

Child Advocacy Centres Knowledge Exchange  
Monday afternoon, February 28, 2011  
**Panel # 2: *Children and testimony***

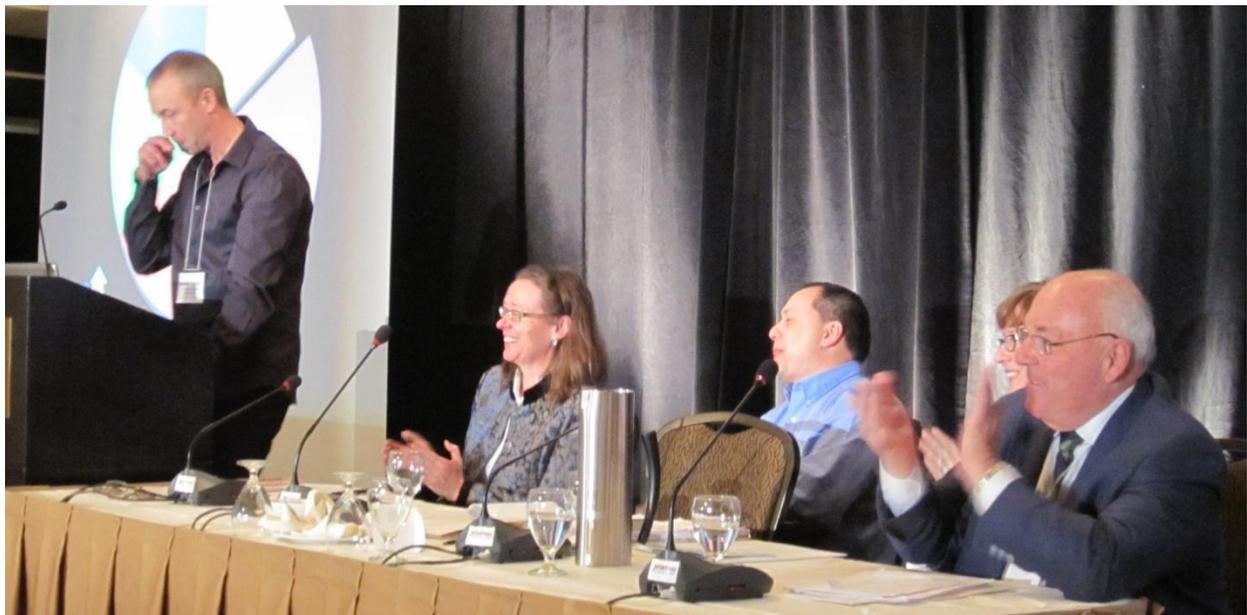
**Mary Ainslie**, Crown Counsel, Vancouver, BC

*See Presentation:* [Ainslie] **Children in the courtroom**

**Milco de Graaf**, Program Coordinator, Child Victim Support Service Government of  
Manitoba, Winnipeg, MB

**Brooke Harker**, Crown Witness Coordinator, Yellowknife, NWT

**Mr. Justice John McGarry**, Superior Court judge, London, ON



*Brooke Harker at the podium. Moving right: (facilitator) Lynne Tyler, Milco DeGraaf, Mary Ainslie (partially obscured), John McGarry*

**Milco DeGraaf** began by explaining that there are 69 court locations in 9 centres around Manitoba. A small team of social workers in Winnipeg focus on child victim work and, together with victim service workers in the regions, cover a wide variety of cases, from child abuse to domestic violence, to situations where the child witnessed a homicide. They try to connect with families at an early stage so that children are better supported, can cope better; and the child witness is more prepared.

Victim services has a close working relationship with crown attorneys. They share a common database called PRISM (Prosecutions Information Scheduling Management) with the crown attorneys, and so they know what's going on with cases at all times. They then can keep the family updated with necessary information (key people involved, dates etc). This system saves time and energy.

Court preparation for the child begins several weeks before the hearing date and may involve a single or multiple sessions, depending on the child's need. They have two child-friendly court rooms in Winnipeg, as well as child-friendly waiting rooms, separate entrance arrangements for children and CCTV facilities. He reported that crown attorneys in their area are generally quite willing to use testimonial aids. Victim services are in constant dialogue with the crowns, and often discuss cases after completion, to analyze what they could have done differently to improve the experience for the child. In closing, he said he would like to see more child friendly courtrooms in Manitoba.

**Brooke Harker**, a Crown Witness Coordinator (CWC) with the Public Prosecution Services of Canada (PPSC), began by explaining that theirs is a court-based program; they prepare witnesses of violent crime to testify at Territorial and Supreme court levels. In Northwest Territories, CWSs serve a population of about 100,000 people spread out in about 80 communities, many of them not accessible by road. They instituted a team approach for circuit travel – three crown prosecutors and one CWC for each region. The consistency assists children, as the CWC is always the same familiar face. It is easier for everyone if there is a team approach.

In supporting witnesses through the process, CWC's explain roles, do mock trials etc, and work closely with the victim services worker – if the community has one.

He noted many challenges to serving victims and witnesses in remote communities including: not enough face-to-face meetings; little time to establish a rapport and build confidence with the witness; a shortage or lack of use of testimonial aids; and a rather high rate of disabilities such as FASD (Fetal Alcohol Spectrum Disorder) among witnesses. There is a lot of pressure on child witnesses when living in a small community, including a great deal of visible support for accused at court appearances. To counter this they can: make application for testimonial aids and have the courtroom cleared (not often granted). Screens are the most frequently used testimonial aid. CCTV/video linked testimony is not being used in NWT communities. Lack of privacy to meet with witness and prepare children for court is also a significant problem. You use whatever you have. He told of doing interviews in the locker room at hockey rinks, or in a janitor's broom closet at a health clinic.

He noted the significant pressure on child witnesses in small communities, where the accused often have substantial family support.

Another major issue is that many of the crowns tend to be fresh out of law school, inexperienced and up north for a short work period. Additional crowns are often flown in from the south, and often don't have enough time to familiarize themselves with the file.



*Miriam MacDonald of VWAP arrives in a remote fly-in community with a screen to be used by a child witness in that week's circuit court.*

[Mary Ainslie](#) started her presentation by saying that the legislation must be interpreted the way that parliament intended. The goal of the legislation is to get the best and most reliable evidence from children, while not re-traumatizing them in

the courtroom. Despite the identified benefits, testimonial aids are under-utilized. Bill C-2 (2006) was supposed to get rid of any uncertainty around children's access to testimonial aids. But uncertainty still continues. So more education is needed.

Orders for testimonial aids are made presumptively, the crown doesn't have to present a need. However, there is still some hesitancy to use them.

The prosecutor applies for accommodation in advance. It's important for the crown to have the conversation with the child about his or her preference as to the use and type of testimonial aids or special accommodation. Age should not be a barrier, however, some judges are hesitant to use testimonial accommodations for older children, and some judges don't like the child to be in another room. She stated that some judges may still want to address the "necessity" of the accommodation. Judges should be ordering these accommodations automatically for children.

She noted that cross-examination was a difficult experience for children –often they are not asked appropriate questions. She suggested there are ways of alerting and educating judges of this issue.

Justice professionals need to plan ahead on several logistical details, when planning to use testimonial aids: Where will the support person be? Who will bring the child to and from the court room? Sometimes the logistics of organizing testimonial aids for a trial in a remote area can be overwhelming for a prosecutor. She closed by emphasizing the importance of case coordination..

*R. v. J.Z.S., 2010 SCC 1*

**Supreme Court of Canada upholds constitutionality of Bill C-2**

A significant change to the way child witnesses are treated in court occurred in 2006 when the **Criminal Code** was amended to allow for the presumptive use of testimonial accommodations for children, and a presumption that child witnesses are competent to testify. These provisions are the latest in a long line of legislative reforms within the criminal justice system. These reforms have been implemented for the purpose of facilitating the giving of testimony by children and vulnerable witnesses. Four years later, the Supreme Court of Canada upheld the constitutionality of these provisions: **R. v. J.Z.S., 2010 SCC 1**. The Supreme Court endorsed the appellate court's conclusion that these changes facilitate the admissibility of relevant and probative evidence from children, and that the rules of evidence must be construed in light of a criminal justice system that encourages the goal of "attainment of truth."

*[Addendum: this information was added after the KE]*

[John McGarry](#) provided a personal and anecdotal account of his experience as an Ontario Superior Court Judge who has spent much of his career on child abuse cases. He described a high-profile case involving sexual abuse of several boys by a teacher, where he sentenced the abuser to 2.5 years. The sentence was over-turned on appeal to 2 years less a day. He felt this was because the abuser was a prominent man in the local community.

Shortly after that, McGarry organized an education program on child witnesses and child abuse for Ontario Superior Court judges. He feels that judges can continue to benefit from more education on the issues of children's evidence in court.

He believes that judges should not allow cross-examination of children in the courtroom to go forward in the same way it can with adults. There are measures, in other legal systems, to protect children from the rigours of harsh cross-examination, and he provided the example of the use of an intermediary (used in South Africa, England, Australia).

## **Q & A**

***Q: Should there be special prosecution teams to handle cases with child witnesses?***

We're trying to get to the truth; in that light, you need more specialized prosecutors and judges. In Toronto, there is one team, in seven courthouses – that makes a significant difference for children and the system more efficient. Special prosecutors are essential. We should also give tribute to the Manitoba specialist experience. Also, in terms of specialized judiciary -- they would have more understanding. Sometimes there is an acquittal because the judge doesn't fully appreciate evidence.

Training, education and coordination between agencies are the key elements.

***Q: How do we raise awareness of the National Judicial Institute training for judges, and develop training on victims issues in general?***



*Ontario Superior Court judge John McGarry confers with Queen's University Law professor Nick Bala*

It was noted that judicial education is voluntary. There has been substantial change in judicial knowledge and attitudes, over the last 30 years.

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For a summary of the discussion on these topics at the Round Tables, see:

**[Round Table Summary 2 – Children and testimony](#)**