

# Children in the Courtroom

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# Goals of the Justice System

A trier of fact expects a full and candid account.

A trier of fact should want reliable evidence.

A trial is a quest for the truth.

Children are now presumed competent to testify –s. 16.1 ***Canada Evidence Act***.

***But . . .***

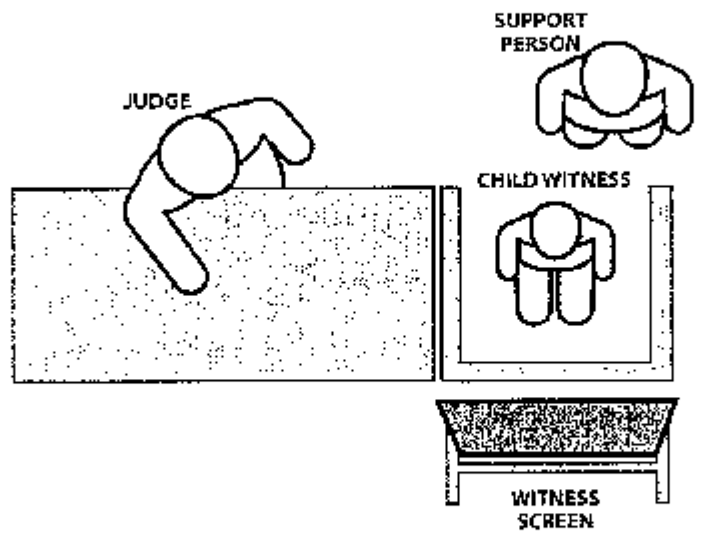
How do we get the ***best evidence*** from children?

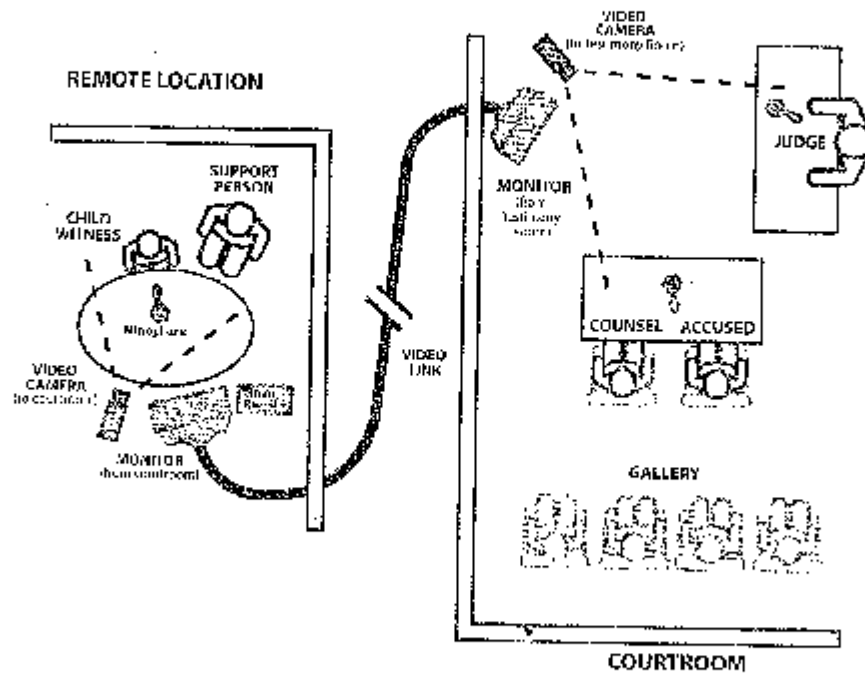
**AND** - How do we prevent or avoid trauma in the courtroom?

# Testimonial Accommodations

Canadian testimonial accommodations are described in the ***Criminal Code***:

- witness support persons
- witness screens
- witnesses testify outside of the courtroom by closed circuit television or video-conferencing – virtual presence of the witness
- witness's evidence given by a video-taped statement





Testimonial aids assist in the truth-seeking function of the criminal trial process.

**AND**

Testimonial accommodations help minimize courtroom trauma for the witness.

## The prosecutor applies for the accommodation in advance of the trial:

- discuss the options and child's preference in advance with the child
- the child's choice is *important*
- different rationales for young children and adolescents – different worries
- considers the practicalities;
- talk to defence counsel;
- get the equipment ready;
- the prosecutor needs time!!



# The application to the judge

- The judge ***must*** order accommodations for children (under 18).
- The Crown does not have to demonstrate that the child needs the accommodation.
- The scheme is ***presumptive***.

The judge can decline to order the accommodation only if it would “interfere with the proper administration of justice”.

***The accommodation cannot interfere with the trial process.***

It cannot impact fair trial rights:

- accused's right to cross-examination;
- the right to full answer and defence;
- an adverse inference cannot be drawn

# Common Objections

- a child witness in another room is more likely to lie or not take the proceedings seriously
- interferes with cross-examination
- interferes with the “normal” way of proceeding in Court
- the judge cannot assess credibility
- it's too difficult to deal with exhibits or identification

# ***The child's testimony***

- a child should be only be asked age appropriate questions
- cross-examination – should be fair to the child witness
- how do judges assess the child's evidence?