. (p. 69)

The Committee also heard a good deal of evidence concerning the value of videotaped testimony, both in and out of court; only the Barreau du Québec said that s. 715.1 should be repealed, because of the difficulties inherent in implementing the legislation. (p. 6) The Committee is satisfied that young complainants in sexual abuse cases can benefit from the use and admissibility of videotaped testimony, notwithstanding previously mentioned shortcomings in the operation of

[23] Schmolka, (1992), p. 70.

s. 715.1. However, the Committee notes that s. 715.1 has been declared invalid by the Manitoba Court of Appeal in a case that will soon be heard by the Supreme Court of Canada.[24] For that reason, it is agreed that any legislative action in the matter should await a decision in *R.* v. *Laramee*.

On a related issue, Crown counsel Wendy Harvey recommended enacting a provision to protect the privacy of any videotaped evidence by making it a criminal offence to misuse the tapes. (p. 23) That suggestion found support with the Canadian Bar Association who agreed that there should be legislation to prohibit disclosure of these tapes or their use beyond the purposes of trial preparation. (99:13)

In light of what it heard, the Committee recommends:

That the *Criminal Code* be amended to protect the privacy of complainants by making it an offence to use videotapes for purposes other than those related to trial.

C. Additional Issues

A number of witnesses suggested the creation of new offences or amendments to existing provisions that were not part of Bill C-15 but are very much related to the stated goals of that legislation. Those suggested reforms are discussed below.

1. Section 155 — Incest

The National Association of Women and the Law recommended that s. 155, prohibiting incest, should be expanded to include family members whose relationship is not limited to blood ties and to capture a broader range of sexual conduct such as sexual interference or invitation to touching. (p. 7)

The Committee acknowledges the concerns raised in regard to this offence. However, given the historical basis of consanguinity for the offence of incest and the availability of other avenues of prosecution, the Committee is not persuaded that s. 155 requires any amendment.

2. Section 486(1) — Exclusion of Public

Under this section, proceedings are ordinarily required to be held in open court but the judge has discretion to exclude any or all members of the public where it is "in the interest of public morals, the maintenance of order or the proper administration of justice."[25] Although this provision was not changed by Bill C-15, a number of witnesses made suggestions for amendments to acknowledge the special needs of child witnesses, including the difficulty they may have giving a full and candid account of their experience in a courtroom crowded with strangers.

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[24] See *R.* v. *Laramee* (1991), 73 Man. R. (2nd) 238 (Man. C.A.); leave to appeal to the Supreme Court of Canada granted 6 February 1992.

[25] In the trial of sexual offences, s. 486(2) requires a judge who refuses a request for an exclusion order to state his or her reasons for not making the order.

The Metropolitan Toronto Special Committee on Child Abuse agreed that telling their story in front of strangers is "one of the biggest fears that children have about testifying." (p. 11) Because children may be intimidated at having to describe traumatic and sometimes degrading events in front of strangers, the Child Witness Project of the London Family Court Clinic recommended that all cases involving child complainants be routinely heard in a closed courtroom. (97:8) Professor Bala recommended that the public be automatically excluded during testimony of children under the age of 14, (90:11) while the National Association of Women and the Law thought that judges should be obliged to grant an order of exclusion during testimony by any complainant or child witness under 14, upon request by the Crown. (p. 24)

Among other goals, Bill C-15 was intended to increase the successful prosecution of child sexual abuse cases and to improve the experience of child victims and witnesses. Obviously, an important objective of this Review is to identify and remedy situations that may inhibit the court room testimony of young witnesses. The Committee notes that Bill C-126 contains amendments to s. 486 that may widen a judge's discretion to exclude the public, at least where witnesses under 14 are concerned. Under proposed s. 486(1.1), the interests of the proper administration of justice that may support an order excluding the public will include "ensuring that the interests of witnesses under the age of fourteen years are safeguarded in proceedings in which the accused is charged with a sexual offence,.."

From this Committee's perspective, the proposed legislation addresses the issue and the details of that particular section are best left to the consideration of the Legislative Committee examining Bill C-126.

D. Presence of Neutral Support Person

The Child Witness Project of the London Family Court Clinic recommended that child witnesses be permitted to have a neutral person accompany them to the stand and to stay with them during their testimony. (p. 21) The Victim/Witness Assistance Program of the Ontario Ministry of the Attorney General also advocated the presence of a support person for child witnesses. (p. 18) Lynda Filbert, of Family and Children's Services, Niagara agreed that the presence of a support person should be permitted during a child's testimony, although she had reservations about leaving the choice entirely up to the complainant. (99:41)

The Committee notes that Bill C-126 contains amendments that would allow a witness under 14 to have a support person present and close by while he or she is testifying, upon order by the judge. The application of proposed s. 486(1.2) would be limited to proceedings where the accused is charged with a sexual offence, sexual assault or an offence where violence against the person is alleged to have been used, threatened or attempted. As with various other provisions of Bill C-126, this Committee would like to indicate its support for the intent of proposed section 486(1.2) while leaving consideration of it to the Legislative Committee.

E. Ban on Accused Cross-Examining Child Witness

During the course of this Review, the Committee heard evidence from a number of witnesses who advocated amendments to the *Criminal Code* that would prohibit cross-examination of a child witness by the accused, personally. The Child Witness Project of the London Family Court Clinic argued that this prohibition was particularly necessary in cases involving intra-familial abuse. (97:7)

The Committee acknowledges the trauma that could be caused by cross-examination by the accused and agrees with the aforementioned proposal, in principle. However, the Committee is concerned about the manner in which such a prohibition could be carried out while still protecting the legal rights of the accused. Once again, the Committee notes that a provision in Bill C-126 addresses this issue.[26] Therefore, the Committee will leave consideration of the details of such legislation and its implementation to the Legislative Committee on Bill C-126 who will have the benefit of evidence on this issue from a number of sources.

F. Abolition of Preliminary Inquiry

Throughout this Review of Bill C-15, the Committee heard repeated reference to the fact that the prosecution of child sexual abuse cases takes far too long. This issue takes on additional significance when one considers the London Family Court Clinic's submission that emotional recovery from the assault does not begin until after the verdict. (p. 20)

As a means of minimizing delays within the legal system, and eliminating the need to testify twice, Professor Bala suggested that preliminary inquiries be abolished. (90:13) He questioned the value of preliminary inquiries, in general, and argued that the added delay and expense they occasion is unnecessary when the same purpose could be achieved by a statutory right to full disclosure. (p. 6)

The Committee agrees that the trial of sexual abuse cases must be expedited for the good of all concerned, but especially for young persons whose treatment may be delayed and for whom a year or two constitutes a very large part of their life experience. It may well be preliminary inquiries could be eliminated in all cases, or in all but a few cases, without seriously disrupting the operation of our criminal justice system or unduly trenching on the rights of accused persons. However, while the suggestion is not without merit, the Committee believes that such a fundamental alteration of the existing judicial system is well beyond the scope of this review and would require a good deal more consultation and study before serious consideration could be given to such a step.

G. Child Pornography

A number of witnesses recommended legislation that would make it an offence to possess or produce child pornography or to show pornography to a child. The Institute for the Prevention of Child Abuse expressed concern that pornography may be used to persuade a child "that sex between adults and children is normal and healthy." (p. 5) Detective Staff Sergeant Robert Matthews of the Ontario Provincial Police Anti-Rackets Branch agreed that child pornography is used as a tool by paedophiles to seduce children. (92:32) Professor Bala made the point that the production of visual child pornography also involves exploitation of the child depicted. (p. 3)

In its Twelfth Report to the House of Commons in February 1993, this Committee discussed requests for additional legislation to better protect children from sexual exploitation. At that time, the issue of child pornography was deferred for consideration in the context of this Review of the

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[26] Proposed s. 486(2.3) would prohibit an accused from personally cross-examining a witness under 14, unless the judge is of the opinion that the proper administration of justice requires it. This prohibition would be available in cases involving a sexual offence, sexual assault or an offence in which violence against the person was allegedly used, threatened or attempted.

child sexual abuse provisions of Bill C-15.[27] Since that time, the Committee is pleased to note, the Minister of Justice has introduced a bill that addresses some of the aforementioned concerns. Bill C-128, introduced on 13 May 1993, would make it a *Criminal Code* offence to possess, distribute or make "child pornography" and would amend the *Customs Tariff* to prohibit the importation of such material into Canada.

However, Billl C-128 does not include written material in its ambit and, therefore, material such as the North American Man-Boy Love Association's Bulletin would still be legal to possess. Several witnesses have called for a ban on possession of this type of written material. Vancouver Police Detective Noreen Wolff, appearing at the Committee's previous hearings on Crime Prevention, argued that there was a need for laws that would make it an offence to possess "NAMBLA-type material." (84:8) At hearings during this Review, Detective Staff Sergeant Matthews expressed emphatic agreement with the need for such reform. (92:37)

Therefore, this Committee endorses the intent of Bill C-128 but urges that amendments be seriously considered at Committee stage, to make it an offence to possess material, of any kind, which depicts, in any manner, or advocates, in any format, the sexual exploitation of children.

H. Codification of a Hearsay Exception/Similar Fact Evidence

The codification of certain rules of evidence was another recurring theme in this Review of Bill C-15. The National Association of Women and the Law recommended codification of the hearsay exception enunciated by the Supreme Court of Canada in *R.* v. *Khan*.[28] (p. 17) Professor Bala argued that the hearsay exception should be extended to allow admission of a child's out-of-court statement, even where the child is able to testify. (p. 5) He also suggested codification of an exception to the rule against similar fact evidence so that a history of prior abuse of children would be admissible "if its probative value is so high that it displaces the prejudice" that could result. (p. 5)

The Criminal Lawyers' Association of Ontario, on the other hand, recommended legislation to restrict the use of hearsay evidence by providing criteria and guidelines for judicial consideration. (p. 12) Citing the potentially great implications of the *Khan* case and "the current state of flux in the law," the Canadian Bar Association argued against a codification at this time.

The Committee agrees with the recommendation of the Canadian Bar Association to the effect that these rules of evidence should be allowed to continue to develop through judicial interpretation and application of the principles enunciated by the Supreme Court of Canada in *Khan* and other decisions.

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[27] *Crime Prevention in Canada: Toward a National Strategy*, Twelfth Report of the House of Commons Standing Committee on Justice and the Solicitor General, 23 February 1993, Issue No. 87, p. 32.

[28] [1990] 2 S.C.R. 531. In Khan, the Supreme Court held that a child's out-of-court statement to her mother was admissible because it was necessary, in that the child was not allowed to testify, and reliable, in the particular circumstances of the case.

I. Child Abuse Register

In his report *Reaching for Solutions*, Rix Rogers identified the need for screening of individuals "applying for or occupying paid or volunteer positions of responsibility for children."[29] That report recommended that the federal government ensure that legislation and polices would permit the disclosure of criminal records relating to child abuse, with appropriate protection for individuals concerned. During this Committee's hearings on Crime Prevention, Monica Rainey, president of Citizens Against Child Exploitation, called for the creation of a national register of convicted child abusers to provide a mechanism to screen those seeking paid or volunteer work with children.[30] During this Review, Professor Nicholas Bala also expressed support for such a register. (p. 6)

The Committee agrees that a national register of convicted child abusers is absolutely necessary for the better protection of children. It is aware that those with a propensity to abuse children may well be attracted to employment or volunteer activities involving contact with children. Therefore, the Committee agrees with Ms. Rainey that it is of the utmost importance that the access of those persons to children be strictly curtailed.

The Committee is also aware of significant legal and administrative barriers to the creation and maintenance of a national child abuse register. The division of constitutional powers between federal and provincial jurisdictions, alone, constitutes a significant hurdle that must be overcome. However, the committee agrees with Rix Rogers' position that a national register is certainly worth the effort. (90:31) In light of the importance of such a scheme and the need to ensure that it is both fair and workable, the Committee believes that the concept requires extensive study and consultation between levels of government.

In the meantime, the Committee notes that volunteer organizations and employers are not entirely without tools to screen out convicted abusers. Those who seek to occupy positions of trust or authority with children can be required to agree to a criminal records check now, as a condition of employment.

In light of the above, the Committee recommends:

That, at the first possible opportunity, a Parliamentary Committee be asked to study the development and implementation of a national child abuse register.

J. Correctional Institutions for Sex Offenders

In his appearance before the Committee, Dr. William Marshall expressed his support for a separate federal penitentiary for sex offenders. Currently, sex offenders are housed in correctional facilities with inmates who have been convicted of non-sexual offences. In Dr. Marshall's view, this scheme is neigher cost-effective nor does it contribute to the rehabilitation of convicted sex offenders. He told the Committee:

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[29] Rix Rogers, *Reaching for Solutions, The Report of the Special Advisor to the Minister of National Health and Welfare on Child Sexual Abuse in Canada*, Supply and Services Canada, 1990, p. 76.

[30] Twelfth Report of the House of Commons Standing Committee on Justice and the Solicitor General (23 February 1993), p. 32.

> First off, its a waste of resources. If you had one institution that housed sex offenders and sex offenders alone, you could put one treatment program in there and I would say that you'd probably save $300,000 or $400,000 a year on treatment and still be able to treat more and more effectively.
>
> Secondly, if you had all the sex offenders in the one institution, it would be much easier to do effective treatment. I do treatment with these fellows in an institution, and they can't talk about anything after I leave for fear that one of the other offenders will beat them up or cut their throats, give them a hard time, or whatever. And, that's just silly, because the time I spend there is meant to start the process of treatment, it's not meant to be the end of it. (100:6)

The Committee also heard that a model of this type has been successfully implemented in New Zealand. The Committee is impressed with Dr. Marshall's proposal and agrees it is of sufficient merit to warrant further study.

Therefore the Committee recommends:

That the Solicitor General consider the feasibility of incarcerating and treating convicted sex offenders in separate correctional institutions.

ADMINISTRATIVE ISSUES FOR REFORM

During the hearing process, many witnesses made recommendations for reform that relate more to the administration of justice and to the special needs of child sexual abuse witnesses than to child sexual abuse legislation per se. Indeed, in spite of the positive advances made by Bill C-15 with respect to the charging and prosecution of those who sexually abuse children, a number of the witnesses were critical of the manner in which child complainants of sexual abuse are treated by the criminal justice system. Rather than protecting children, it further traumatizes them, the Committee was told. Ron Ensom of the Child Protection Program, Children's Hospital of Eastern Ontario (CHEO), spoke of the re-abuse children and their parents experience with the court system. In his view, procedural reform to support witnesses of tender years as opposed to legal change is needed.

> Most sources of re-abuse in the criminal justice system now lie, I think, in the procedures, practices, and priorities surrounding the law. For this reason, much of the remedy lies here as well. (92:18)

Aspects of the criminal court of law that are particularly problematic include long delays between disclosures of sexual abuse and trial dates; inadequate victim/witness court preparation; professionals who do not have the expertise to deal with the complexities of child sexual abuse cases; lack of continuity of Crown counsel between the preliminary hearing and trial; courtrooms devoid of a child-friendly atmosphere; and intimidation of child witnesses by defence counsel. Witnesses opined that these factors produced considerable stress and anxiety in an already traumatized population of vulnerable victims.

The Child Witness Project of the London Family Court Clinic prepares child witnesses to testify in criminal court. In her opening statement to the Committee, the director of the Project, Dr. Louise Sas, spoke of the system-induced trauma experienced by children who attend court. She told the Committee that as a parent she would be reluctant to permit one of her children to testify in court if the child had been sexually abused.

> I'm a child psychologist, I'm a professional in the field, and I'm the mother of four very young children. I can tell you, very honestly, that if one of my children were sexually abused I would find it very difficult to allow that child to go to court and testify. It would not be what I would want for my child. (97:11)

The position of many parents of children who have been through the criminal justice system is unequivocal; they would not make another report of sexual abuse to the authorities. The Committee heard from Ron Ensom:

> The vast majority of parents in our study whose cases had been adjudicated reported a very poor experience with court. Most of these parents said they would not report another abuse of their child knowing what they know now. (92:19)

The criminal justice system was not set up to accommodate the needs of witnesses of tender years. The Committee was told, however, that there are compelling reasons for involving children in the criminal process. They are victims of sexually abusive behaviour that can devastate their lives and their families. Sexual activity between an adult and a child violates the laws of this country. Further, victimization of this kind is a major contributing factor in criminality among adults. And, according to Dr. William Marshall, who has treated sex offenders for more than 20 years, a prison sentence is almost always necessary to get a sex offender into treatment. (100:4) Given these facts, the state, the criminal justice system and the community clearly have an overriding interest in ensuring that the perpetrators of child sexual abuse and exploitation are apprehended, prosecuted and made accountable for their acts. However, because child sexual abuse is a clandestine act rarely witnessed by another person, a child's testimony often constitutes a large part of the Crown's case against the alleged abuser. Therefore, it behooves government authorities to reform the administration of justice in order to accommodate and protect child witnesses for the prosecution.

Lynda Filbert, of the Niagara Family and Children's Services, told the Committee:

> Children weren't supposed to be in court. They're there in increasing numbers, and it is for us to devise ways not only to assist the prosecution in ensuring that these people are held accountable for their acts but also to protect the child in that process. (99:41)

Relatively simple, non-legislative measures and safeguards were suggested to make the child's experience less intimidating. However, these measures are inconsistently available in courtrooms across Canada, the Committee was told. Many witnesses noted that procedures to mitigate the anxiety of complainants in child sexual abuse cases facilitate the trial process and do not infringe on the rights of accused persons to a fair and unbiased trial.

One witness cited research findings revealing the negative effects that failing to accommodate child witnesses in court may have on the search for truth. LeeAnn Lloyd of the Metropolitan Toronto Special Committee on Child Abuse told the Committee:

> . . .Research has shown that intimidation will actually promote the children to cooperate to the point of possibly giving wrong information on the witness stand or completely closing down. (94:18)

Rix Rogers, Chief Executive Officer of the Institute for the Prevention of Child Abuse, pointed out the positive effects a non-threatening atmosphere may produce

> . . .when children are in a very safe and secure environment they are really much better able to tell their story in a reliable way and overall. . .this serves the purpose of justice very well. (90:6)

The recommendations that follow are intended to improve the criminal court process for child witnesses. The Committee is aware that the administration of justice is a provincial responsibility. Yet, given federal responsibility for criminal law and the concern for children shared by both levels of government, it is of the view that the federal and provincial governments must work together in partnership to promote and support the personal safety and security of some of Canada's most vulnerable citizens. Jurisdictional issues should not become an excuse for failure to act to reform the criminal trial process and protect child witnesses.

A. Expediting Prosecution of Child Sexual Abuse Cases

The trauma of waiting for court and the negative effect this has on the lives of child sexual abuse complainants and their parents were highlighted by a number of witnesses. They emphasized the significance of expediting the prosecution of these cases to protect children from further abuse. The Committee heard from Ron Ensom of CHEO that in some jurisdictions delays of 18 to 24 months from a child's initial disclosure to the trial are common and "feel like an eternity of unrelenting anxiety and stress for victimized children and their parents." (92:18) Witnesses of the London Family Court Clinic also spoke of the disruptive impact long waits for the resolution of child sexual abuse cases have on the child witnesses. The Committee was told:

> Children describe their lives as being in limbo, that they can't tolerate the amount of stress, that they are preoccupied with trying to remember the details of the abuse when what they should be doing is trying to get on with their lives. Our experience as clinicians is that emotional recovery just does not begin until the court system is finished and there is a verdict. (97:8)

The Department of Justice research found that, on average, the duration from report to police to trial ranged from a low of 8 months for child sexual abuse cases in Edmonton to a high of 11 months for these cases in Hamilton. In interviews with parents in Alberta whose children had gone to court, the majority indicated that they had found the time from investigation to adjudication of the case to be too long.

The stress caused by long waiting periods for court is compounded in cases where parents are counselled not to communicate with their child about the abuse because such communication could jeopardize the successful prosecution of the case. In these circumstances, the Committee was informed, non-offending parents are expected to defer support for their child until after the matter has been adjudicated. In the Committee's view, this is an untenable expectation to impose on the parents of abused children as it very likely stalls the child's healing process and heightens levels of anxiety.

The brief submitted to the Committee by the London Family Court Clinic reported some disturbing findings. Its research found that the "highest incidence of suicide attempts, school drop out, assaultive behaviour and acting out against authority" among child sexual abuse complainants was observed during the period following disclosure and pre-trial. (p. 20) The London Family Court Clinic referred to the long wait for court as the "greatest source of secondary victimization."

It was also pointed out that delays in court proceedings may unfairly prejudice the credibility of young child witnesses because their ability to remember and accurately relate details of their abuse diminishes over time.

In view of these concerns, some witnesses recommended that legislation should be enacted to require that child sexual abuse cases be tried within six months of the report to police. While the Committee agrees that these cases should be expedited, it is not convinced that legislating a fixed time limit is the most auspicious course of action to adopt. In its deliberations, the Committee has asked itself, "what would be the result if a sexual abuse case is not adjudicated within the time limit?". It concluded that the result might be that the case would be dismissed and the accused would go free. This outcome would serve neither the interests of the child complainant nor society.

An alternative strategy to reduce court delays was suggested in the testimony of Robert Wakefield, Ottawa Director of the Criminal Lawyers' Association of Ontario. He described to the Committee the model that was developed in Ottawa to expedite criminal trials in the aftermath of the Supreme Court of Canada decision in *Askov*.

> In this jurisdiction after the decision in *Askov*, the bench and the bar and the judges and everybody made an effort to get all of the provincial court cases tried within six months, and they were successful on that until the Supreme Court of Canada, in *Morin*, took the pressure off and allowed the time to expand. When the pressure is there, if there's a dictate that cases must proceed at a certain rate, they'll proceed at that rate. ...The major concession was that the Crown stopped prosecuting marginal cases and concentrated its resources on the more serious ones. (99:30)

The Committee is impressed with this model. Mr. Wakefield's submission clearly indicates that it is possible for the key actors in the criminal justice system to work together to expedite cases. The Committee encourages participants in the criminal justice system across Canada to examine strategies to reduce the time between the laying of charges and adjudication and to implement policies that give priority to child sexual abuse cases in court scheduling.

Therefore the Committee recommends:

That the Minister of Justice work with provincial and territorial Attorneys General, bar associations and judicial councils to develop policies to expedite the prosecution of child sexual abuse cases.

B. Court Preparation

The Committee heard that children's lack of familiarity with the criminal justice process contributes significantly to fear and stress. A number of witnesses highlighted the importance of court preparation for children and their supportive adults to reduce trauma brought on by going to court. The design of a court room, the roles of those involved in the trial, the purpose of a trial, legal terminology and concepts, how to give evidence and the adversarial system are aspects of the criminal justice process that are not part of children's common stock of knowledge. Indeed, there is little in the experience of most adults to prepare them to be witnesses in a criminal court of law. The Committee was told that demystifying the criminal trial process prepares child witnesses for what is expected of them and helps them to cope with the pressure of testifying.

In the view of Dr. Sas, of the London Family Court Clinic, children deserve to be prepared for the ordeal of testifying.

> If we're going to continue to expect young children to take a part in the criminal justice system and to be child witnesses and to tell us what happened to them, then the very least we owe them are some provisions that will respect them and also ensure their safety. (97:11)

Every witness who spoke on the subject of victim-witness preparation emphasized the value in preparing children for court. In the experience of Dr. Sas, court preparation makes children more effective witnesses which in turn facilitates the administration of justice.

> Our own research and our own review of other people's research here in Canada and internationally have shown us that child witnesses who are properly prepared and shielded from courtroom stressors can give clear and full accounts of their evidence, and that making children more comfortable and unafraid, in our view, assists in the administration of justice. (97:5)

An evaluation of the Child Victim-Witness Support Project in Metropolitan Toronto found that court preparation does enable children to give evidence in court and to do this satisfactorily.[31] The Committee was informed by the Metropolitan Toronto Special Committee on Child Abuse that since 1987, the Child Victim-Witness Support Project has assisted over 1,200 children who have testified in criminal court and over 1,000 of their supportive adults. (94:15)

Research on the impact of the Child Witness Project in London, Ontario, found that court preparation benefitted child witnesses in four ways:

1. by educating them about court procedures;
2. by helping them deal with their stress and anxieties related to the abuse and to testifying;
3. by helping them tell their story on the stand in court;
4. by providing an advocacy role on their behalf with the other mandated agencies in the criminal justice system.[32]

According to the witnesses before the Committee, few jurisdictions in Canada have victim-witness court preparation programs. Research conducted by the Department of Justice in Alberta and Saskatchewan reported that there were no programs for child sexual abuse victim/witnesses.[33] Ron Ensom reported on the preliminary findings of an in-progress study of extra-familial sexual abuse victims and their families. Only one-third of the children who testified in court received victim-witness preparation and many of the families were given court preparation just a day or two prior to the court date. (92:19)

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[31] Campbell Research Associates and Social Data Research Limited, *Program Review of the Child Victim-Witness Support Project*, Working Document, Department of Justice Canada, Ottawa, June 1992.

[32] Louise Sas, *et. al.*, *Reducing the System-Induced Trauma for Child Sexual Abuse Victims Through Court Preparation, Assessment and Follow-Up*, London Family Court Clinic, London, January 1991, p. 116.

[33] Joseph Hornick and Floyd Bolitho, *A Review of the Implementation of the Child Sexual Abuse Legislation in Selected Sites*, Department of Justice Canada, Ottawa, 1992.

In many jurisdictions, child witnesses and their parents are prepared for court by the Crown attorney responsible for the case. However, the workload demands on Crown attorneys rarely afford them the opportunity to give more than superficial court preparation. Research showed that court preparation provided through the Child Witness Project at the London Family Court Clinic brought about a reduction in some of the work of the Crowns and enabled them to focus on the legal aspects of cases involving child witnesses.[34] And, in the review of the Child Victim-Witness Support Project, Crown attorneys indicated that having a specialized resource to prepare children for court would save their time and the courts' time.[35]

The Committee is convinced that there are compelling interests for involving child sexual abuse victims in the criminal justice process. Based on what it has heard, it is also convinced that no one benefits, except possibly the alleged abuser, when child witnesses are not prepared for the ordeal of testifying in court.

Therefore the Committee recommends:

That the federal government work with provincial and territorial governments to develop child victim-witness support programs that are available to all child victims and witnesses.

C. Specialized Training of Professionals

Many witnesses before the Committee argued that child sexual abuse cases are difficult cases to investigate and prosecute and that the skills and knowledge needed to deal effectively with these cases requires specialized training. However, the instruction received by most police officers, Crown attorneys and judges is not concerned with child development issues nor does it emphasize the skills required to interview children about sensitive issues such as sexual abuse.

LeeAnn Lloyd of the Metropolitan Toronto Special Committee reminded the Committee that child witnesses are a unique population who need support and care from those involved in the administration of justice.

> . . .Children are a very special population. They are. They have a very distinct language. They understand the world quite differently from the way we do. They have many vulnerabilities, and in most cases children are very dependent on adults to keep them safe and to take care of them. (94:17)

Ms. Lloyd stressed the importance of training professionals, from the police through to the judiciary, on child development and the dynamics and impact of violence against children.

In her submission to the Committee, Lynda Filbert of the Niagara Family and Children's Services expressed her support for the establishment of a pool of specialized personnel in the agencies involved in investigating and prosecuting child sexual abuse. In her view, specialization

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[34] Sas, *et. al.* (January 1991).

[35] Campbell Research Associates and Social Data Research Limited (June 1992), p. 156.

enables those involved in child protection, law enforcement and prosecution to acquire expertise over time and to establish and maintain contacts with the different agencies involved in child sexual abuse cases.

The Committee endorses the position that supportive and sensitive intervention techniques in handling child sexual abuse complainants benefits both the child witness and the administration of justice. When investigative and court processes are carried out by justice system professionals who are knowledgable about a child's development and vulnerabilities, child witnesses are less likely to become victims of system-induced trauma. The Committee believes this helps children to be better witnesses for the court which, in turn, facilitates more successful prosecutions.

Therefore the Committee recommends:

That the federal government in consultation with the provinces and territories take steps to ensure that police officers, Crown attorneys and judges, under both federal and provincial jurisdiction, receive training that focuses on appropriate ways to respond to child sexual abuse complainants.

D. Continuity of Crown Counsel

In jurisdictions where Crown counsel are solely responsible for victim-witness preparation, it is important that the Crown who is initially assigned to a child sexual abuse case follow that case through from first appearance to trial, the Committee was told by Monica Rainey of Citizens Against Child Exploitation (CACE).

In busy courts a different Crown may be assigned to handle the preliminary hearing and trial. This has been shown to be traumatic for children and non-offending parents who come to rely on the Crown as a vital source of information and support in the intervening period between disclosure and the trial. In this respect, the Committee regards the continuity of Crown counsel in child sexual abuse cases to be an important issue.

Therefore the Committee recommends:

That the federal government work with the provinces and the territories to ensure that in child sexual abuse cases one Crown counsel follows the case through to trial.

E. Child's Courtroom

Some witnesses before the Committee spoke of the intimidating environment of the courtroom. LeeAnn Lloyd of the Metropolitan Toronto Special Committee on Child Abuse referred to the court's "rigidity", "formality", "rules", "pomp and circumstance" and "ceremony" in making the point that trials are not conducted with sensitivity to the needs of child witnesses. She suggested some measures to relax the formality of the courtroom that would benefit children.

> Having a child testify outside the witness stand, in a small chair or wherever the child sees fit to testify, would be helpful, as would allowing simple things such as bathroom breaks and drinking boxes. ...Also using interpreters as creatively as possible to interpret adult legalese into something a child can understand. ...(94:17)

Robert Wakefield, of the Criminal Lawyers' Association of Ontario, agreed that the atmosphere in a courtroom is foreign, both to children and adults who appear as witnesses. He went on to add that this is an impediment to children and that it can be reformed.

> ...Traditionally, the wisdom was that this was a good thing, because. . .it would create an atmosphere in which fabrication would be more difficult. So the robes, the gowns, the very solemn presentation were an artifice to assist in reliable findings. Whether they are or not, I have no idea. Clearly, they're an obstacle to children. We don't disagree that the formal setting of the courtroom can be altered. ...(99:29)

Monica Rainey of CACE indicated to the Committee her support for a children's courtroom. (97:28)

The Committee believes that if justice is to be truly served, the formality and intimidating environment of courtrooms should be relaxed or modified to accommodate the needs and vulnerabilities of child witnesses.

Therefore the Committee recommends:

That the Department of Justice in consultation with provincial and territorial Attorneys General, bar associations and judicial councils develop policies to govern the trial process that are sensitive to the needs of child witnesses.

F. Code of Ethics for Dealing with Child Witnesses

A number of witnesses expressed concern to the Committee about the abusive manner in which child witnesses are cross-examined by defence counsel in child sexual abuse cases. Ron Ensom regards the behaviour of defence counsel to be "one of the two main sources of children's trauma." He told the Committee that "there must be greater curbs on their often abusive behaviour toward captive child victims/witnesses." (92:21)

An analysis of child sexual abuse trials observed in Calgary and Edmonton courts and interviews with child victims/witnesses found that the most stressful part of the court process for children was the cross-examination by defence lawyers.[36]

Lynda Filbert of the Niagara Family and Children's Services has observed a host of trials involving child victims/witnesses. Her experience led her to recommend to the Committee a code of conduct to govern the manner in which children are be treated in criminal courts of law. This reform was also called for in the brief prepared by Wendy Harvey, Crown counsel and specialist in child sexual abuse with the British Columbia Ministry of the Attorney General. Ms. Harvey recommended that a recommendation contained in the federal report *Reaching for Solutions* be adopted. It calls on the federal government to fund the study of ethical issues for lawyers in child abuse cases in order to develop a model ethics code for discussion and possible adoption by various Law Societies.

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[36] Hornick and Bolitho (1992), p. 107.

The Committee believes that our criminal courts must accommodate and protect vulnerable witnesses without prejudicing an accused person's right to a fair and just trial. And it is convinced it is possible to conduct effective cross-examination of a child without intimidating and harassing the witness. The research findings and testimony the Committee heard point to the need to address and remedy the abuse some child witnesses are subjected to during cross-examination.

Therefore the Committee recommends:

That the federal government in consultation with the provinces and territories, Canadian Bar Association and child advocates study the ethical issues for lawyers in child abuse cases and develop a model ethics code for possible adoption by provincial and territorial law societies.

CONCLUSION

A. Defence Against Legal Challenges

Throughout the course of this Review, the Committee was struck by the number of provisions of Bill C-15 that have been or may be held to be invalid under the *Canadian Charter of Rights and Freedoms*. Crown counsel Wendy Harvey discussed the need (p. 26), also identified by Rix Rogers in *Reaching for Solutions*[37], for the Department of Justice Canada to monitor challenges to this legislation and to ensure that a full and vigorous defence of the legislation is maintained. The Committee agrees that defence of the provisions of Bill C-15 will be necessary to achieve its stated purpose.

Therefore the Committee recommends:

That the federal Department of Justice should monitor challenges to Bill C-15 provisions under the *Canadian Charter of Rights and Freedoms* and actively defend the legislation against constitutional attack.

The Committee also agrees that where provisions of Bill C-15 are finally determined to be invalid, efforts must be made to draft substitute legislation that will achieve its goals while respecting the rights of the accused.

The Committee therefore recommends:

That if any provisions of Bill C-15 are ruled unconstitutional, they should be redrafted and re-enacted to meet constitutional requirements, rather than simply abandoned.

B. Future Review of the Legislation

As previously mentioned, Bill C-15 mandated a committee review of its provisions after four years of operation. Section 19 of the Act contemplates a comprehensive review of the provisions and operation of the Act including a report to Parliament on "such recommendations pertaining to the

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[37] Rogers (1990), p. 76.

continuation of those sections and changes required therein as the committee may wish to make." As indicated, the Committee's review of Bill C-15 was informed by the specially prepared research reports and submissions referred to in this report.

However, several witnesses suggested that this review may be premature, especially in light of the many outstanding constitutional challenges. The Canadian Bar Association thought that a number of the new offence sections should be reviewed again in four years. They also suggested that the provisions allowing screened or remote testimony be reconsidered after the Supreme Court of Canada has rendered its decision on their constitutional validity. (p. 90)

The Committee notes that there are several provisions of Bill C-15 that are likely to be reviewed by the Supreme Court of Canada in the near future. As previously mentioned, Bill C-126 also contains a number of amendments that will have an impact on the operation of Bill C-15. The Committee agrees that the current state of the law and the need to assess additional reforms, including any arising out of this report, suggest the need for a further review of this legislation in five years.

Therefore the Committee recommends:

That a further review of Bill C-15 and related reforms, including any arising out of this report, be conducted within five years.

LIST OF RECOMMENDATIONS

Following are the recommendations of the Standing Committee on Justice and the Solicitor General in relation to its four-year review of the *Act to Amend the Criminal Code* and the *Canada Evidence Act* (Sexual Offences):

That section 150.1 of the *Criminal Code* be retained in its present form. (p. 6)

That sections 151, 152 and 153 of the *Criminal Code* be retained in their present form. (p. 7)

That section 159 of the *Criminal Code* be retained in its present form. (p. 8)

That section 179(1)(*b*) of the *Criminal Code* be retained in its present form. (p. 9)

That Section 486(2.1) of the *Criminal Code* be amended to provide that any victim of physical or sexual abuse under the age of 14 years will testify from behind a screen or outside the court room unless the Crown asks the court to order otherwise. (p. 11)

That the *Criminal Code* be amended to protect the privacy of complainants by making it an offence to use videotapes for purposes other than those related to trial. (p. 12)

That, at the first possible opportunity, a Parliamentary Committee be asked to study the development and implementation of a national child abuse register. (p. 16)

That the Solicitor General consider the feasibility of incarcerating and treating convicted sex offenders in separate correctional institutions. (p. 17)

That the Minister of Justice work with provincial and territorial Attorneys General, bar associations and judicial councils to develop policies to expedite the prosecution of child sexual abuse cases. (p. 20)

That the federal government work with provincial and territorial governments to develop child victim-witness support programs that are available to all child victims and witnesses. (p. 22)

That the federal government in consultation with the provinces and territories take steps to ensure that police officers, Crown attorneys and judges, under both federal and provincial jurisdiction, receive training that focuses on appropriate ways to respond to child sexual abuse complainants. (p. 23)

That the federal government work with the provinces and the territories to ensure that in child sexual abuse cases one Crown counsel follows the case through to trial. (p. 23)

That the Department of Justice in consultation with provincial and territorial Attorneys General, bar associations and judicial councils develop policies to govern the trial process that are sensitive to the needs of child witnesses. (p. 24)

That the federal government in consultation with the provinces and territories, Canadian Bar Association and child advocates study the ethical issues for lawyers in child abuse cases and develop a model ethics code for possible adoption by provincial and territorial law societies. (p. 25)

That the federal Department of Justice should monitor challenges to Bill C-15 provisions under the *Canadian Charter of Rights and Freedoms* and actively defend the legislation against constitutional attack. (p. 25)

That if any provisions of Bill C-15 are ruled unconstitutional, they should be redrafted and re-enacted to meet constitutional requirements, rather than simply abandoned. (p. 25)

That a further review of Bill C-15 and related reforms, including any arising out of this report, be conducted within five years. (p. 26)

Appendix A

Changes made to the Criminal Code and the Canada Evidence Act as a result of Bill C-15

FORMERLY BILL C-15
(in effect since January 1, 1988)

Please note that since Bill C-15 became law, the numbers of many sections of the *Criminal Code* have changed. This Appendix uses the old section numbers when referring to Bill C-15. The new section numbers are in the margin.

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A/ CHANGES TO THE *CRIMINAL CODE* (Sections 1 to 16):

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Section 1 The heading preceding section 140 and sections 140 and 141 of the *Criminal Code* are repealed and the following substituted therefor:

Sexual Offences

150.1(1) *consent no defence*

139.(1) Where an accused is charged with an offence under section 140 or 141 or subsection 146(1), 155(3) or 169(2) or is charged with an offence under section 246.1, 246.2 or 246.3 in respect of a complainant under the age of fourteen years, it is not a defence that the complainant consented to the activity that forms the subject-matter of the charge.

150.1(2) *exception*

(2) Notwithstanding subsection (1), where an accused is charged with an offence under section 140 or 141, subsection 169(2) or subsection 246.1 in respect of a complainant who is twelve years of age or more but under the age of fourteen years, it is not a defence that the complainant consented to the activity that forms the subject-matter of the charge unless the accused

(a) is twelve years of age or more but under the age of sixteen years;
(b) is less than two years older than the complainant; and
(c) is neither in a position of trust or authority towards the complainant nor is a person with whom the complainant is in a relationship of dependency.

150.1(3) *exemption for accused aged 12 or 13*

(3) No person aged twelve or thirteen years shall be tried for an offence under section 140 or 141 or subsection 169(2) unless the person is in a position of trust or authority towards the complainant or is a person with whom the complainant is in a relationship of dependency.

150.1(4) *mistake of age*

(4) It is not a defence to a charge under section 140 or 141, subsection 155(3) or 169(2), or section 246.1, 246.2 or 246.3 that the accused believed that the complainant was fourteen years of age or more at the time the offence is alleged to have been committed unless the accused took all reasonable steps to ascertain the age of the complainant.

150.1(5)

(5) It is not a defence to a charge under section 146, 154, 166, 167 or 168 or subsection 195(2) or (4) that the accused believed that the complainant was eighteen years of age or more at the time the offence is alleged to have been committed unless the accused took all reasonable steps to ascertain the age of the complainant.

151 *sexual interference*

140. Every person who, for a sexual purpose, touches, directly or indirectly, with a part of the body or with an object, any part of the body of a person under the age of fourteen years is guilty of an indictable offence and is liable to imprisonment for a term not exceeding ten years or is guilty of an offence punishable on summary conviction.

152 *invitation to sexual touching*

141. Every person who, for a sexual purpose, invites, counsels or incites a person under the age of fourteen years to touch, directly or indirectly, with a part of the body or with an object, the body of any person, including the body of the person who so invites, counsels or incites and the body of the person under the age of fourteen years, is guilty of an indictable offence and is liable to imprisonment for a term not exceeding ten years or is guilty of an offence punishable on summary conviction.

* * *

Section 2 Sections 146 and 147 of the said Act are repealed and the following substituted therefor:

153(1) *sexual exploitation*

146.(1) Every person who is in a position of trust or authority towards a young person or is a person with whom the young person is in a relationship of dependency and who

> (a) for a sexual purpose, touches, directly or indirectly, with a part of the body or with an object, any part of the body of the young person, or
> (b) for a sexual purpose, invites, counsels or incites a young person to touch, directly or indirectly, with a part of the body or with an object, the body of any person, including the body of the person who so invites, counsels or incites and the body of the young person,

is guilty of an indictable offence and is liable to imprisonment for a term not exceeding five years or is guilty of an offence punishable on summary conviction.

153(2) *definition of "young person"*

(2) In this section, "young person" means a person fourteen years of age or more but under the age of eighteen years.

* * *

Section 3 Sections 151 to 155 of the said Act are repealed and the following substituted therefor:

159(1) *anal intercourse*

154.(1) Every person who engages in an act of anal intercourse is guilty of an indictable offence and is liable to imprisonment for a term not exceeding ten years or is guilty of an offence punishable on summary conviction.

159(2) *exception*

(2) Subsection (1) does not apply to any act engaged in, in private, between

(a) husband and wife, or

(b) any two persons, each of whom is eighteen years of age or more, both of whom consent to the act.

159(3)

(3) For the purposes of subsection (2),

(a) an act shall be deemed not to have been engaged in in private if it is engaged in in a public place or if more than two persons take part or are present; and

(b) a person shall be deemed not to consent to an act

(i) if the consent is extorted by force, threats or fear of bodily harm or is obtained by false and fraudulent misrepresentations as to the nature and quality of the act, or

(ii) if the court is satisfied beyond a reasonable doubt that that person could not have consented to the act by reason of mental disability.

160(1) *bestiality*

155.(1) Every person who commits bestiality is guilty of an indictable offence and is liable to imprisonment for a term not exceeding ten years or is guilty of an offence punishable on summary conviction.

160(2) *compelling the commission of bestiality*

(2) Every person who compels another to commit bestiality is guilty of an indictable offence and is liable to imprisonment for a term not exceeding ten years or is guilty of an offence punishable on summary conviction.

160(3) *bestiality in presence of or by child*

(3) Notwithstanding subsection (1), every person who commits bestiality in the presence of a person who is under the age of fourteen years or who incites a person under the age of fourteen years to commit bestiality is guilty of an indictable offence and is liable to imprisonment for a term not exceeding ten years or is guilty of an offence punishable on summary conviction.

* * *

Section 4 Sections 157 and 158 of the said Act are repealed.

* * *

Section 5 Sections 166 and 167 of the said Act are repealed and the following substituted therefor:

* * *

170
parent or guardian procuring sexual activity

166. Every parent or guardian of a person under the age of eighteen years who procures that person for the purpose of engaging in any sexual activity prohibited by this Act with a person other than the parent or guardian is guilty of an indictable offence and is liable to imprisonment for a term not exceeding five years if the person in question is under the age of fourteen years or to imprisonment for a term not exceeding two years if the person in question is fourteen years of age or more but under the age of eighteen years.

* * *

171
householder permitting sexual activity

167. Every owner, occupier or manager of premises or other person who has control of premises or assists in the management or control of premises who knowingly permits a person under the age of eighteen years to resort to or to be in or on the premises for the purpose of engaging in any sexual activity prohibited by this Act is guilty of an indictable offence and is liable to imprisonment for a term not exceeding five years if the person in question is under the age of fourteen years or to imprisonment for a term not exceeding two years if the person in question is fourteen years of age or more but under the age of eighteen years.

* * *

Section 6 Subsection 168(2) of the said Act is repealed.

* * *

Section 7.(1) Section 169 of the said Act is renumbered as section 169(1).

173(2)
exposure

Section 7.(2) Section 169 of the said Act is further amended by adding thereto the following subsection:

(2) Every person who, in any place, for a sexual purpose, exposes his or her genital organs to a person who is under the age of fourteen years, is guilty of an offence punishable on summary conviction.

* * *

179(1)(*b*)
vagrancy

Section 8 Paragraph 175(1)(*e*) of the said Act is repealed and the following substituted therefor: (Every one commits vagrancy who)

(e) having at any time been convicted of an offence under section 140, 141, 146, subsection 155(3) or 169(2), section 246.1, 246.2 or 246.3, or of an offence under a provision mentioned in paragraph (b) of the definition "serious personal injury offence" in section 687 as it read before January 4, 1983, is found loitering in or near a school ground, playground, public park or bathing area.

* * *

Section 9 Subsections 195(2) to (4) of the said Act are repealed and the following substituted therefor:

212(2)

(2) Notwithstanding paragraph (1)(j), every person who lives wholly or in part on the avails of prostitution of another person who is under the age of eighteen years is guilty of an indictable offence and is liable to imprisonment for a term not exceeding fourteen years.

212(3) *presumption*

(3) Evidence that a person lives with or is habitually in the company of a prostitute or lives in a common bawdy-house or in a house of assignation is, in the absence of evidence to the contrary, proof that the person lives on the avails of prostitution, for the purposes of paragraph (1)(j) and subsection (2).

212(4) *offence in relation to juvenile prostitution*

(4) Every person who, in any place, obtains or attempts to obtain, for consideration, the sexual services of a person who is under the age of eighteen years is guilty of an indictable offence and is liable to imprisonment for a term not exceeding five years.

* * *

Section 10 Subsection 246.1(2) of the said Act is repealed.

* * *

Section 11 Sections 246.4 and 246.5 of the said Act are repealed and the following substituted therefor:

274 *corroboration not required*

246.4 Where an accused is charged with an offence under section 140, 141, 146, 150, 154, 155, 166, 167, 168, 169, 195, 246.1, 246.2 or 246.3, no corroboration is required for a conviction and the judge shall not instruct the jury that it is unsafe to find the accused guilty in the absence of corroboration.

275 *rules respecting recent complaint abrogated*

246.5 The rules relating to evidence of recent complaint are hereby abrogated with respect to offences under sections 140, 141, 146, 150 and 154, subsections 155(2) and (3), and sections 166, 167, 168, 169, 246.1, 246.2 and 246.3.

* * *

Section 12 All that portion of subsection 246.6(1) of the said Act preceding paragraph (a) thereof is repealed and the following substituted therefor:

276(1) *evidence of complainant's sexual activity*

246.6(1) In proceedings in respect of an offence under section 140, 141, 146, 150 or 154, subsection 155(2) or (3), or section 166, 167, 168, 169, 246.1, 246.2 or 246.3, no evidence shall be adduced by or on behalf of the accused concerning the sexual activity of the complainant with any person other than the accused unless

[(a) it is evidence that rebuts evidence of the complainant's sexual activity or absence thereof that was previously adduced by the prosecution;

(b) it is evidence of specific instances of the complainant's sexual activity tending to establish the identity of the person who had sexual contact with the complainant on the occasion set out in the charge; or

(c) it is evidence of sexual activity that took place on the same occasion as the sexual activity that forms the subject-matter of the charge, where that evidence relates to the consent that the accused alleges he believed was given to the complainant. (unchanged by Bill C-15)]

* * *

Section 13 Section 246.7 of the said Act is repealed and the following substituted therefor:

277 *reputation evidence*

246.7 In proceedings in respect of an offence under section 140, 141, 146, 150 or 154, subsection 155(2) or (3) or section 166, 167, 168, 169, 246.1, 246.2 or 246.3, evidence of sexual reputation, whether general or specific, is not admissible for the purpose of challenging or supporting the credibility of the complainant.

* * *

Section 14.(1) Subsections 442(3) and (3.1) of the said Act are repealed and the following substituted therefor:

486(2.1) *testimony outside court room*

(2.1) Notwithstanding section 577, where an accused is charged with an offence under section 140, 141, 146, 150 or 154, subsection 155(2) or (3), or section 166, 167, 168, 169, 246.1, 246.2 or 246.3 and the complainant is, at the time of the trial or preliminary inquiry, under the age of eighteen years, the presiding judge or justice, as the case may be, may order that the complainant testify outside the court room or behind a screen or other device that would allow the complainant not to see the accused, if the judge or justice is of the opinion that the exclusion is necessary to obtain a full and candid account of the acts complained of from the complainant.

486(2.2) *condition of exclusion*

(2.2) A complainant shall not testify outside the court room pursuant to subsection (2.1) unless arrangements are made for the accused, the judge or justice and the jury to watch the testimony of the complainant by means of closed-circuit television or otherwise and the accused is permitted to communicate with counsel while watching the testimony.

486(3) *order restricting publication*

[section 442] (3) Where an accused is charged with an offence under section 140, 141, 146, 150 or 154, subsection 155(2) or (3), or section 166, 167, 168, 169, 246.1, 246.2 or 246.3, the presiding judge or justice may, on his or her own motion, or shall, on application made by the complainant, by the prosecutor or by a witness under the age of eighteen years, make an order directing that the identity of the complainant or the witness and any information that could disclose the identity of the complainant or witness shall not be published in any document or broadcast in any way.

486(4) *mandatory order on application*

(3.1) The presiding judge or justice shall, at the first reasonable opportunity, inform every witness under the age of eighteen years and the complainant of the right to make an application for an order under subsection (3).

(2) Subsection 442(5) of the said Act is repealed.

* * *

Section 15 Section 586 of the said Act is repealed.

* * *

Section 16 The said Act is further amended by adding thereto, immediately after section 643 thereof, the following heading and section:

Videotaped evidence

715.1 *evidence of complainant*

643.1 In any proceeding relating to an offence under section 140, 141, 146, 150 or 154, subsection 155(2) or (3), or section 166, 167, 168, 169, 246.1, 246.2 or 246.3, in which the complainant was under the age of eighteen years at the time the offence is alleged to have been committed, a videotape made within a reasonable time after the alleged offence, in which the complainant describes the acts complained of, is admissible in evidence if the complainant adopts the contents of the videotape while testifying.

* * *

B/ CHANGES TO THE *CANADA EVIDENCE ACT* (Sections 17 and 18)

Section 17 Subsection 4(2) of the *Canada Evidence Act* is repealed and the following substituted therefor:

4(2)

(2) The wife or husband of a person charged with an offence against subsection 50(1) of the *Young Offenders Act* or with an offence against any of sections 140, 141, 146, 150 or 154, subsection 155(2) or (3), or sections 166 to 169, 175, 195, 197, 200, 246.1 to 246.3, 249 to 250.2, 255 to 258 or 289 of the *Criminal Code*, or an attempt to commit any such offence, is a competent and compellable witness for the prosecution without the consent of the person charged.

Section 18 Section 16 of the said Act is repealed and the following substituted therefor:

16(1) *witness whose capacity is in question*

16.(1) Where a proposed witness is a person under fourteen years of age or a person whose mental capacity is challenged, the court shall, before permitting the person to give evidence, conduct an inquiry to determine

(a) whether the person understands the nature of an oath or a solemn affirmation; and

(b) whether the person is able to communicate the evidence.

16(2) *testimony under oath or solemn affirmation*

(2) A person referred to in subsection (1) who understands the nature of an oath or a solemn affirmation and is able to communicate the evidence shall testify under oath or solemn affirmation.

16(3) *testimony on promise to tell truth*

(3) A person referred to in subsection (1) who does not understand the nature of an oath or solemn affirmation but is able to communicate the evidence may testify on promising to tell the truth.

16(4) *inability to testify*

(4) A person referred to in subsection (1) who neither understands the nature of an oath or a solemn affirmation nor is able to communicate the evidence shall not testify.

16(5) *burden as to capacity of witness*

(5) A party who challenges the mental capacity of a proposed witness of fourteen years of age or more has the burden of satisfying the court that there is an issue as to the capacity of the proposed witness to testify under an oath or a solemn affirmation.

* * *

C/ PARLIAMENTARY FOUR-YEAR REVIEW (Section 19)

* * *

Section 19.(1) On the expiration of four years after the coming into force of this Act, the provisions contained herein shall be referred to such committee of the House of Commons, of the Senate, or of both Houses of Parliament as may be designated or established by Parliament for that purpose.

(2) The committee designated or established by Parliament for the purpose of subsection (1) shall, as soon as practicable, undertake a comprehensive review of the provisions and operation of this Act and shall, within one year after the review is undertaken or within such further time as the House of Commons may authorize, submit a report to Parliament thereon including such recommendations pertaining to the continuation of those sections and changes required therein as the committee may wish to make.

Appendix B

List of witnesses

Associations and Individuals	Issue	Date
Institute for the Prevention of Child Abuse Rix Rogers, Chief Executive Officer; Patricia Sibbald, Director of Professional Services.	90	Tuesday, April 27, 1993
Faculty of Law, Queen's University Professor Nick Bala.		
The Hon. Pierre Blais, Minister of Justice and Attorney General of Canada.	91	Tuesday, April 27, 1993
Department of Justice Carolina Giliberti, A/Chief, Family Law Research Section; Hilary McCormack, General counsel, Family and Youth Law Policy.		
Canadian Association for Community Living Paulette Berthiaume, First Vice-President; Patty O'Donnell, Board Member; Diane Richler, Executive Vice-President.	92	Wednesday, April 28, 1993
Child Protection Program, Children's Hospital of Eastern Ontario Ron Ensom, Co-ordinator.		
Ontario Provincial Police, Anti-Rackets Branch Detective Staff Sergeant Robert Matthews, Pornography and Hate Literature Section.		
Department of Health and Welfare Elaine Scott, Director, Family Violence Prevention Division.	94	Tuesday, May 4, 1993
Metropolitan Toronto Special Committee on Child Abuse Sylvia Pivko, Executive Director; LeeAnn Lloyd, Co-ordinator, Protection/Legal Response.		

Associations and Individuals	Issue	Date
***"Barreau du Québec"* (Committee on Child Sexual Exploitation)** Me Josée-Anne Simard, Secretary, Research and Legislation Department; Me Esthel Gravel, Crown Attorney Substitute; Me Alain Manseau, Lawyer, Manseau, Groulx & Associates, Charlemagne; Me Hugues Létourneau, Legal Counsel, *"Centre de protection de l'enfance et de la jeunesse et du Centre des services sociaux du Montréal métropolitain"*.	95	Tuesday, May 4, 1993
Child Witness Project, London Family Court Clinic Louise Sas, Principal Investigator; Pamela Hurley, Co-ordinator.	97	Thursday, May 6, 1993
Citizens Against Child Exploitation Monica Rainey, President		
Canadian Bar Association (National Criminal Justice Section) Michelle Fuerst, Chair, Gold & Fuerst, Toronto; Elizabeth Bennett, Secretary, Crown Counsel, Ministry of the Attorney General, British Columbia; Ellen Gordon, Chair, Committee on Domestic Violence, Corne & Corne, Winnipeg; Susan Zimmerman, Director, Legislation and Law Reform, C.B.A.	99	Tuesday, May 11, 1993
Association of Criminal Lawyers of Ontario Bob Wakefield, Wakefield and Associates.		
Family and Children's Services, Niagara Lynda Filbert, Supervisor.		

Associations and Individuals	Issue	Date
Sexual Behavior Clinic (Kingston) Dr. William Marshall.	100	Wednesday, May 12, 1993
Ministry of the Attorney General of B.C. Wendy Harvey, Crown Counsel.		
National Association of Women and the Law (Criminal Justice Working Group) Nicole Tellier, Co-Chair; Judy Parrack, Co-Chair.		
Ministry of the Solicitor General John Walker, Senior Policy Analyst, Corrections Branch; Norm Funk, Manager, Operational Development Team, Correctional Service of Canada; David From, Manager, Application Development, Correctional Service of Canada; Inspector Gary Leaman, Officer-in-Charge, Criminal History Branch, RCMP; Inspector Bob Terris, Officer-in-Charge, Canadian Police Information Centre (CPIC), User Services Branch, RCMP.	101	Thursday, May 13, 1993

Appendix C

Written Submissions

Organizations:

Children's Aid of Ottawa-Carleton

Mel Gill
Executive Director

Ontario Ministry of the Attorney General
(Victim/Witness Assistance Programme)

Susan Lawson
Assistant Crown Attorney

Society for Children & Youth of British Columbia

Valerie Froraczek

Thistletown Regional Centre for Children & Adolescents
(SAFE-T Program)

Richard Berry
Director

Toronto Hospital for Sick Children
(Suspected Child Abuse and Neglect (SCAN) Program)

Dr. Marcellina Mian, M.D.,
Paediatrician and Director

United Way of the Lower Mainland
(British Columbia)

Andy Wachtel
Research Associate

Individuals:

James Collier

S. Greco

Barry Hession

Lene Jakobsen

Les Klassen

David LeGallant

J.C. Ritter

Request for Government Response

The Committee requests that the Government provide a comprehensive response to this Report in accordance with Standing Order 109.

A copy of the Minutes of Proceedings and Evidence of the Standing Committee on Justice and the Solicitor General (*Issues Nos. 90, 91, 92, 94, 95, 97, 99, 100 and 101 including the present Report*) is tabled.

Respectfully submitted,

ROBERT HORNER,
Chairman.

Minutes of Proceedings

THURSDAY, MAY 13, 1993
(130)

[*Text*]

The Standing Committee on Justice and the Solicitor General met *in camera* at 10:08 o'clock a.m. this day, in Room 536, Wellington Bldg., the Chairman, Bob Horner, presiding.

Members of the Committee present: Douglas Fee, Bob Horner, Russell MacLellan, Scott Thorkelson and Tom Wappel.

Other Member present: Derek Lee.

In attendance: From the Research Branch of the Library of Parliament: Patricia Begin and Marilyn Pilon, Research Officers.

Witnesses: From the Ministry of the Solicitor General: John Walker, Senior Policy Analyst, Corrections Branch; Norm Funk, Manager, Operational Development Team, Correctional Service of Canada; David From, Manager, Application Development, Correctional Service of Canada; Inspector Gary Leaman, Officer-in-Charge, Criminal History Branch, Royal Canadian Mounted Police; Inspector Bob Terris, Officer-in-Charge, Canadian Police Information Centre (CPIC) User Services Branch, Royal Canadian Mounted Police.

The Committee resumed consideration of its Order of Reference of Monday, May 11, 1992: Four-year Review of the *Act to amend the Criminal Code* and the *Canada Evidence Act* (Sexual Offences), Chapter 19, 3rd Supplement, revised statutes of Canada, 1985, (formerly Bill C-15). (*See Minutes of Proceedings and Evidence dated Tuesday, April 27, 1993, Issue No. 90*).

John Walker, Norm Funk, David From, Inspector Bob Terris and Inspector Gary Leaman each made opening statements and answered questions.

At 12:30 o'clock p.m., the Committee adjourned to the call of the Chair.

AFTERNOON SITTING
(131)

The Standing Committee on Justice and the Solicitor General met *in camera* at 12:28 o'clock p.m. this day, in Room 536, Wellington Bldg., the Chairman, Bob Horner, presiding.

Members of the Committee present: Douglas Fee, Bob Horner, Russell MacLellan, Ian Waddell and Tom Wappel.

Other Member present: Derek Lee.

In attendance: From the Research Branch of the Library of Parliament: Patricia Begin and Marilyn Pilon, Research Officers.

The Committee resumed consideration of its Order of Reference of Monday, May 11, 1992: Four-year Review of the *Act to amend the Criminal Code* and the *Canada Evidence Act* (Sexual Offences), Chapter 19, 3rd Supplement, revised statutes of Canada, 1985, (formerly Bill C-15). (*See Minutes of Proceedings and Evidence dated Tuesday, April 27, 1993, Issue No. 90*).

The Committee began consideration of a Draft Report.

At 2:15 o'clock p.m., the Committee adjourned to the call of the Chair.

THURSDAY, JUNE 3, 1993
(132)

The Standing Committee on Justice and the Solicitor General met *in camera* at 10:15 o'clock a.m. this day, in Room 536, Wellington Bldg., the Chairman, Bob Horner, presiding.

Members of the Committee present: Douglas Fee, Bob Horner, Russell MacLellan, Jacques Tétreault, Ian Waddell and Tom Wappel.

In attendance: From the Research Branch of the Library of Parliament: Patricia Begin and Marilyn Pilon, Research Officers.

The Committee resumed consideration of its Order of Reference of Monday, May 11, 1992: Four-year Review of the *Act to amend the Criminal Code* and the *Canada Evidence Act* (Sexual Offences), Chapter 19, 3rd Supplement, revised statutes of Canada, 1985, (formerly Bill C-15). (*See Minutes of Proceedings and Evidence dated Tuesday, April 27, 1993, Issue No. 90*).

The Committee considered its Draft Report.

At 11:20 o'clock a.m., the sitting was suspended.

At 12:15 o'clock p.m., the sitting resumed.

It was agreed,—That the Draft Report, as amended, be concurred in.

It was agreed,—That the Chairman be authorized to make such grammatical and editorial changes to the report as may be necessary without changing the substance of the report.

It was agreed,—That the Committee request that the Government provide a comprehensive response to this report.

It was agreed,—That the Chairman table the report of the Committee as the Seventeenth Report to the House.

It was agreed,—That the Committee print an additional 1,000 copies in English and 500 copies in French of Issue No. 101 which includes the present report and that the additional cost be charged to the budget of the Committee.

The Committee considered its future business.

At 12:45 o'clock p.m., the Committee adjourned to the call of the Chair.

Richard Dupuis
Clerk of the Committee

Nancy Hall
Committee Clerk

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