

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 . . .

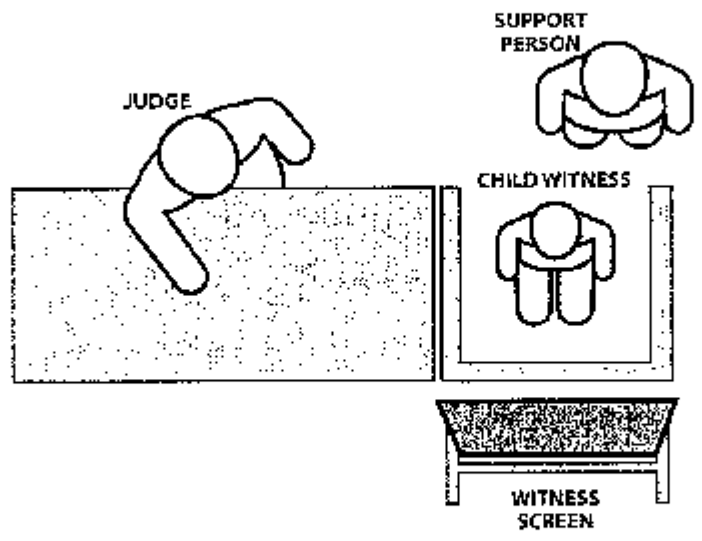
How do we get the ***best evidence*** from children?

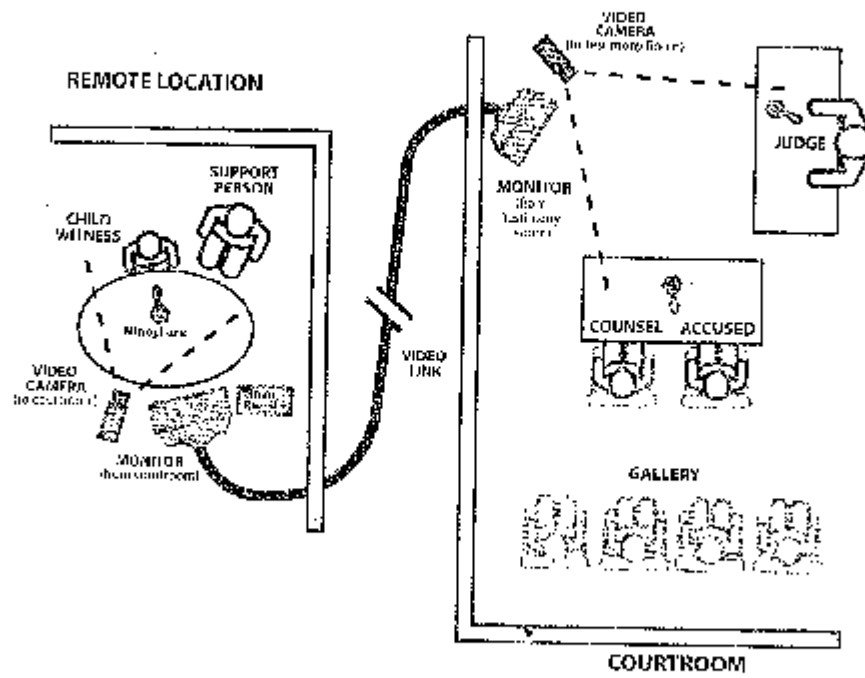
AND - How do we prevent or avoid trauma in the courtroom?

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?