Department of Justice Canada
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WORKING DOCUMENT

PROCESSING OF CHILD SEXUAL ABUSE CASES IN SELECTED SITES IN QUEBEC

Studies on the Sexual Abuse of Children in Canada

Daniel Sansfaçon and Fabienne Presentey
La boîte à qu'on-se-voir
with the cooperation of
Anne Le Blanc and Lise Letarte

October 1992

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Research and Development Directorate /
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Canada

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1.0 INTRODUCTION

Bill C-15, which was passed in 1987 and received Royal Assent on January 1, 1988, significantly changed the provisions of the Criminal Code relating to the sexual abuse of children. It repealed several out-of-date measures and created a series of new offences, increased penalties, and radically restructured the evidentiary system in this area of the law. Moreover, this new legislative framework formed part of a major initiative that required both human and financial resources to provide support for, and follow-up action on, these provisions. Furthermore, the federal legislation also contained a clause providing for review of its provisions four years after it came into effect. This, then, is the background to the present review of the implementation of Bill C-15's provisions in Quebec, which is itself part of a Canada-wide review.

1.1 Objective of the Study

The federal Department of Justice began a series of empirical studies in 1989 in various parts of Canada (Alberta and Ontario, among others) to collect both quantitative and qualitative information on the judicial treatment of the implementation and effects of the new legislation. Since this legislation closely overlaps the provincial legislative framework governing child protection, these studies were also designed, as far as possible, to obtain information on the handling of child sexual abuse cases from a "social" perspective.

The Quebec study began in the fall of 1991. While it generally had the same objectives, it could not have the same scope or depth. The Quebec study had the following specific objectives:

- To examine the procedures and protocols in Quebec that relate to the sexual abuse of children.
- To examine the treatment of cases within the legal system involving sexual abuse of children.
- To determine the extent to which the new provisions of the Criminal Code are used in cases involving the sexual abuse of children, and the reasons therefor.
- To examine the nature of the relationship between the persons involved in the criminal justice system and staff in the Youth Protection Service (YPS).

- To identify the problems that might arise for workers in the criminal justice system in implementing Bill C-15.

1.2 Focus of the Study

Because of time and budget constraints, the Quebec study is not evaluative in nature: it is essentially exploratory and descriptive. It is exploratory because, to the best of our knowledge, it is the first of its kind conducted in Quebec, and we did not have at our disposal either pre-established tools or a data bank that could be used for comparison purposes. It is descriptive because, although we have attempted to carry out more sophisticated analyses of the decisions made or the problems noted, the study is designed primarily to describe the existing situation.

While an evaluative study would aim to determine whether the objectives of the legislation had been attained and would, therefore, devise strict tests to judge the changes noted empirically between the two periods -- before and after the legislation -- our research considered the implementation of the new legislation and the problems that may arise, but did not reach any conclusions as to whether the legislation's objectives have been attained. Inferences will inevitably be drawn, however, and we will inform the reader accordingly.

This study deals with the sexual abuse of children in the broadest sense; that is, it includes everything involving sexual contact with minors for purposes of exploitation. However, this rather broad definition requires explanation, because the study dealt primarily with cases of abuse reported to the police and prosecuted at law. These cases probably differ greatly from the majority of child sexual abuse situations, which are not reported to the police but to the Youth Protection Service. (See, for example, Manseau, 1990 on this point.)[1]

The study concentrated on Montreal and Quebec City, adding the area of Baie-Comeau/Sept-Îles for the qualitative section. Because significant differences were found between Montreal and Quebec City -- not in the characteristics of reported cases, but rather in the way in which they were dealt with by the legal authorities -- it seems probable that a larger study involving other municipalities would have produced a much more complex picture of the situation.

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[1] Manseau, H., (1990) Les abus sexuels d'enfants et la protection de la jeunesse. Silley: Presses de l'université du Québec.

This study used data from three sources: a sample of files from the Montreal and Quebec City police forces, a series of semiformal conversations with staff members in legal and social services, and written documentation.

1.3 Structure of Report

This research report is structured as follows. Chapter 2 summarizes the major methodological elements used to understand how the data were obtained and analyzed. Among other things, it lists the research questions that guided the work. Chapter 3 describes the legislative background to the study, noting the objectives of Bill C-15 and its main provisions, and the provincial legislative context created by the Quebec Youth Protection Act. Chapter 4 presents the protocols and procedures that are in effect and which reflect the links between the two pieces of legislation, and discusses the matter of overlapping and the obvious deficiencies noted in our analysis of the documentation. Chapter 5 contains the statistical information obtained from a sample of cases involving the sexual abuse of children reported to the municipal police forces in Montreal and Quebec City in 1988, 1989 and 1990. Among other things, this chapter analyzes the processing of reports. Chapter 6 describes the intervention practices reported by the persons interviewed and the problems they had noted. Finally, Chapter 7 attempts to draw conclusions on the current state of intervention practices within the criminal justice system as they relate to the sexual abuse of children.

2.0 METHODOLOGY

2.1 Specifications of the Study

As indicated earlier, this study is exploratory and descriptive, not evaluative. As a result, it sought above all to ascertain the nature of the types of intervention used at this time, although it could not determine whether significant changes have occurred since the legislation was passed, let alone attribute possible changes to the legislation itself.

In this context, the study attempted to answer a series of questions relating to the five objectives stated in the introduction, as follows:

Objectives	Questions
• To examine the procedures and protocols in Quebec that relate to the sexual abuse of children.	- What are the policies of the police forces with respect to the sexual abuse of children? - What mechanisms are available for coordination with the Youth Protection Service? - What are the policies of the Youth Protection Service? - What are the policies of the Crown?
• To examine the treatment of cases within the judicial system involving sexual abuse of children.	- How many cases are reported to the police? - What are the characteristics of these cases? - What decisions are made by the police? How many cases are considered to be founded? In how many are charges laid? - How many cases lead to prosecution? - What are the characteristics of these cases? - What decisions are made by the judicial authorities? - What sentences are imposed on those convicted?

Objectives	Questions
• To determine the extent to which the new provisions of the Criminal Code are used in cases involving the sexual abuse of children, and the reasons therefor.	- Which sections of the Criminal Code are used by the police when charges are laid? - How many times and in what circumstances is testimony videotaped? - How many times must the children be interviewed? - How many times must the children appear in court? - How many times and in what circumstances is a screen used? Is remote testimony used? - What objections have been made to these provisions? - How are the children sworn?
• To examine the nature of the relationship between the persons involved in the criminal justice system and staff in the Youth Protection Service.	- What mechanisms have been put in place to provide coordination between the two areas of intervention? - What types of cases will the YPS refer to the police? - What are the reasons cases are heard by the courts? - Do the two sectors have different basic philosophies and perceptions of what constitutes the sexual abuse of children? If so, how do they differ?
• To identify the problems that might arise for workers in the criminal justice system in implementing Bill C-15.	- What difficulties have been experienced by those working within the criminal justice system in implementing the legislation? - What difficulties have been experienced by those working within social services? - Which provisions of Bill C-15 specifically cause problems? - Do the parties involved receive sufficient training? - What are the main shortcomings in the present official response to cases of child sexual abuse?

These questions, as well as the study's instruments, were based largely on those developed by Hornick's team in Alberta, to ensure a degree of comparability between sites. However, the time frame -- the Quebec study began in November 1991 and was to be completed by the spring of 1992 -- determined, to a large extent, some of the methodological decisions. First, the choice of study locations was of greatest importance. While the study sought to move away from the major centres that are usually studied to obtain a greater variety of data, Montreal and Quebec could not be avoided. Baie-Comeau/Sept-Îles was added in order to obtain information from a smaller although diversified area, partly because it has a significant native population.

Second, this study did not have the luxury of being able to conduct a longitudinal study, which would have enabled it to follow a sample of cases. As a result, the study obtained only the data contained in police files, and these are often incomplete. Similarly, it was not able to obtain data from a sample of YPS files, not only because there was insufficient time, but also insufficient resources. Further, it is not easy to obtain the necessary authorizations to consult files from the Youth Protection Service.

The third limitation was that it was not possible to make observations in court or conduct interviews with the children or their parents.

However, the study was able to collect three types of data, which are described briefly below.

2.2 Components of the Study

2.2.1 Semiformal Interviews

The study interviewed a number of persons working in the various sectors in each of the three municipalities, as well as provincial government officials and a training officer at the Nicolet Police College. Altogether, there were nearly 70 such interviews, broken down as follows:

	Montreal	Quebec City	Baie-Comeau
police	13	5	4
crown attorneys	6	2	2
defence counsel	2	1	1
judges	4	2	1
probation officers	2	1	-
social workers	7	4	5
officials	-	3	-
children's aid workers	1	-	-
police college officers	-	1	-
Total	35	19	13

Interview guidelines mainly related to the following: characteristics of known cases, intervention practices in cases of child sexual abuse, mechanisms for coordination with other sectors, training received, difficulties in intervening and limitations of the legislative framework. The guidelines are found in Appendix A. The interviews lasted an average of 70 minutes and were conducted by two interviewers, who made notes of what was said.

The persons to be interviewed were recommended by contact persons in the various organizations. They were selected on the basis of such criteria as years of experience, type of intervention and gender. The study sought persons who had diverse experience, preferably extending over several years.

2.2.2 Review of Documentation

All sectors were asked, through the contact persons and each person interviewed, to identify and, whenever possible, to provide, relevant documentation. This included government reports, official government policy documents, internal policy documents, and examples of forms or schedules used internally. The study also collated the available statistics and the training guides that were issued. Regarding the latter, the study obtained, among other things, a copy of a video produced by the Sûreté du Québec (SQ) showing an interview with a young boy who was the victim of sexual abuse.

2.2.3 Examination of Police Files

The third component of the research involved collecting quantitative information from a sample of files of the municipal police forces of Quebec City and Montreal for 1988, 1989 and 1990. Overall, the study prepared a statistically representative sample of 257 cases for the two municipalities covering the three-year period.

First, the population of cases was set up, from which the study took a random sample of 10 percent for Montreal and 30 percent for Quebec City. The difference reflects the different volumes of cases in the two cities; it was necessary to oversample in Quebec City in order to conduct more sophisticated analyses of the data. Second, the files from the archives were borrowed, using the incident numbers, and were searched for data that were transcribed onto a grid that is reproduced in Appendix B. This grid contains the following information: characteristics of incidents, characteristics of victims and suspects, decisions made by the police, and any other information contained in the file when charges were laid with respect to court proceedings, pleas and sentences. In all these cases, the following stage involved obtaining the file from the appropriate court registry to complete the data obtained from the police file.

At this point, four factors in particular were selected to measure practices: the decision to substantiate, the decision as to whether charges would be laid, the guilty plea or conviction, and the sentence. Each factor is central to the intervention that occurs within the judicial system.

2.3 Analysis

The data were analyzed in various stages. Qualitative data were read, and themes were noted and classified by area of intervention. The information was then organized and interpreted by subject and in accordance with the objects of the questions raised in the research specifications.

Analysis of the documentation involved identifying the factors that would enable the study to describe the intervention policies and procedures.

The quantitative analyses were made on SPSS, version 4.0. Descriptive statistics were produced, and then relationships (essentially chi squared). Finally, variance and logistical regression analyses were carried out on the four factors in the analysis noted earlier, in an attempt to isolate the variables that would best explain each of them.

2.4 Limitations

This study has a number of limitations that result, among other things, from the factors noted earlier. In particular, it concerns only three municipalities; any attempt at generalization to the province as a whole might well pose insurmountable problems. The very fact that the decisions made in Quebec City and Montreal differ so significantly shows how hazardous such generalizations would be.

Also, although it has been emphasized that this is an exploratory and descriptive study, it is inevitable that some will be tempted to see evaluative elements in it; the authors themselves are not completely innocent of this. There is no remedy for this but to remain vigilant and to identify instances in which inferences are drawn.

A third limitation is that the qualitative data were not obtained under the best conditions. It is preferable by far to keep conversations as open as possible, and to record them on tape: it is then possible to return to the original conversations. The transcripts, made from notes and memory, did not permit this.

Furthermore, the scale of the samples allows for only limited statistical analyses. Variance and regression analyses could not be carried out with sufficient precision in the interaction effects between the variables because of the limited number of cases. Similarly, the lack of comparable data from the Youth Protection Service meant that the scope of the phenomenon of child sexual abuse or its treatment could not really be determined.

On a more specific level, the quantitative data obtained from the police files show a number of inconsistencies, shortcomings and limitations. These include difficulty in following the cases retroactively as they progress through the judicial process; the inevitable result is a lack of information. Furthermore, it is probable that the study did not take other elements into account that a more exhaustive analysis of the cases would have provided. Finally, in its examination of sentences, the study was not able to take account of concurrent and consecutive sentences.

3.0 LEGISLATIVE CONTEXT

Since most of the other studies conducted for the Department of Justice Canada have fully described the legislative background against which they were completed, this report simply outlines the relevant legal provisions of the Criminal Code and the Canada Evidence Act.[1] To the extent that intervention under the criminal law is closely intertwined with the provincial legislative framework contained in the Youth Protection Act, the outlines of the latter legislation are described below.

3.1 Bill C-15

Bill C-15, which became R.S.C. 1985 (3d Supp.), c. 19, was based to a large extent on the work of the Badgley Committee, and attempted to remedy a number of shortcomings in the Criminal Code. In particular, it was necessary to:

- remedy the sexual discrimination under which boys and girls were not given the same protection (in some cases the victims had to be girls and the abusers men);
- change the nature of the prohibited sexual acts (for example, masturbation and oral sex by the child or offender were not necessarily covered);
- repeal the requirement that girls had to show that they were chaste;
- change the possibility of examining victims concerning their past and their sexual reputation;
- do away with the presumption that a boy under 14 years of age was incapable of having sexual relations;
- harmonize the ages of consent to various sexual activities (e.g., a boy could consent to sexual relations, except for anal sex and gross indecency, at any age, whereas a girl could not consent to vaginal sex before the age of 14, and anal sex before the age of 21, although she could do so from age 16 if she were married);

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[1] This discussion borrows freely from the report prepared for the federal Department of Justice by J. Hornick et al. (1992). This does not mean, however, that this report necessarily agrees with the authors on all points; for example, on the objectives of the legislation.

- repeal the limitation periods for certain offences.

The following Table[2] shows the principal provisions of the Criminal Code before and after the amendments were made.

Table 3.1 Amendments made to the Criminal Code by Bill C-15

Old Criminal Code Prior to January 1, 1988		New Criminal Code as of January 1, 1988		
XCC	Section Description	Interim[1] Code (C-15)	CC	Section Description
s. 140	Consent no defence	s. 139	s. 150.1	Consent no defence
s. 141	Time limitation (repealed 1987)			
s. 146(1)	Sexual intercourse with female under 14 years (repealed 1987)			
s. 146(2)	Sexual intercourse with female between 14-16 years of previous chaste character (repealed 1987)			
		s. 140	s. 151	Sexual interference for children under 14
		s. 141	s. 152	Invitation to sexual touching for children under 14
		s. 146	s. 153	Sexual exploitation for children 15-18
s. 150	Incest - Intercourse with a blood relative	s. 150	s. 155	Incest
s. 151	Seduction of a female 16-18 years old of previous chaste character (Repealed 1987)			
s. 152	Seduction of a female under 21 years old under promise of marriage (Repealed 1987)			
s. 153	Sexual intercourse with stepdaughter/foster daughter (Repealed 1987)			
s. 154	Seduction of a female passenger on vessels (Repealed 1987)			
s. 155	Buggery or bestiality (Repealed 1987)	s. 154	s. 159	Anal intercourse
		s. 155	s. 160	Bestiality
s. 157	Gross indecency (Repealed 1987)			

[2] This table is reproduced from the report by J. Hornick et al., op. cit.

Table 2.1 (continued)

Old Criminal Code Prior to January 1, 1988		New Criminal Code as of January 1, 1988		
XCC	Section Description	Interim[1] Code (C-15)	CC	Section Description
s. 166	Parent/guardian procuring sexual activity (Repealed 1987)	s. 166	s. 170	Parent/guardian procuring sexual activity
s. 167	Householder permitting sexual activity (Repealed 1987)	s. 167	s. 171	Householder permitting sexual activity
s. 168	Corrupting children (Repealed 1987)	s. 168	s. 172	Corrupting children
s. 169	Indecent act	s. 169(1)	s. 173(1)	Indecent Act
		s. 169(2)	s. 173(2)	Exposure to child under 14 years
s. 195(1)	Procuring	s. 195(1)	s. 212(1)	Procuring
s. 195(2)	Living off avails (repealed 1987)	s. 195(2)	s. 212(2)	Living off avails of a prostitute under 18 years
		s. 195(4)	s. 212(4)	Obtaining person under 18 years for sexual purpose
s. 195.1	Soliciting	s. 195.1	s. 213	Soliciting
s. 246.1	Sexual assault	s. 246.1	s. 271	Sexual assault
s. 246.2	Sexual assault with a weapon/threats/bodily harm	s. 246.2	s. 272	Sexual assault with a weapon/threats/bodily harm
s. 246.3	Aggravated sexual assault	s. 246.3	s. 273	Aggravated sexual assault
s. 246.4	Corroboration not required	s. 246.4	s. 274[2]	Corroboration not required
s. 246.5	Rules re: recent complaint abrogated	s. 246.5	s. 275[2]	Rules re: recent complaint abrogated
s.246.6(1)	No evidence concerning sexual activity	s. 246.6(1)	s. 276(1)[2]	No evidence concerning sexual activity
s. 246.7	Reputation evidence	s. 246.7	s. 277[2]	Reputation evidence
		s. 442(2.1)	s. 486(2.1)	Testimony outside the courtroom
s. 442(3)	Order restricting publication	s. 442(3)	s. 486(3)[2]	Order restricting publication
		s. 643.1	s. 715.1	Videotaped evidence
CEA s.16	Sworn/unsworn evidence of a child (repealed 1987)	CEA s. 16	s. 16	Child witness oath/promise to tell truth

[1] The interim code numbers were introduced with Bill C-15. They related to new sections introduced by Bill C-15 and, in addition, include sections carried over from the old Criminal Code. The interim codes were used for approximately one year.

[2] These section were enacted by Bill C-127 (August 1982), however, they were extended to the sexual offences enacted by Bill C-15.

According to Hornick et al. (1992), Bill C-15 sought to attain the following objectives, as identified from the parliamentary debates:

- to provide better protection for children who were the victims of sexual abuse, and for witnesses;
- to increase the number of successful prosecutions;
- to improve the experience of child victims and witnesses with the judicial system; and
- to bring sentences into line with the seriousness of the offences.

To attain these objectives, Parliament simplified the legislative scheme, created specific offences, and changed the rules governing evidence and the testimony of children. It simplified the criminal system by repealing out-of-date provisions, extending the protection provided by certain provisions to boys, and clarifying age categories. The creation of specific offences includes the new provisions concerning sexual contact, inducements, and the sexual exploitation of children. Finally, the system of evidence and testimony was radically altered by abolishing the requirement of proof of chastity, and the need for corroboration and evidence of recent complaint. The testimony of a child given outside the courtroom was made admissible, as was the videotaped testimony of a child. Finally, the rules for the swearing of children were changed so that they could be heard on their solemn affirmation or promise to tell the truth.

3.2 Provincial Legislative Framework[3]

The Quebec Youth Protection Act was first enacted in 1951 (R.S.Q. 1964, c. 220). In view of the many difficulties of enforcement, it underwent major review, first in 1974. It was later replaced by the current Act, which has been in effect since 1979 (S.Q. 1977, c. 20). It was last amended in 1988 (S.Q. 1989, c. 53, Bill 142), among other things, to bring the rules governing the admission of evidence (e.g., videotaped recordings) into line with those in the federal legislation. While the Criminal Code aims to protect the child through measures designed to coerce and punish the offender, the Youth Protection Act aims

[3] This section is freely based on the text "La Loi sur la protection de la jeunesse en regard des dispositions du Code criminel" of a speech by Jean Turmel of the Quebec Department of Justice to a conference of the Association québécoise Plaidoyer-victimes in 1989.

instead to protect children by offering assistance and support to them and their families.

The YPA is based on the primacy of parental authority, which is defined as follows in the Civil Code: "the body of powers and rights granted by the law to the father and mother over their minor children to enable them to fulfil their duties as parents which may not be avoided or derogated from by agreement".[4] This broad definition of parental authority suggests the following rights and duties: custody, supervision, education, correction, feeding, and maintenance. The purpose of the YPA is to protect minor children whose security or development is in danger: in other words, where the parents or guardians cannot perform one of the duties mentioned above. Protection here includes protection from threats to the child's security and the promotion of its development, if these are felt to be in danger. The protection provided by the state, sometimes called social protection, is defined as follows:

> . . . extraordinary intervention by the State based on a finding that the persons primarily responsible for ensuring the protection of the child are not performing their duty or are performing it improperly. As a result they need help and support from government officers specifically authorized to intervene with a view to reestablishing this fundamental right. The duty of the Legislature is to define as well as it can the boundary separating protection in the broad sense from so-called social protection.
>
> In so doing, it will explain the boundary situations beyond which the security and development of a child or adolescent will be considered to be in danger in light of conduct that is tolerated by society.[5]

Thus, the objectives of the YPA are as follows: to put an end to situations where the security and development of the child are in danger, and to ensure that such situations do not recur. Any situation that endangers the security and development of a child must be remedied in close cooperation with the parents,

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[4] Pineau, J., La famille, Traité élémentaire du droit civil, PUM 1982, p. 276, quoted in Quebec, Manuel de référence sur la loi sur la protection de la jeunesse, 1990, p. 23. The discussion in this section is based generally and freely on this work.

[5] Quebec, 1990, p. 39.

"since they remain primarily responsible for their child" (Quebec, 1990, p. 33). Intervention under the YPA is based on a series of principles, namely:

1. A child enjoys all the rights and freedoms conferred by the Quebec Charter of Human Rights and Freedoms.

2. The interests of the child and respect for its rights must be the decisive factors in any decision concerning that child.

3. The State acknowledges that the parents are primarily responsible for the care and maintenance of a child. They have the right and duty of custody, education and supervision.

4. However, the State admits a supplementary responsibility toward children in need of protection.

5. Thus, the State acknowledges an obligation to intervene, on its own authority if necessary, when the security or development of a child is or may be in danger within the meaning of sections 38 and 38.1 of the YPA.

6. The State will intervene in such cases in order to ensure the child's security and development. The objective of such intervention will be to keep or, at the very least, to return the child to the parental home by helping the parents to assume their responsibilities.

7. Failing this, the objective of the intervention must be to ensure that the conditions in which the child lives are appropriate to its needs and its age by creating conditions that are as far as possible like the normal parental environment.

8. In order to achieve this objective, it is essential that all resources (family and community) and the facilities of Health and Social Services, Education and Justice work together and consult.

9. Intervention relating to a child under the YPA must also be designed to prevent similar situations from arising with respect to this child or other children and to promote community involvement.[6]

Among the situations that may endanger the development or security of the child, contemplated by section 38 of the YPA, paragraph 38(g), are physical

[6] Quebec, op. cit., pp. 33-34.

mistreatment and sexual abuse. It should be noted that, to the extent that the abuse is committed by a third person and the parents take the necessary action to protect the child -- that is, they give the child the necessary physical and psychological care and ensure that the abusive situation does not recur -- this concept does not apply. As a guide, sexual abuse is defined as follows:

> . . . actions designed to provide sexual stimulation or to seek sexual stimulation and may sometimes cause injury or trauma.[7]

However, according to a working paper prepared for the Table des directeurs de la protection de la jeunesse (DPJ), the expression "sexual abuse" is inappropriate because it is, in itself, an "abuse of language": the expression "sexual exploitation" is preferred. In fact, this expression has the advantage of being less subjective and moralistic than the notion of sexual abuse, of making clear the unequal relationship in these situations, and of creating less of a stigma than does sexual abuse, and thus of not creating a "new identity".[8] The expression "sexual exploitation" refers to both the acts perpetrated and the underlying intention, and the consequences they entail. In this context, the document suggests the following definition of sexual exploitation:

> Act of a person that provides or seeks sexual stimulation and is inappropriate in light of the age or level of development of a child or adolescent, the relationship, the position of responsibility, authority or domination and that violates the corporal or physical integrity of the child or adolescent.[9]

In April 1991, the Table des DPJ adopted this definition, although they retained the expression "sexual abuse". The definition of the actions in question is very broad and includes, in order of increasing seriousness, gestures or actions that do not involve touching (providing sexual stimulation through the senses of sight or hearing); gestures or actions involving touching but no penetration (e.g., fondling, caresses); gestures or actions involving touching and penetration (of the vagina, anus or mouth with the penis, fingers, tongue or inanimate object); and gestures involving violence (verbal, mental or psychological).[10] This

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[7] Id., p. 47.

[8] Gauthier, L. et al., (1990), Définition de l'abus sexuel (exploitation sexuelle), Working Paper prepared for the Table des directeurs de la protection de la jeunesse, p. 4.

[9] Id., p. 8.

[10] Table des directeurs de la protection de la jeunesse, L'abus sexuel, April 1991, p. 3.

definition clearly does not have any legal validity as long as it is not included in legislation. However, Chapter 4 explains that it is used as a reference point for the actions of the directors of Youth Protection Service units in this area.

Concluding this review of the background to protective intervention, it should be noted that the latest amendments made to the YPA, like those made to the Canada Evidence Act, lowered from 18 to 14 the age at which a child is able to testify under oath or make a solemn affirmation, although 18 is the normal age for this in civil proceedings. As a result, a child may testify under oath or solemn affirmation if he or she understands the nature of this formality, or otherwise may testify under a promise to tell the truth if capable of reporting the facts. In this case the testimony does not require corroboration. Furthermore, a child capable of testifying may be excused from doing so if the judge feels that the testimony could harm the child's mental or emotional development. A child may even testify without the presence of any party involved in the case. Finally, a statement made by a child outside the courtroom may be admitted in evidence when the child is too young to testify or is excused from doing so. Table 3.2 summarizes the differences between the provisions of the Criminal Code and the Canada Evidence Act, on the one hand, and the Youth Protection Act on the other, with respect to the testimony of children.[11]

3.3 Conditions Governing the Implementation of Bill C-15 in Quebec

When Parliament enacted Bill C-15, Quebec adopted a very broad implementation strategy. First, there was a desire to build on the existing process to review the interplay between psycho-social and judicial interventions -- this is revisited in Chapter 4 -- and to reaffirm the need for coordinated intervention, where resort to the courts in cases of sexual abuse would be encouraged.

To this end, policies and protocols governing intervention were devised and, in several cases, implemented in the various administrative regions of the province to apply to social service centres (SSCs), the Youth Protection Service units, police forces, crown attorneys, and hospitals and other institutions forming part of the health and social service (e.g., women's shelters) and justice (e.g., probation service) networks.

The Sûreté du Québec was also given sophisticated equipment to videotape the statements of children who had suffered sexual abuse. Fourteen units are available; some of these are mobile and can be moved anywhere in the

[11] This table is taken from Turmel, op. cit.

province on 24 hours' notice. In this regard, not only were specialist technicians trained: specialized training courses were also given to the investigating officers conducting the interviews. In 1989, the testimony of more than 300 children was recorded in this way.

In addition, a special room was created for closed-circuit testimony in the Montreal Law Courts, and a mobile unit was formed that could go anywhere in the province. These facilities make it possible to obtain a child's testimony in court without the accused being present.

There also was a desire to provide training for all staff involved in dealing with cases of child sexual abuse. A multifaceted strategy was adopted for this purpose. Conferences were organized on specialized subjects, such as that at Montebello in 1989. Specific training in the dynamics of sexual abuse and the psychology of child witnesses was given to individuals in various areas of intervention who were, in turn, expected to train the staff in their particular institutions. Finally, for the same purposes, the organization of consultation groups and regional conferences was promoted.

It was estimated that the total cost of implementing the provisions of this legislation in Quebec was more than one million dollars.

Table 3.2 Comparison of the Provisions of the Criminal Code, the Evidence Act and the Youth Protection Act with Respect to the Testimony of Children

TESTIMONY OF CHILDREN		
	Criminal Code/Canada Evidence Act	**Youth Protection Act**
STATEMENT MADE BY CHILD OUTSIDE THE COURTROOM ss. 85.5 and 85.6 of the Youth Protection Act	Facts contained in child's statement cannot be admitted in evidence if they are reported by a person other than the child himself (hearsay)	ADMISSIBLE When • when the child cannot testify • when the child is dispensed by the court from testifying How • by deposition of a person who personally received the child's statement • by any means of recording it that is reliable and the authenticity of which can be established Probative Value The statement made outside the courtroom must be corroborated by other evidence that confirms its authenticity
RECORDING s. 715.1, Criminal Code s. 85.6 of the Youth Protection Act	Videotaping • Reasonable time after commission of offence • Content of recording must be confirmed in child's testimony	VIDEOTAPING, TAPE RECORDING • Reliability • Child does not have to testify • The child's statement must be corroborated in order to be admissible

Table 3.2 (Continued)

TESTIMONY OF CHILDREN		
	Criminal Code/Canada Evidence Act	**Youth Protection Act**
ABILITY TO TESTIFY s. 16, Canada Evidence Act ss. 85.1 & 85.2 of the Youth Protection Act	Child under fourteen - Understand nature of oath/or solemn affirmation and ability to communicate facts → Testify under oath/solemn affirmation - Ability to communicate the facts → Testify on promise to tell the truth (corroboration not necessary) - If he is not able to communicate the facts → Not allowed to testify	Child under fourteen - Understand nature of oath or solemn affirmation → Testify under oath or solemn affirmation - Ability to report facts of which he has knowledge and to understand the duty to tell the truth → Testify on promise to tell the truth (corroboration not necessary) - If he is not able to communicate the facts → Not allowed to testify but a statement he may have made outside the courtroom may be admitted
COMPELLABILITY s. 85.3 of the Youth Protection Act	The child is compellable	Even when he is able to testify, the child may in exceptional cases be dispensed from doing so if the court feels that his testifying could harm his mental or emotional development
MEANS OF ENCOURAGING THE TESTIMONY OF CHILDREN s. 486 (2.1, 2.2), Criminal Code s. 85.4 of the Youth Protection Act	The accused must be present at his trial; therefore • the child may testify behind a screen • the child may testify outside the hearing room (closed-circuit television and the accused may communicate with his counsel)	The child may testify in the absence of all parties to the case, except counsel The excluded person may examine the child's testimony/order to maintain confidentiality

4.0 LINKS BETWEEN THE TWO SYSTEMS

4.1 Introduction

It was noted in Chapter 3 that the two legislative schemes that exist to protect children against sexual abuse in Quebec have common objectives. However, some of their objectives differ, and the mechanics of intervention within these schemes also differ considerably. This chapter first describes the mechanisms for intervention under the YPA, then describes the policies and practices under each system, and concludes with the mechanisms provided for consultation and implemented to facilitate a more adequate response to the problem of child sexual abuse.

4.2 Intervention by the Youth Protection Service[1]

4.2.1 Information

Information transmitted to the Youth Protection Director (YPD) is the doorway to any further intervention. Any person who has reasonable grounds for believing that a child has been subject to sexual abuse shall report the situation to the YPS. Section 45 of the YPA provides:

> Any information to the effect that the security or development of a child is or may be considered to be in danger must be transmitted to the director, who shall determine if it is admissible and whether or not urgent measures are required.

The Act requires persons to report any situation in which a child is in difficulty within the meaning of section 38(g); that is, if the child is a victim of sexual abuse, or physical negligence or abuse. In concrete terms, information concerning cases of sexual abuse of children received by the police must be reported by them to the Youth Protection Service.

In effect, the factor that brings the Youth Protection Service into play is "the report". More than 44,000 incidents of all kinds were reported in 1990-1991,

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[1] In this chapter, the official English terminology as provided in Quebec government publications on the YPS has been used.

and 25,000 of these were chosen for evaluation. The number of reports received and selected doubled between 1979 and 1988. Similarly, the number of court cases opened involving youth protection of all kinds increased from 1760 in 1979 to 5970 in 1990. Table 4.1 summarizes the statistics on cases reported and taken in charge from 1983-1984 to 1989-1990 for all Youth Protection Service units in Quebec. It should be noted that the cases taken in charge for sexual abuse were specifically identified only from 1987-1988.

Table 4.1 Reports and Cases Taken in Charge All YPSs - 1983 to 1990[1]

	Cases Reported		Cases Taken in Charge			
	Rec'd	Ret'd	Number of Children	s. 38	s. 38(g)	Sexual Abuse
83-84	35,858	20,946	16,562	18,769	NA	NA
84-85	34,438	19,105	23,856	20,036	3,146	NA
85-86	37,123	22,087	22,951	23,934	3,598	NA
86-87	43,284	25,713	22,672	24,048	3,166	NA
87-88	48,567	26,097	21,411	15,205	2,522	1,239
88-89	50,524	28,027	23,768	16,532	2,879	1,404
89-90	43,849	25,484	19,427	16,353	2,822	1,550

[1] Source: Ministère de la Santé et des Services sociaux, 1991.

While Table 4.1 gives an order of magnitude for the number of cases of sexual abuse of children taken in charge, it does not show reports of sexual abuse as a proportion of total reports, or sexual abuse cases reported as a proportion of other kinds of cases, or the nature of the intervention when the situation is taken in charge.

Moreover, one of the features of the Youth Protection Act is the fact that its approach to intervention is that use of the courts should be avoided. Initially, it was felt that the mere disclosure of a situation of sexual abuse -- especially if it involved members of the same family -- would be sufficient to change the dynamics of the abuse and thus protect the child. It follows that the philosophy behind the intervention consisted, to some extent, of avoiding resort to the courts as much as possible. In fact, the number of cases opened at the Youth Court

registries indicates that little use was made of the courts at the time. In 1981, there were 49 cases; in 1982, 39 cases; in 1983, 82 cases; and in 1984, 172 cases. These included both physical and sexual abuse cases. In comparison, there were 314 cases in 1987; 540 in 1988; and 439 in the first nine months of 1989 -- all of which involved sexual abuse only. While these data appear to indicate a change in thinking (which is examined further in Chapter 6), they are meaningful only in light of the statistics on cases reported as a whole.

Accordingly, more complete data were obtained for the years from 1987 to 1990 from the Department of Health and Social Services; these enabled this study not only to answer some of the questions raised here but also to compare the three health and social services centres (SSCs) included in the study. These data are shown in Table 4.2.

Table 4.2 Cases Reported, Assessments and Cases Taken in Charge 1987-1990

SSC[1]		Cases Reported		Assessments		Taken in Charge		
		Rec'd	Ret'd	Total	Sexual Abuse	Total Cases	Orders	Voluntary Measures
Qc	1	6,052	4,090	3,821	569	2,080	162	62
	2	6,703	4,132	3,777	590	2,268	176	58
	3	6,565	3,322	2,885	584	1,943	128	86
Mtl	1	8,773	4,154	3,730	419	4,199	48	165
	2	8,488	4,660	3,740	390	4,353	75	185
	3	8,509	4,602	3,682	358	4,468	75	232
C-N	1	1,152	933	563	80	414	2	26
	2	1,259	1,003	627	94	470	4	25
	3	1,615	1,045	824	156	483	14	27
Total[2]	1	48,567	26,097	21,413	2,820	15,205	549	690
	2	50,524	28,027	25,091	3,392	16,532	699	705
	3	43,849	25,484	18,741	3,004	16,353	750	800

[1] The figures after the name of each health and social services centre refer to the following years: 1 = 1987-1988; 2 = 1988-1989; 3 = 1989-1990.

[2] The total is for all social services centres in Quebec.

These data show a number of things. First, the Metropolitan Montreal Social Services Centre retains the fewest cases reported and has the lowest percentage of cases evaluated for sexual abuse. More interesting, however, is the fact that the Quebec City centre (CCSQ) differs markedly from the other two, and from the provincial trend, with respect to cases taken in charge, because in each of the three periods there were significantly more court orders than voluntary measures, although the latter show a clear increase while the former show an equally marked decrease.

The processing of information begins the procedure that allows intervenors to determine the degree of danger and to assess the urgency of the situation.[2] The team responsible for receiving reports must attempt to do the following: determine the reasons the informant reported the incident; inquire into the facts alleged (identification of the child's living conditions, the nature of the sexual acts or activities, identification of the place where the child is located); assess the child's vulnerability (perception of the child's reaction, age and current condition); assess the parents' ability to take charge, and the situation in which the child finds itself (perception of parents' reaction and conduct, involvement of other organizations and identification of resources in the community); support and seek the help of the person reporting the incident (identify reasons, clarify links between the person reporting the incident and the child, check that person's ability and willingness to become involved, clarify roles and limitations of the youth protection service); and collect additional information where necessary (determine urgency and make resources available).

Once the information has been obtained, the professional responsible for dealing with the report must first determine the priority of the situation and the time within which intervention is necessary. Three codes are used here: 1 = immediately; 2 = within 24 hours; 3 = within four days. If the child is less than five years of age, is in contact with the abuser and has no adult protection, and physical consequences or sickness seem likely, there will be immediate intervention. If the child involved is a pre-teen or a teenager involved in a situation of abuse within the family -- an open situation in the family -- and the nonabusing spouse can provide some protection, intervention will take place within 24 hours. Finally, in the case of a pre-teen or an adolescent who is the victim of abuse by a third party, or of actions in the past, and the parents are able to protect the child, intervention will take place within four days. Finally, the person receiving the report will write a report indicating the priority code, and will send the file for assessment.

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[2] The information in this section is taken from a working paper prepared by Claire Lessard of the Youth Protection Service unit at the Quebec City Social Services Centre, 1990.

When intervention is urgently necessary, the Youth Protection Service may act without court authorization for a period not exceeding 24 hours (section 47). If it is necessary to prolong the emergency intervention, the Youth Protection Service must obtain court authorization. The emergency action will usually consist in removing the child from his or her family, either to be housed in the community or for other external action (for example, a hospital visit) (section 46).

Any emergency measure requires that the parents and child be consulted as far as possible in order to obtain their consent. However, the Youth Protection Service may intervene even without such consent. When emergency action is ordered by the court, it may not be extended beyond five working days. It seems that cases where emergency measures are ordered in this way are also the cases most likely to be taken to court.

4.2.2 Assessment and Direction

(a) Assessment

The objective of the assessment is to verify the facts reported, analyze the child's situation in light of his or her vulnerability, the environment, and the abilities of the parents, with a view to determining if a threat exists to the child's development and security. Section 49 of the YPA provides that:

> If the director considers admissible information to the effect that the security or development of a child is or may be considered to be in danger, he shall assess the child's situation and living conditions. He shall decide whether or not the child's security or development is in danger.

After the file has been examined, the YPS meets with the child; this will generally happen two or three times in the case of a child under six, and once in the case of an older child. The child is informed of his or her rights, and the relevant information concerning the alleged events is obtained. In some cases, especially when young children are involved, helpful materials will be used, such as drawings, toys, or anatomical diagrams. Sexually explicit dolls are not always used: opinion concerning them is divided, with some specialists finding them suggestive. The use of sound-recording equipment is recommended with children aged six and over, as well as video equipment in some situations (although these are not defined). Such equipment is useful clinically but not legally; it is used primarily to help the young person's memory during later interviews.

At the first interview, the child is generally accompanied by an adult: the person reporting the incident, a social worker, a police officer, or the nonabusing parent if the case involves an incident within the family. The child is encouraged to talk freely, with the help of objective, open and neutral questions. These questions deal with the nature and extent of the alleged actions, the development and progress of the actions, the presence of other persons, the time at which the actions occurred, their duration, any knowledge of the actions that other people may have, the child's acceptance of the actions, and the child's feelings with respect to these actions. It is recommended that all child victims undergo a medical examination. Finally, in the case of abuse within a family, an attempt will be made to ascertain whether siblings were also involved, either by asking the child or by meeting with his or her siblings.

The second stage of assessment involves meeting with the parents. Where the alleged abuser is a member of the family, there will first be a private meeting with the nonabusing parent as soon as possible after the meeting with the child. One of the main objects of this meeting is to assess parental capacity. The following questions will be explored, among others: Does the parent believe the child? Did the child confide in this parent earlier? Did the parent have doubts? How did the parent react? What steps will she or he take to protect the child? Is the parent the victim of conjugal violence? Did he or she suffer abuse as a child? What is the nature of his or her marital and sexual relationships with the spouse?

When the evaluation leads to a conclusion that the allegations are founded, there will be a meeting with the abusing parent, unless the situation is to be reported to the police (see Section 4.3).[3] The meeting with the abusing parent is designed to hear the suspect's version and to determine his or her attitude to the situation (e.g., willingness to withdraw from the family home, favourable attitude toward therapy). If the abusive parent admits responsibility, there will be a meeting between this parent and the child, so that an admission can be made to the child that the parent alone is responsible for the actions that occurred and that he or she has agreed to seek assistance.

In the case of abuse by a third party, the meeting with the parents is designed to determine their ability to protect the child and to obtain the necessary care.

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[3] This exception is explained in a memorandum from the director of the Youth Protection Service unit in the Quebec City Social Services Centre dated March 24, 1988.

Before a decision is made regarding danger to the child, the investigating official will obtain, if necessary, any other relevant information from the child's school, the police, or other persons close to the child.

If the allegations are considered to be unfounded, the case will be closed with or without a referral. If the allegations are founded but the child's development is determined not to be in danger (e.g., because the parents have taken action to remedy the situation), the case will be closed with or without a referral.

Finally, if the allegations are justified and the child's development is seen to be in danger, the direction stage of the process will begin. Section 51 of the YPA provides that:

> Where the director is of the opinion that the security or development of a child is in danger, he shall take charge of the situation of the child . . . . For that purpose, the director shall propose the application of voluntary measures or refer the situation to the Court.

(b) Direction

Direction paves the way for taking a child in charge. It is necessary to make a diagnosis, explore the applicable measures, identify the coordinator, decide with him or her on the approach and action to be taken, and prepare a plan of service. A further meeting will be held with the child to inform him or her of the result of the evaluation, and to explore possibilities of intervention. In some cases, medical, psychiatric or psychological help will be present. Finally, the official and the coordinator will decide to pursue either voluntary action or legal proceedings.

As a rule, "situations of sexual abuse within a family will be heard in the Youth Court so that a probation order can be obtained to ensure the effectiveness and assiduity of the treatment".[4] However, it should also be noted that "the individualization of each case leads to the choice of voluntary measures". Voluntary action would be indicated, for example, if there is reason to believe that the evidence of abuse would be difficult to adduce in court, or if the conditions for an agreement are present. Three conditions for voluntary measures were identified in the Guide for Directors of Youth Protection: the parents and the child should be aware of the problem, admit that it exists and understand the

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[4] Id. p. 30. The Youth Court is a court of civil not criminal jurisdiction.

need to change the situation; they should be able to participate in applying the measures contemplated and to improve the situation along the lines of the objectives to be attained; and they should display a desire and sufficient motivation to become involved in the application of the measures.[5]

4.2.3 Taking a Child in Charge

Children may be taken in charge either as a result of voluntary measures or following a court decision. Voluntary measures concern the child as much as the parents, and the consent of all parties, including the child if over 14 years of age, is required (section 52). The list of voluntary measures in the Act (section 54) is not exclusive; it is possible for the Youth Protection Service to recommend any measure that is likely to improve the child's situation and resolve the problem as far as possible while still respecting parental authority.

In principle, an agreement must be concluded within 20 days, and it must be in writing. As a rule, an agreement may not last for more than one year, but it can be renewed after this period.

When the voluntary measures chosen are not appropriate, or when the parties either dispute the facts or do not consent to voluntary measures, the Youth Protection Service then applies to the Youth Court, informing it of the situation. The court rules first on the facts and then on the action to be taken. Because the YPA follows the rules of evidence and procedure in the Civil Code, the onus of proof is not as great as in a criminal case, because it is not necessary to prove the situation beyond a reasonable doubt. Hearings relating to protection are always held in camera in the presence of the parties, but it is possible to exclude the child or any other person, especially the parents, from the courtroom.

The order made by the court enshrining the measures is executory and the parties referred to therein must comply without delay. A failure to comply may lead to a charge of contempt of court or constitute an offence within the meaning of section 134 of the YPA.

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[5] Quebec (1990), Manuel de référence sur la Loi sur la protection de la Jeunesse, Department of Health and Social Services, p. 69.

4.3 Criminal Justice Policies

Intervention by the criminal justice system in a case of child sexual abuse is not designed so much to protect the child -- although this will be one of the consequences of "successful" intervention -- as it is to punish the offender in order to deter him or her, as well as others, from committing such crimes. However, such intervention in occurrences of child sexual abuse requires that every incident be reported to the Youth Protection Service. As has been stated in several documents, cases are reported to this service although there is often little knowledge of what happens afterwards.

Two approaches exist, therefore, which sometimes clash, or at least do not blend easily: on the one hand, the desire to criminalize and penalize conduct that is considered reprehensible and, on the other hand, the aim of protecting children in order to assert the primacy of the family.

4.3.1 Police Forces

When cases are referred to the criminal justice system, they usually make their entry via the police. In Quebec, two police forces may be involved: the municipal police force (each of the municipalities studied has its own force) and the Sûreté du Québec. While each force carries out investigations on the territory for which it is responsible, the government has given the SQ alone a complete mobile system for videotaping the testimony of children who have been sexually abused. Furthermore, the members of the SQ's Crimes Against the Person Unit have received more specialized training in interviewing children than have the members of most other police forces. It follows that they are asked to play a major role when the need arises to use video equipment.

The activities of the police may be divided into three stages: the investigation, the prosecution, and the sentencing and post-hearing.[6]

The investigation essentially involves collecting all the evidence necessary to determine whether a criminal offence has been committed. It is first necessary to check the urgency of the situation, protect and reassure the child and its parents, meet with the witnesses, identify the suspect, investigate all the relevant facts, determine whether videotaping would be appropriate, report the case to the Youth Protection Service, question the suspect and, where appropriate, ask the

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[6] Manseau, A., Dionne, J.F. and J. Turmel, Les abus sexuels envers les enfants: Manuel de référence de l'intervenant, Institut de police du Québec, n.d., pp. 39-51.

crown attorney's office to institute proceedings. According to the SQ's policy document, because this process is so complex, it is important for the investigation to be "the responsibility of the police, which should never ignore all the advantages of bringing social workers in during the investigation".[7]

When proceedings are begun, the police officer must be available for examination at the bail hearing, to explain to counsel any personality troubles or mental disturbance he or she may have noted in the accused, to hand over a complete file to counsel prior to the preliminary inquiry, to contact the nonabusing relatives or parents to explain the process, to give the witnesses an opportunity to reread their statements before they testify, to check whether the bail conditions have been complied with by the accused, and to try to obtain evidence of similar acts and check whether the child was previously subject to protective measures. He or she must also project an image of confidence and security, and never reveal feelings of disgust or vengefulness toward the accused.

Finally, at the sentencing and post-hearing stage, the police officer must determine the date of the judgment, inform the child or nonabusing parent whether the accused was convicted or acquitted, collect any information obtained following the investigation for sentencing purposes, and immediately report any breach of the conditions of the sentence.

4.3.2 Crown Attorneys

When charges are laid, the crown attorney must first examine the file to determine whether there is sufficient evidence to justify a prosecution, and institute proceedings where appropriate "in light of the public interest and the protection of society".[8] In determining whether there should be a prosecution, crown attorneys have at their disposal two complementary series of principles: the first relates to the gravity of the offence and the second to the relationship between the child and the accused.

For purposes of determining their gravity, offences are divided into two groups. The first generally require prosecution, regardless of the relationship between the victim and the accused. This group involves the following offences: the three kinds of sexual assault, incest, buggery, bestiality in the presence of a child or inducing a child to commit such an act, corruption of children, procuring

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[7] Sûreté du Québec, Les abus sexuels envers les enfants, 1987, Communiqué.

[8] "Politique du ministère de la Justice", in Forum régional de la Table de concertation socio-judiciaire, La complicité dans la concertation: Pour aider les enfants victimes d'abus sexuels, June 1988, p. 18.

by the father, mother or guardian, the head of a household allowing forbidden sexual acts, and procuring a person under 18 years old.

The second group is distinguished on the basis of the relationship between the victim and the accused. It includes the following offences: sexual touching, inducement, indecent acts, exhibitionism and nudity. In such cases if the person is a stranger or a person who is not close to the child, a prosecution should be brought. However, if the person is close to the child, the crown attorney should consider the following factors: the seriousness, duration and frequency of the offence; the method used and the number of potential victims; the child's age and level of development; the consequences of a trial on the dynamics of the family; the time that has elapsed since the abuse took place; the abuser's acceptance of responsibility for the act and commitment to a voluntary measure under the YPA; and the likelihood that the offence will recur.[9]

Crown attorneys are guided by the following procedures: they should remain on the case until proceedings are concluded (in Montreal a specialized team has been created, the members of which are interchangeable, while in Quebec City there is no specialized team but vertical prosecutions are conducted -- that is, the same crown attorney will follow the case from beginning to end); they must meet with the child before authorizing the laying of the information; they must accept any assistance that may be given by the Youth Protection Service and, if necessary, should not hesitate to request its assistance; and they should give precedence to the kind of evidence that best allows the system to achieve the prosecution's objectives while minimizing inconvenience for the victim and the witnesses.

Particular attention is paid to the preparatory interview with the child. As far as possible, this interview is conducted by the crown attorney in the presence of the investigating police officer and after examination of the videotape, if one was made. Similarly, crown attorneys are encouraged to avoid having the child testify in court, or using the video unless it has been examined in detail.

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[9] Id., pp. 18-20.

4.3.3 The Judiciary

The judges of the Quebec Court, Chambre criminelle, have to decide beyond a reasonable doubt whether the accused is guilty of an offence. Judges of the Youth Court must decide whether the security and development of the child are in danger, and protect the child, rather than determine the criminal liability of the abuser. The latter group of judges will require proof on a balance of probability in deciding on the facts alleged. Two essential matters, which are closely connected, must be examined concerning the role of the criminal court judge. The first concerns the process of swearing the child, and the second relates to the admissibility of statements made outside the court. A third matter, the penalty, will be touched upon briefly.

Without going into a discussion of the case law, which would not be appropriate here,[10] it should be noted that the two tests recognized by the courts for determining the admissibility of statements by a child in adult court are, first, sufficient intelligence, and second, an understanding of the duty to tell the truth. Section 16 of the Canada Evidence Act does not make any distinction with respect to the child's age. In a decision dated July 19, 1988, rendered at Thetford Mines, Judge Andrée Bergeron of the Youth Court notes on page 14 that no distinction need be made on the basis of whether the child's testimony is given under oath or simply on the basis of a promise to tell the truth:

> These are two means of obtaining testimony and once the judge is convinced that the child is able to communicate the facts, he will admit the child's testimony; he must give this testimony the same probative force as testimony given under oath.

In a speech to a meeting of the judges of the Quebec Court, Chambre criminelle, for the Quebec City Region, Judge Gilles La Haye suggested the following procedure for swearing children under the Evidence Act:

> (a) A child aged 14 and more is considered to be capable of swearing an oath or making a solemn affirmation, unless he is mentally disabled in some way.
>
> (b) A child under 14 years of age may also be sworn if he understands the nature of the oath or the solemn affirmation.

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[10] To the best of knowledge, the decision in Khan, [1990] 2 S.C.R. 531, is still the leading case on the subject.

(c) The inquiry seems to me to be necessary as soon as a child who is under 14 years appears on the stand (13 years and under).

(d) The judge should conduct as simply as possible a very brief inquiry to ensure that the child understands the moral obligation to tell the truth.

(e) The case law tends to suggest that it is sufficient for the child to understand that the oath involves a moral obligation to tell the truth.

(f) An easy examination as to his age, understanding, level of schooling, knowledge of swearing on the Bible and the need to tell the truth will be brief but sufficient.

(g) If the child does not particularly understand the nature of the oath (if there is doubt) but is capable of communicating the facts and if he understands the difference between telling the truth and a lie, why subject him to something beyond his abilities and force him to place his hand on the Bible if he is not sure what it is? The child can then testify by promising to tell the truth.

(h) In my view, the best method is a simple approach to the child that is weighted and sober and professional. Once again, the aim is the simplest possible approach. It is not necessary for the child to leave the courtroom traumatized for the rest of its life.

(i) The child must be given an opportunity to be heard and his ability to testify should not be doubted even before it opens its mouth.[11]

Although it is not binding on the other judges of the court, an article by Judge Claude Tremblay of the Youth Court concerning hearsay evidence notes that cases involving the sexual abuse of children require the creation "of an

[11] La Haye, G., (1991), Le témoignage des enfants devant la Cour, Text of an address delivered to the meeting of the judges of the Quebec Court, Chambre criminelle et pénale, Quebec City Regional Division, Château Bonne Entente, Sainte-Foy, Quebec, pp. 49-51.

exception to the ban on hearsay evidence if this exception does not exist in the case law".[12] The author continues:

> . . . it is not necessarily because the young child is essentially incapable of testifying. On the contrary, we believe that a young child can, in his own way, recount the facts of which he has knowledge and understand the duty to tell the truth.[13]

If hearsay evidence must be admitted, it is because the primary intention of the YPA is to protect the child against, among other things, the experience of testifying in court -- an experience that, because it will bring him or her into contact with "persons who often have no knowledge of child psychology in a place designed for adults and in the presence of the person who presumably abused him",[14] may well be one that runs counter to the primacy of the child's interests.

As far as adult courts are concerned, the decision in Khan again seems to provide guidelines for Canadian courts on the admissibility of hearsay evidence. It is always necessary to act with caution, but hearsay is admissible if it satisfies the two requirements of necessity -- for example, if an expert psychological witness convinces the trier of fact that if the child testified it would be harmful to him or her -- and reliability: that is, if the judge has no reason to believe that the child made up his or her statement.

Finally, with respect to the penalty, the judges have no criteria other than those that generally apply in sentencing. They must consider the objective seriousness of the offence, the particular circumstances, the need to set an example, the impact of the offence on the victim, whether the accused has shown remorse, the existence of a criminal record, the risk of repeated offences, the victim's age, and the age and personality of the accused. This study was not able to find any document listing the principles that govern sentencing in the specific area of child sexual abuse. The Canadian Centre for Justice Statistics, however, provided data on the sentences imposed in Quebec in 1989-1990 for offences involving the sexual abuse of children. They are reproduced in Table 4.3.

It should be noted that the sentence imposed in the adult courts for sexual abuse of children is usually probation, regardless of the charge laid, except in the

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[12] Tremblay, C., (1989), "Les déclarations des enfants en bas âge au sujet des abus sexuels dont ils ont été victimes: une preuve par exception", Les cahiers de droit, Vol. 30, No. 1, p. 264.

[13] Id., p. 264.

[14] Id., p. 265.

case of bestiality (section 155), householder permitting defilement (section 171) and sexual assault with a weapon (section 272). Sentencing is further discussed in Chapter 5.

Table 4.3 Decisions and Penalties in Child Sexual Abuse Cases Quebec, 1989-1990[1]

Section	Decision				Sentence		
	Total	Guilty	Acquitted/ Withdrawn	Prison	Probation	Fine	Other
151	1,176	290	240	140	235	49	126
152	391	83	112	49	70	6	34
153	369	92	74	39	76	24	38
155	154	34	27	31	13	3	15
171	33	18	8	10	5	6	2
173	825	635	146	88	388	376	269
271	2,668	697	558	460	522	85	242
272	243	37	66	37	13	1	1
273	19	6	3	6	0	0	0

[1] Source: Canadian Centre for Justice Statistics.

4.3.4 Services

The study found that the terminology relating to services for victims and persons who have committed sexual abuse is relatively confused. Should one speak of therapy, treatment, assistance relationship, consciousness-raising groups, or more simply of follow-up to ensure social reintegration? Must the services offered be geared to individuals, families or groups? These questions suggest others, relating to multiple approaches and variations thereon: psychiatric, behavioural, medical, psychoanalytic, psychodynamic, feminist. There is a panoply of assistance services, and it is not difficult to feel, in the final analysis, that there is little common vision and even less coordination.

For abusers, there are specialized institutes in Montreal and Quebec City: the Centre de psychiatrie légale (CPLM) attached to the Institut Philippe Pinel, and the Clinique d'évaluation et de traitement des troubles du comportement

sexuel (CETTCS) attached to the Robert Giffard Hospital Centre. In both cases, there is talk of "treatment" for "patients". At the CPLM there are sessions in sexual education, groups using Depo Provera (medication designed to control sexual impulses), work with couples, individual and group therapy sessions, social skills development groups, and groups designed to prevent repeat offences. At the CETTCS, the basis seems to be group treatment, supplemented where necessary by individual and couple sessions. Hormonal therapy is also used. In both institutions the work is long term (three years at the CETTCS). Also, in both cases the treatment is closely linked to the probation service, and officers must provide regular monitoring of the abuser and his or her compliance with the court order.

The SSCs also provide therapeutic services, and several are apparently based on the Giaretto approach. In this model, the approach combines both group and individual therapy for the victim, the nonabusing parent, and the abusing parent.

Finally, the Centres d'aide et de lutte contre les agressions à caractère sexuel (CALACS), located throughout the province, also provide support services for victims and allow them to break out of the isolation in which they often find themselves, to counter the prejudice that they often face, and to create heightened awareness of the structural gender inequalities that characterize relationships in cases of sexual abuse.

It is difficult to know how many people, whether child victims or adult abusers, benefit from these various services. It is even more difficult to determine who receives services of this kind, why they receive them, and how effective they are.

4.4 Uneasy Linkages

It was noted that the present policy of the Youth Protection Service is to encourage disclosure of the situation to the police in sexual abuse cases. It was also noted that the police wish to retain complete responsibility for the investigation, although they seek the assistance of social workers where necessary. Similarly, crown attorneys are encouraged to use the expertise available in the Youth Protection Service. Two matters are raised here. The first relates to the day-to-day coordination of activities that may often involve several services, even if only to ensure that the impact of intervention on the victims is minimized (e.g., the number of interviews that the children undergo). The second matter, which is more general if not more fundamental, relates to the very philosophy behind intervention: Is it necessary to take these cases to criminal court, and in

what circumstances will this be done? If not, what is the meaning of a social intervention that respects the primacy of parental responsibility?

4.4.1 Coordination Policies

Since 1984, a series of preparatory studies has been carried out to develop protocols for consultation and coordination of intervention by the various sectors. However, as a memorandum prepared by the Sûreté du Québec notes:

> Over the last few years we have accordingly been given tools and mechanisms to help us act more effectively, to intervene more adequately and in a manner that is better adapted to the situation of child victims. Consultation between social and legal services has been recognized as playing an important role . . . .
>
> However, the situation in Quebec is not necessarily a model of effectiveness; it lacks uniformity. There are many protocols of agreement between social and legal services. It can almost be said that each region has one. They have been interpreted in several different ways. Overall, they are all very similar . . . . It is not simply a question of intervening together but of complementing the efforts of the other.
>
> The interveners from the social services must limit themselves to their role as providers of social services. The same is true of the police and Crown attorneys. This is a basis for intervention to which anyone can subscribe. If it were otherwise, the protocols would not be worth anything more than the paper on which they are written.[15]

In 1984, which is the date of the oldest document to which this study was referred, a report prepared for the Youth Protection Committee (YPC) for the Montreal Region recommended the development of an integrated approach and the establishment of a protocol of cooperation between the various parties

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[15] Beaudoin, Y., (1991), L'intervention policière a l'égard des enfants abusés sexuellement, Sûreté du Québec, Crimes Against the Person Unit, p. 77.

involved in such intervention.[16] Among other things, it noted a division of responsibility for intervention, a lack of consensus on methods of intervention, and shortcomings in the training of personnel in the field of sexual abuse. Similarly, it noted that the victim- and family-centred approach meant that there was generally no monitoring of abusers, since responsibility for this had not been assigned.

In the case of intervention by the police, the report described the difficulties encountered by police officers in preparing evidence, their misunderstanding of the problem of sexual abuse, and their manner of interviewing children, as well as the lack of specialized teams of investigators.

Concerning crown attorneys, the report noted that they were, at the time, rather ill-equipped: the provisions of the Criminal Code had not yet been changed, files prepared by the police were often incomplete, and they shared a vision of society in which sexual abuse, especially when it occurred within a family, was not a crime like others and required a psycho-social rather than a legal response.

Finally, as far as the judiciary was concerned, the potential damage to the family unit resulting from trials for sexual abuse meant that they were hesitant about punishing the conduct in question.

Given these findings, the report concluded that there was a need for an integrated social and legal response that would conserve, and also clarify and increase, therapeutic intervention applying to victims, abusers and the family, while resort to the courts should be used as often as possible. However, this was not to be only punitive in nature.

The proposed approach was to be based on three major conditions: an increase in support for the child and his or her family from the social service organizations; a greater assignment of responsibility to the persons who perpetrate the prohibited acts and whose actions constitute serious offences; a greater concern in the legal system for the child victims and their families in the process of charging the abusers. The principles underlying the proposed integrated approach were: joint intervention, specialized staff, a clear division of responsibilities, more frequent intervention by the legal system, a reorganization of existing resources for the children and their families, and development of resources to treat the abusers.

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[16] Rioux-Gougeon, G., and J.F. Boulais, (1984), Développement d'une approche intégrée sociale et judiciaire en matière d'abus sexuel et établissement d'un protocole de coopération entre les divers niveaux d'intervention, Report of a task force on sexual abuse in the Metropolitan Montreal Region.

The statement of principle in this draft protocol of coordination proposed that it should be assumed that the child reporting the incident is acting in completely good faith; that the child is not responsible for the abuse; that the response must be speedy and unambiguous; that sexual abuse is an offence and the perpetrator must be held liable; that the situation must be the subject of a criminal investigation; that criminal prosecution of the abuser must be contemplated, and the child and his or her family must be given access to psycho-social resources; and that an adequate response required the cooperation of all systems, specialization by certain members of staff, and immediate, intensive and specialized intervention in the period immediately following the disclosure.

Under this protocol, judicial intervention was to form an integral part of the approach. The child-centred intervention strategy meant that any sexual contact between minors and adults in a position of authority or responsibility was to be considered reprehensible and harmful to the child, with the responsibility for such contact lying entirely with the adult. In this situation, use would be made, whenever necessary, of either the YPA or the Criminal Code to ensure protection of the child by removing the abuser. Thus, the police were encouraged to contact the Youth Protection Service before beginning their investigation, and vice versa, in any sexual abuse situation.

It is difficult to determine from the written documentation the extent to which this protocol was implemented and the impact it may have had in Montreal. It is known that it was adopted by the Richelieu Social Services Centre, and other administrative regions in Quebec may have adopted it. In any event, one of the main problems in implementing such a protocol relates to the question of disclosure of incidents of sexual abuse by the Youth Protection Service to the police: section 11.3 of the YPA provides that the confidentiality of any disclosure must be assured, unless there is a decision to the contrary by the Youth Court. (This report returns to this matter in Chapter 6 on the basis of the qualitative conversations that were carried out; the study found a serious expression of disillusionment with these protocols of consultation).

The question of disclosure is also relevant to the policy statement of the Department of Health and Social Services sent to SSCs and Youth Protection Service units in January 1988.[17] In this policy, the objectives of the Youth Protection Service are laid out in paragraph 2: "first to protect children, to take action to bring an end to the sexual abuse situation and to apply the necessary

[17] Résumé de la position du ministère de la Santé et des Services sociaux et des directions de la Protection de la Jeunesse, des Centres de services sociaux et de l'Association des Centres de services sociaux du Québec relatif à l'élaboration d'un mécanisme de concertation socio-judiciaire en matière d'abus sexuels sur les enfants, Working paper adopted on January 28, 1988.

corrective action to the problems experienced by the child and its family where appropriate". The policy then states that intervention must be individualized in the case of each child (paragraph 3) and that any decision initially must be geared to the interests of the child and suggests that the Youth Protection Service "analyse the impact of a decision to disclose on the physical, emotional, moral and intellectual well-being of a child" (paragraph 4).

The policy then states that the Youth Protection Service must favour the use of the courts, either the Youth Court or the Criminal Court, "with a view to imposing a judicial ban on the abuser and providing a framework for the measures designed to protect the child" (paragraph 6). The Youth Protection Service must therefore inform the parents and child of their right to report to the police and to help them where necessary (paragraph 7), and to encourage them to do so in light of the child's interests, agreement or categorical refusal, his or her credibility, any serious disturbance to the child, and the time that elapses between the act and the time it was reported (paragraph 8). Finally, the Youth Protection Service must obtain authorization from the Youth Court if it decides to disclose to the police, except in emergency situations -- that is, when the physical security of the child is in danger, or when the facts are clearly established and the court cannot hear the case or is not available within the emergency period.

When disclosure occurs, the professionals in the Youth Protection Service are to refrain from contacting the abuser before the police investigation is complete.

It will be seen that this policy falls far short of the objectives developed in the statements in earlier protocols of consultation: among other things, by stressing the need to obtain the authorization of the parents, the child or the Youth Court -- except in emergency situations -- before disclosing to the police situations of sexual abuse that are reported.

In 1989, the departments of Justice, Health and Social Services, and Public Security adopted a protocol of intervention in cases of institutional sexual abuse: that is, all cases occurring in institutions forming part of the health and social services network in Quebec.[18] While it required a level of cooperation that was more concrete and more integrated than the directives of the DHSS with respect to disclosure, it was based on essentially the same principle: the recognition that reports should remain confidential except where the parents, the child or the court authorize disclosure to the police.

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[18] Quebec, Protocole d'intervention intersectorielle dans les situations d'abus sexuels institutionnels, Departments of Justice, Health and Social Services and Public Security, 1989.

Finally, mention should be made of the Protocole d'évaluation et d'intervention socio-medical, adopted in 1988, which concerns the identification, treatment and prevention of the mistreatment and neglect of children. Sexual abuse is considered to be a matter of urgency that must be reported immediately.

4.4.2 Differing Philosophies

These protocols of coordination, or attempts to implement them, show that there are still widely differing philosophies of intervention. On one hand, intervention based on the philosophy of the Youth Protection Act is designed primarily to provide protection for the child in an approach that attempts as much as possible both to keep the family unit intact and to limit possible trauma for the child. On the other hand, intervention under the criminal provisions of the Criminal Code seeks to punish and deter acts considered to be reprehensible and, in order to do this, has relatively rigid principles that make it possible to ensure respect for the fundamental rights of the accused.

It follows that the answer to the fundamental question as to whether the courts should be used is, generally, "That depends". The few available statistics have shown that the intervention of the Youth Protection Service seems to vary from systematic use of the courts in some SSCs to a preference for voluntary measures in others. Even when the cases are taken to court, it is usually to Youth Court rather than adult court; as a result, the possibility of monitoring the application of protective and treatment measures will always be limited.

The next two chapters show the complexity of the intervention practices: on one hand, on the basis of a sample of cases reported to the police, and on the other hand, on the basis of an analysis of conversations held with professionals in all relevant disciplines.

5.0 SEXUAL ABUSE SITUATIONS IN THE CRIMINAL PROCESS

5.1 Introduction

This chapter presents the quantitative data obtained during the study of the treatment of child sexual abuse complaints. These data came from statistically representative samples of cases from the Montreal and Quebec City police forces for the years 1989 and 1990. When the files indicated that charges had been laid, the data were supplemented with information from the law courts in the two cities.

The study analyzed 257 complaints received by the police: 61 in Quebec City and 196 in Montreal. There was no significant difference in the nature of the complaints themselves between the two cities, in terms of the characteristics of the incidents, the children, or the suspects. However, the response of the authorities in the legal system showed several significant differences; Quebec City seemed generally more "strict" in its response. In fact, there were significantly more arrests ($X^2=5.50$, $p\leq.02$), charges ($X^2=8.55$, $p\leq.04$), guilty pleas or convictions ($X^2=16.60$, $p\leq.000$) and prison sentences ($X^2=11.77$, $p\leq.000$). To the extent that there were no significant differences among the cases reported, it can be concluded that these differences are the result of the manner in which the authorities responded to the complaints at various levels of the legal system.

However, despite the significant differences between the two cities, the data were analyzed as a whole since there were not sufficient cases from Quebec City to facilitate more sophisticated analyses.

The following section describes the characteristics of the incidents reported to the police, and the police and judicial decisions. This is followed by a more detailed analysis of four major decisions that mark the criminal process: substantiation, charges, guilt and sentencing.

5.2 Case Characteristics

Information was collected on the following factors: incidents, children, and suspects.

5.2.1 Incidents

The incidents reported occurred between 1975 (one case) and 1990 (66 cases). The majority occurred in 1988 (82 cases, or 32 percent), followed by 1989 (66 cases, or 26 percent), and 1990 (66 cases, or 26 percent). These incidents usually (84 cases) occurred in a place other than the home of the abuser or the victim. The abuser's home was the second most common location (79 cases), and that of the victim was in third place (64 cases).

(a) Nature of the Offences

The incidents most frequently involved touching (187 cases), followed by physical force (77 cases), penetration (53 cases), and fellatio (26 cases). Grouping the means used into two categories -- those involving force or penetration (including fellatio), and those not involving force -- resulted in the following breakdown: 44.6 percent (n=107) force or penetration, and 55.4 percent (n=133) other means. Fourteen cases were missing. The means used by the suspects are significantly related to the age of the victims, as is shown in Table 5.1.

Table 5.1 Relation Between Nature of Incidents and Age of Children

Number % Row % Column	Age Groups			Total n %
	1-6 Years	7-12 Years	13-18 Years	
Force or Penetration	14 13.1 29.2	25 23.4 30.1	68 63.6 62.4	107 44.6
Other Means	34 25.6 70.8	58 43.6 69.9	41 30.8 37.6	133 55.4
TOTAL n %	48 20.0	83 34.6	109 45.4	240 100.0

$X^2=25.62$, 2df, $p \leq .0000$

These data show that the use of force or penetration is significantly more common in the case of children between 13 and 18 than in the case of the other groups.

They also show a statistically significant relationship between the means used and the sex of the victims, since female victims were more likely than boys to be subject to penetration or force ($X^2=10.23$, $p\leq.001$).

However, the means used did not vary significantly on the basis of the relationship between the victim and the suspect or the duration of the abuse.

(b) Duration of abuse

Isolated incidents were more common than repeated abuse, accounting for 60.3 percent (n=146), compared with 39.7 percent (n=96). A statistically significant relationship was found between the duration of the abuse and the relationship between the victim and the abuser. As Table 5.2 shows, the abuse was repeated more often when the child was known to the suspect.

No significant relationship was found between the duration of the abuse and the sex or age of the victims.

Table 5.2 Relation Between Duration of Incident and Victim-Offender Relationship

Number % Row % Column	Victim-Offender Relationship		Total n %
	Person Known	Person Unknown	
Isolated Incident	79 54.1 46.2	67 45.9 94.4	146 60.3
Repeated Incident	92 95.8 53.8	4 4.2 5.6	96 39.7
TOTAL n %	171 70.7	71 29.3	242 100.0

$X^2=48.63$, 1df, $p\leq.0000$

(c) Source of police information

The information usually came from complainants other than the victims, who accounted for 23 percent of reports (n=59): the Youth Protection Service provided 8 percent (n=21), and other persons 64 percent (n=165).

5.2.2 Children

The incidents reported involved girls (191 cases, 74 percent) more often than boys (64 cases, 25 percent). The ages of the victims extended from less than a year to 18 years, the average being 10.8 years. For purposes of more sophisticated statistical analysis, the ages of the victims were grouped into three categories: from 1 to 6 (n=52, 20 percent of cases), from 7 to 12 (n=88, 34 percent of cases), and from 13 to 18 (n=111, 43 percent of cases).

5.2.3 Suspects

The suspects were overwhelmingly men (n=250, 97 percent) of between 12 and 89 years of age, the average being 33 years. They knew the victims in 69 percent of cases (n=176) and did not know them in 28 percent of cases (n=73). In 10 percent of cases, the abuser was the father; in 7 percent, the common-law husband; in 9 percent, another relative; in 26 percent, a friend or acquaintance; in 9 percent, a person in a position of authority; and in 28 percent of cases, the abuser was not known to the victim. No significant relationship was found between the relationship of the victim to the suspect, and the sex or age of the victim.

Where information was available concerning the criminal records of suspects, 48 percent (n=118) had such records and 52 percent had none (n=61). There was an almost significant relationship between the existence of a criminal record and the arrest of the suspects ($X^2=3.55$, $p\leq.06$) and the four main decisions involved in the legal process, as will be seen in the next section.

5.2.4 Summary

The data show that the incidents of sexual abuse reported to the police usually involve cases where the victim knows the abuser, that they do not generally involve the use of force or penetration, and that the abuse tends to be isolated rather than repeated. It comes as no surprise that a majority of the

victims are female, and the abusers are almost exclusively men. The average age of victims is 10 years, and that of abusers 33 years.

5.3 Police Decisions

The police must make a series of important decisions during their handling of the reports received. This section deals first with the terminology police use to designate the incidents reported to them, and the sections of the Criminal Code under which they are usually classified. It then examines decisions relating to the arrest of the suspect, substantiation of the report, and the request to institute proceedings.

5.3.1 Terminology and Classification

The incidents reported to the police sometimes involve more than one type of sexual act; this means that the total number of incidents recorded exceeds the total cases. Of 279 incidents, 235 were single incidents, 16 involved two types of abuse, and four involved three types of abuse. There were 231 cases of sexual assault recorded, one of incest, one of sexual interference, four of inducement, and 42 others.

For 118 cases, it was possible to determine the provisions of the Code that were used. The provisions used most often were those governing sexual assault: 30 reports were made under section 246, 55 under section 271, and four under section 272. Of the specific provisions in the main substantive amendments to the Criminal Code in the area of child sexual abuse, that relating to consent (section 150) was used once; contact (section 151) was used 11 times; inducement (section 152) was used once; and abuse of positions of authority (section 153) was used twice.

5.3.2 Arrest of Suspect

The decision to arrest a suspect is an important one, not only because it temporarily deprives a person, who has not yet been convicted, of his or her liberty, but also because it is significantly connected with a number of subsequent decisions. The police proceeded to make arrests in 40.8 percent of cases (n=95) and did not do so in 59.2 percent (n=138). The decision to arrest the suspect is related to the type of abuse in question, the suspect's relationship with the victim, and the existence of a criminal record. There were statistically significant relationships when the suspect used force or penetration (X^2=4.35, p≤.04), and

when the suspect was known to the victim ($X^2=6.52$, $p\leq.01$). Having a criminal record did not quite reach the level of statistical significance ($X^2=3.56$, $p\leq.06$).

The decision to arrest the suspect is significantly related to the decisions to substantiate, to lay charges, to admit guilt or enter a guilty plea, and to the determination of the penalty.

Table 5.3 shows that the allegation is more likely to be recognized as being founded when the suspect is arrested. Tables 5.4, 5.5 and 5.6 show the even stronger relationship between arrest and the decision to lay charges, guilt, and the sentence, respectively.

Table 5.3 Relationship Between Arrest of Suspect and the Decision Concerning Substantiation

Number % Row % Column	Substantiation			Total n %
	Founded	Non Founded	No Decision	
Arrest	91 95.8 46.2	4 4.2 14.8		95 40.8
No Arrest	106 76.8 53.8	23 16.7 85.2	9 6.5 100.0	138 59.2
Total n %	197 84.5	27 11.6	9 3.9	233 100.0

$X^2=16.12$, 2df, $p\leq.00031$

Table 5.4 Relationship Between Arrest of Suspect and Decision to Lay Charges

Number % Row % Column	Charges		Total n %
	Charges	No Charges	
Arrest	84 89.4 75.7	10 10.6 11.9	94 48.2
No Arrest 27	74 26.7 24.3	101 74.3 88.1	51.8
Total n %	111 56.9	84 43.1	195 100.0

$X^2 = 77.88$, 1df, $p = .0000$

Table 5.5 Relationship Between Arrest of Suspect and Guilt

Number % Row % Column	Guilt		Total n %
	Guilty	Non Guilty	
Arrest	45 78.9 46.4	12 21.1 8.3	57 23.7
No Arrest	52 28.3 53.6	132 71.7 91.7	184 76.3
Total n %	97 40.2	144 59.8	241 100.0

$X^2 = 46.49$, 1df, $p = .0000$

Table 5.6 Relationship Between Arrest of Suspect and Sentence

Number % Row % Column	Sentence		Total n %
	Prison	Other Sentence	
Arrest	26 26.8 81.3	71 73.2 34.0	97 40.2
No Arrest	6 4.2 18.8	138 95.8 66.0	144 59.8
Total n %	32 13.3	209 86.7	241 100.0

$X^2=28.26$, 1df, $p=.0000$

It will be seen later in the section, where the processing of cases involving sexual abuse of children is analyzed, that the decision to arrest the suspect is not as important as seems to be the case here in the explanation of the four factors determining the progress of these cases.

5.3.3 Substantiation

The decision to substantiate allegations of sexual abuse is extremely important. In effect, data obtained in previous studies of the police's handling of sexual assault generally (e.g., Clark and Lewis, 1977)[1] and sexual abuse of children specifically (e.g., Badgley Committee Report, Canada, 1984)[2] had shown that the police response to offences of this kind often ended at this stage.

In this study's sample of police files, the police recognized that 85.2 percent of allegations were founded (n=207), 11 percent were not founded (n=27), and a further 9 were not determined.

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[1] Clark, L.M. and Lewis, D.J. (1977) Rape: The Price of Coercive Sexuality. Toronto: Women's Press.

[2] Report of the Committee on Sexual Offences Against Children and Youths (1984). Sexual Offences Against Children (Vol. 1). Ottawa: Minister of Supply and Services Canada.

The factors that may influence this decision will be analyzed in detail later. At this point, we shall limit ourselves to a few observations. It was seen earlier that the arrest of the suspect is related to the decision to declare whether or not a case is founded. This decision is also linked to the sex of the victim, and to the relationship between the suspect and the victim. Table 5.7 shows that there is a greater tendency to recognize as founded cases involving girls than those involving boys.

Table 5.7 **Relationship Between Sex of Victims and Decision Concerning Substantiation**

Number % Row % Column	Substantiation			Total n %
	Founded	Unfounded	No Decision	
Girls	159 87.4 76.8	15 8.2 55.6	8 4.4 88.9	182 74.9
Boys	48 78.7 23.2	12 19.7 44.4	1 1.6 11.1	61 25.1
Total n %	207 85.2	27 11.1	9 3.7	243 100.0

$X^2=6.71$, 2df, $p=.035$

This may seem surprising at first to the extent that, on one hand, many studies tend to show that charges involving girls are viewed more often as suspect by the police, and to the extent, on the other hand, that the views expressed by the police in conversations also indicate that it is harder to believe girls when there has been no use of force or penetration. However, since the relationship is mediated specifically by the type of abuse in question, this finding is easier to explain. In fact, it is seen that the relationship between the type of abuse and the decision to substantiate almost achieves the minimum significance threshold ($p=.08$), showing that there is a tendency to recognize as less founded those cases involving a type of abuse in which there is no penetration or use of force.

A bi-polar correlation is obtained to the extent that the use of force or penetration are mainly used with adolescents and to the extent that boys who are child abuse victims tend to be young.

Allegations would seem to be less founded in the cases of young boys (1-6 years) or adolescents (13-18 years) who are, in both cases, victims of acts other than use of force or penetration.

Whether the case is determined to be founded or unfounded is also linked to the relationship between the victim and the suspect. As shown in Table 5.8, it is more likely that a case will be recognized as being founded when the persons involved know each other, than when they do not.

Table 5.8 **Relationship Between Victim-Abuser Relationship and Decision Concerning Substantiation**

Number % Row % Column	Substantiation			Total n %
	Founded	Unfounded	Ongoing	
Known	146 86.9 73.0	21 12.5 77.8	1 0.6 11.1	168 71.2
Unknown	54 79.4 27.0	6 8.8 22.2	8 11.8 88.9	68 28.8
Total n %	200 84.7	27 11.4	9 3.8	236 100.0

$X^2 = 16.73$, 2df, $p \leq .0002$

An explanation for this finding may lie in the extent to which unknown persons will, in many cases, be more difficult to identify.

5.3.4 Charges

The police laid charges in 59 percent of cases (n=115), and did not do so in 41 percent of cases (n=80); no decision had yet been made in 50 other cases (19 percent). There was a significant relationship between the decision to lay charges and the arrest of the suspect, as noted earlier. This decision is also linked to the type of abuse in question ($p \leq .04$), since the police laid more charges when penetration was involved. Similarly, it is linked to the duration of the abuse ($p \leq .0001$), so that when the abuse is repeated rather than isolated, the likelihood that charges will be laid is greater. These data are found in tables 5.9 and 5.10, respectively. Whether or not the suspect had a criminal record is not significantly correlated to the decision to lay charges ($p = .065$).

Table 5.9 Relationship Between Type of Abuse and Decision to Lay Charges

Number % Row % Column	Charges		Total n %
	Charges	No Charges	
Force or Penetration	54 67.5 47.0	26 32.5 32.5	80 41.0
Other Means	61 53.0 53.0	54 47.0 67.5	115 59.0
Total n %	115 59.0	80 41.0	195 100.0

$X^2 = 4.07$, 1df, $p = .04$

Table 5.10 Relationship Between Duration of Abuse and Decision to Lay Charges

Number % Row % Column	Charges		Total n %
	Charges	No Charges	
Isolated	54 50.0 46.6	54 50.0 65.1	108 54.3
Repeated	62 68.1 53.4	29 31.9 34.9	91 45.7
Total n %	116 58.3	83 41.7	199 100.0

$X^2=22.75$, 1df, p≤.0000

5.3.5 Other Forms of Intervention

Before concluding this section on police intervention, it would seem appropriate to present other forms of intervention. Interviewing of children is usually conducted by a police officer with one other person present (n=124, or 48 percent) although the data did not identify the person. Interviews were also conducted by a police officer alone (n=31, or 12 percent), or by a police officer with an official from the Youth Protection Service (n=16, or 6 percent). In a majority of cases -- 51 percent (n=132) -- the files indicated only one interview, although there were two in 14 percent of cases (n=36), three in 4 percent (n=9), and four in 1 percent (n=2).

It appears that available technical resources to facilitate the taking of testimony from children were used very little. Videotaping was carried out in only four cases (2 percent), and there was none in 157 cases (61 percent); there is no information for 82 of the cases. Sound recording was used in only one case.

5.3.6 Summary

These data on intervention by the police show that while a very large majority of allegations are recognized as founded, this applies more to girls than to boys, and the rate at which charges are laid declines considerably to about

50 percent of the cases recognized as being founded. In a majority of cases, the suspects are not arrested; when they are arrested, it is usually in cases where there was penetration or force or where the abuse was repeated and the suspect was known to the victim. The police did not make extensive use of the new substantive provisions of the Criminal Code when charges were laid, preferring to use the existing provisions relating to sexual assault (section 271).

5.4 Judicial Interventions

5.4.1 The Crown

The Crown authorized 79 percent (n=107) of complaints received from the police, in most cases without change (n=76, 29 percent). Refusals to proceed were uncommon; the study found only six (4 percent), although it should be noted that the relevant information was not available for 22 cases. Authorized complaints are essentially designed to become criminal proceedings (80 percent), and only one case was prosecuted as a summary conviction offence. Moreover, 80 percent of complaints (n=107) were brought to the Chambre criminelle of the Quebec Court, as compared with 9 percent (n=12) to the Youth Court.

5.4.2 First Appearance

A majority of the accused, 62 percent (n=80), appeared under arrest, 37 of them without warrant and 43 with warrant. Twelve (9 percent) appeared on a promise to appear and seven (5 percent) following a summons.

At the first appearance a majority of the accused pleaded not guilty: n=88, (69 percent). Only three (2 percent) pleaded guilty, while two were referred for assessment.

After the first appearance 73 (57 percent) were ordered to a preliminary inquiry, seven (6 percent) were ordered to trial, three (2 percent) pleaded guilty, and there was a waiver, release or withdrawal of the charges in six cases.

5.4.3 Preliminary Inquiry

Unfortunately, the files contained little information on the testimony of the victims and the accused, either at preliminary inquiry or at trial.

The preliminary inquiry usually ended in an order to stand trial (n=51). The accused pleaded guilty in 14 cases, and they were released or the charges withdrawn in eight cases.

5.4.4 Trial

There were 58 trials, of which 55 were before a judge alone. The files studied did not contain any information concerning the use of closed-circuit television, a screen, or videotaping.

The trials resulted in guilty pleas in 27 cases and in convictions in 17, while 13 accused were acquitted and two released.

The next section analyzes the factors determining convictions, regardless of the point in the process at which they occurred. It should be noted that guilt was significantly correlated to the duration of the abuse ($p=.0002$), the relationship between the victim and the abuser ($p=.04$), and the arrest of the abuser, as shown in Table 5.5. Tables 5.11 and 5.12 show the results for the two former variables.

Since there was a significant relationship between repeated abuse and the relationship between the victim and the abuser (Table 5.2), the fact that these two variables were significantly related to convictions does not come as a surprise. Moreover, it was also seen that persons who were known to the victim were arrested more often than others.

5.4.5 Sentencing

Sentences were imposed as follows: There were only three fines (5 percent), two with probation and one with suspended probation. The amount of the fines ranged from $150 to $2,500. There was a total of 45 sentences to probation, varying from six to 39 months, although most of them were for nine months. Eight sentences to probation were not accompanied by any other penalty. Two probation sentences were combined with treatment, and five with community service. Imprisonment was the penalty in 34 cases. In nine of these, imprisonment was not accompanied by any other measure, whereas in 23 cases it was combined with probation, and in two it was suspended.

Table 5.11 Relationship Between Duration of Abuse and Guilt

Number % Row % Column	Guilt		Total n %
	Guilty	Not Guilty	
Isolated	23 15.5 39.7	126 84.6 66.7	149 60.3
Repeated	35 35.7 60.3	63 64.3 33.3	98 39.7
Total n %	58 23.5	189 76.5	247 100.0

$X^2 = 13.53$, 1df, $p = .0002$

Table 5.12 Relationship Between Victim-Abuser Relationship and Guilt

Number % Row % Column	Guilt		Total n %
	Guilty	Not Guilty	
Known	48 27.3 81.4	128 72.7 67.4	176 70.7
Unknown	11 15.1 18.6	62 84.9 32.6	73 29.3
Total n %	59 23.7	190 76.3	249 100.0

$X^2 = 4.25$, 1df, $p = .04$

To analyze sentences, a dichotomous category was created, broken down into cases in which there was a prison sentence and those in which there was none. There was a significant relationship between the arrest of the suspect and the kind of sentence imposed, since those who were arrested were more likely to be imprisoned, as shown in Table 5.6. Moreover, there is also a relationship between the duration of the abuse and the victim-abuser relationship and the sentence, as shown by Tables 5.13 and 5.14.

A reading of these two tables shows that repeated abuse, and incidents involving persons who are known to each other, result in imprisonment more often than other cases. These results are no more surprising than those relating to guilt, for reasons mentioned earlier.

5.4.6 Summary

The data show that crown attorneys authorize a great majority of the reports sent to them by the police. Most accused plead not guilty, and the suspects are convicted and acquitted in more or less equal numbers. When they are convicted, they are usually sentenced to probation or to probation and prison. The data on sentences seem to be in accordance with the picture obtained from the data provided by the Canadian Centre for Justice Statistics, described in the preceding chapter.

Table 5.13 Relationship Between Duration of Abuse and Sentence

Number % Row % Column	Sentence		Total n %
	Prison	Other Sentence	
Isolated	6 4.0 18.2	143 96.0 66.8	149 60.3
Repeated	27 27.6 81.8	71 72.4 33.2	98 39.7
Total n %	33 13.4	214 86.6	247 100.0

$X^2=28.26$, 1df, $p=.0000$

Table 5.14 Relationship Between Victim-Abuser Relationship and Sentence

Number % Row % Column	Sentence		Total n %
	Prison	Other Sentence	
Known	32 18.2 94.1	144 81.8 67.0	176 70.7
Unknown	2 2.7 5.9	71 97.3 33.0	73 29.3
Total n %	34 13.7	215 86.3	249 100.0

$X^2 = 10.43$, 1df, $p = .001$

5.5 Analysis of Processing of Complaints

The data in Figure 1, the processing of allegations received by the Montreal and Quebec City police forces, show that the first break occurs when the decision to lay charges is made. Of 208 allegations recognized as founded, or 81 percent of reports, charges were laid in only 121 cases, or 58 percent. These cases resulted in 60 convictions (when the accused either pleaded guilty or were found guilty), although this accounts for only 50 percent of the charges laid. These are two essential aspects of the processing of charges within the criminal justice system relating to child sexual abuse. This section examines in greater detail each of the four essential decisions in the processing of reports of child sexual abuse: those relating to substantiation, charges, guilt, and sentencing. Variance analyses and logistic regression analyses of each of these four dependent variables were carried out over the following dichotomous independent variables -- whether or not force was used, the duration of the abuse, the relationship between the victim and the abuser, and the existence of a criminal record -- and two co-variant variables: the sex and age of the victims.

5.5.1 Substantiation

It will be recalled that a significant relationship was found between the decision to substantiate and the victim's sex, the relationship between the victim

and the abuser, and the arrest of the abuser by the police. The analysis of variance (ANOVA) showed that the variables taken individually had no effect and that the interaction of the means used (force) and the duration of the abuse were the only significant interaction effects ($F=4.77$, $p=.031$), while the introduction of the victim's sex as a co-variant produced a significant relationship.[3]

Since the study had a dependent nominal dichotomous variable, a logistic regression analysis was carried out on each variable separately and on the interactions that the variance analyses had revealed. This gave the following results: sex is the most important predictive variable, and enabled the study to classify 93 percent of cases correctly. No other variable was included in the equation since none achieved the minimal level of significance.

It follows that the victim's sex was the first predictor in the decision to substantiate, followed by the interaction between the use of force, and the duration of the abuse.

5.5.2 Laying of Charges

There was a significant relationship between the decision to lay charges and the use of force, the duration of the abuse, criminal record, and the arrest of the suspect. The variance analysis showed a primary effect of criminal record ($F=6.90$, $p=.01$) and of the effects of interaction of the use of force and duration ($F=3.621$, $p=.003$), of force and the victim-abuser relationship ($F=11.17$, $p=.001$), and of duration and the victim-abuser relationship ($F=5.67$, $p=.019$). The logistic regression analysis showed that the variable that correctly predicted most cases (81 percent) was the existence of a criminal record.

It can be concluded from these data that the laying of charges depends primarily on the existence of a criminal record, followed by the interaction between the victim-abuser relationship and the existence of a criminal record and, in third place, the interaction between the duration of the abuse and the relationship between the victim and the suspect.

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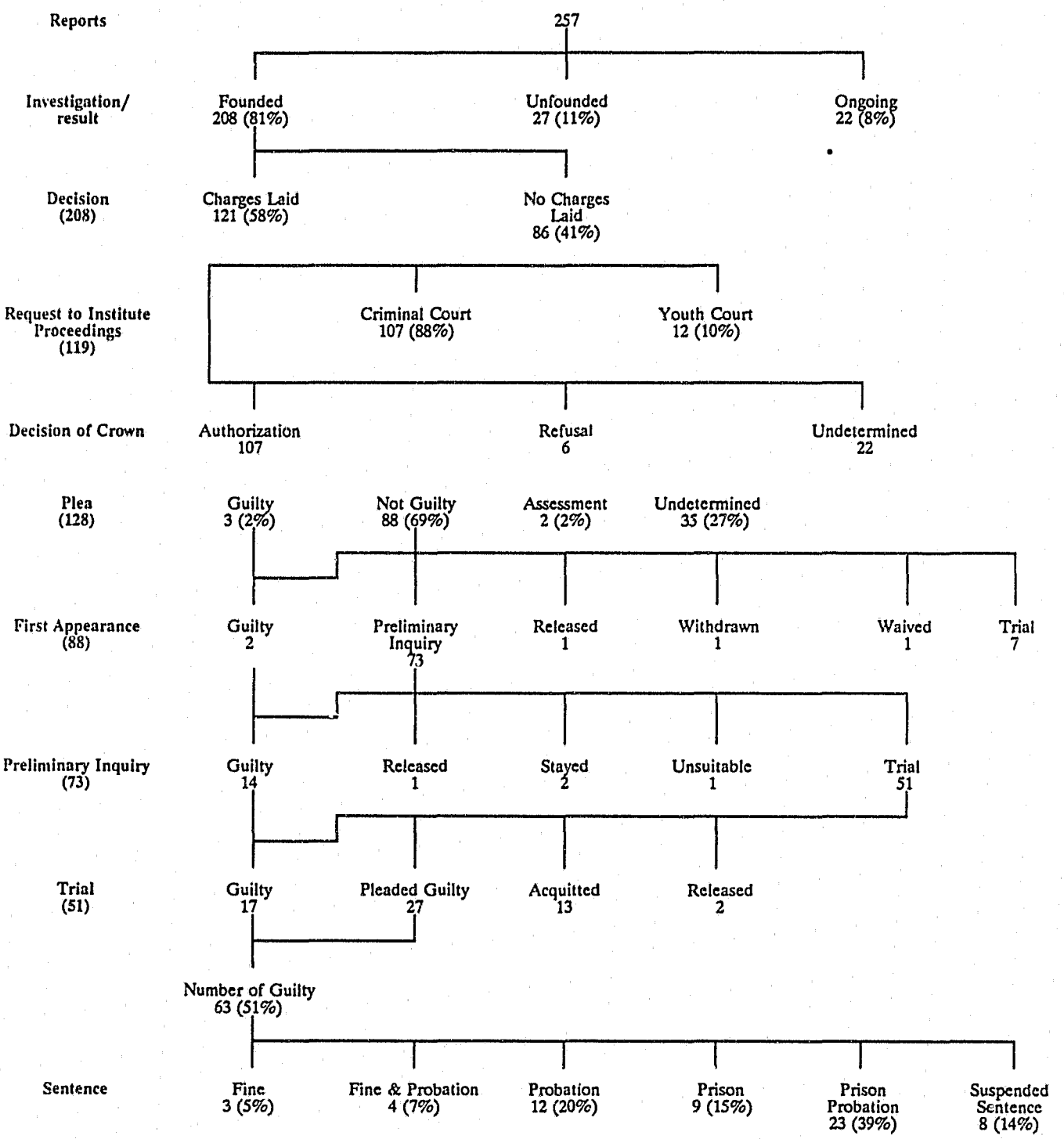
[3] Because of the small number of cases, the study was unable to obtain analyses more powerful than those with two interactions.

Figure 1 Processing of Complaints Within the Criminal Justice System Montreal and Quebec City



5.5.3 Guilt

There was a significant relationship between the guilt of the abuser and the duration of the abuse, the relationship between the victim and the abuser, and the arrest of the suspect. The variance analysis did not show any primary effect or interaction effect. The logistical regression revealed that the interaction between the use of force and the existence of criminal records made it possible to predict 61 percent of cases correctly ($\beta = -.44$, $p = .03$).

These data show that the interaction between the use of force and the existence of a criminal record is the primary predictor of guilt, followed by the duration of the abuse.

5.5.4 Sentencing

There was a significant relationship between the sentencing decision and the duration of the abuse, the victim-abuser relationship and the arrest of the suspect. The variance analysis showed principal effects for the use of force ($F = 4.20$, $p = .04$), the duration of the abuse ($F = 14.38$, $p = .000$) and the existence of a criminal record ($F = 5.31$, $p = .02$). The analysis also showed an interaction effect between the use of force and the existence of a criminal record ($F = 5.16$, $p = .025$). The logistic regression analysis also showed that the duration of the abuse was the principal explanatory variable making it possible to predict 79 percent of cases correctly ($\beta = 1.11$, $p = .0007$).

The result is that the duration of the abuse is the primary predictor of the nature of the sentence, followed by the interaction between the use of force and the existence of a criminal record, and the relationship between the victim and the abuser.

5.5.5 Summary

The data show that the victim's sex determines the decision to substantiate the allegation and that the existence of a criminal record, the use of force, the duration of the abuse and, to a lesser extent, the relationship between the victim and the suspect, most accurately predict the other three decisions, namely, the decision to lay charges, guilt, and sentencing.

In other words, it is possible to create a decision-making model along the following lines: reports involving girls will more likely be recognized as founded if they involve the use of force or penetration than if this is not the case. In the

case of boys, on the other hand, the reports will more often be considered to be founded if the abuse is repeated and perpetrated by someone known to the victim.

When charges are laid, it is not so much the sex of the victim that is decisive as the relationship between the victim and the abuser. In fact, when the abuser is known, it will be easier to apprehend him or her and to determine whether he or she has a criminal record, two variables that determine whether charges will be laid. Subsequently, the accused will plead guilty or will be convicted to a greater extent if they have criminal records and if they used force or if there was penetration.

Finally, the longer the abuse lasted, and thus the better known the abuser was to the victim, the greater the likelihood that the abuser will be sentenced to imprisonment.

6.0 INTERVENTION PRACTICES: A VIEW FROM THE INSIDE

6.1 Introduction

It will be recalled that interviews were conducted with more than 60 persons selected from all levels of intervention in each of the three municipalities studied. The objective was not only to obtain information on their views of the legislation governing child sexual abuse and problems that may continue to arise -- information that could be obtained neither from the documentation consulted nor the files analyzed -- but also to attempt to take another look at intervention practices.

In fact, between the official policies on one hand, and the cold light cast by statistics on "real" practices on the other hand, the views of the parties involved of their own practices and of those in other sectors make it possible not only to refine our understanding of the existing situation, but also to better understand the day-to-day difficulties of implementing the will to report and suppress situations of sexual abuse of children.

This information reveals, above all, that beyond discourse and written documents, systems of images continue to a large extent to condition the application of these policies. In particular, it shows that the extent to which people's perceptions of what are "legitimate" cases of sexual abuse interacts constantly with official or unofficial directives designed to administer the sector in which they are implemented.

This chapter is subdivided into four sections, which deal with the following topics: "definitions" of sexual abuse, problems of coordination and cooperation encountered in practice, shortcomings in the legislation and difficulties in applying it, and recommendations made by the respondents.

6.2 Variable Definitions

Between a "criminal law" definition consisting of a rather scattered series of operational factors, and socio-political definitions, examples of which were seen in Chapter 4, sexual abuse reflects a very complex reality. It certainly involves concrete actions: touching of the genitalia, caresses, vaginal or anal intercourse, and so forth. However, each of these acts in itself does not immediately or necessarily, in the view of the persons interviewed, constitute sexual abuse. It is necessary to look at the context in which they occur, the underlying intent and the possible consequences. Simple use of the provisions of the Criminal Code or the

Youth Protection Act is not sufficient for an understanding of why some such acts will be treated as sexual abuse while certain others, which are similar in every "objective" respect, will not be so treated.

As the persons interviewed for this study said over and over again, each case is unique (those working in the legal field), or individualized (those working in the social services field). Other than in the committed views of organizations such as the Centres d'aide et de lutte contre les agressions à caractère sexuel (CALACS) there is little room for recognition of the systemic and structural elements of sexual abuse.

These perceptions are described briefly in the following sections. Examples are drawn from individual experiences and specific cases. However, each example, and especially the respondents' selection of certain metaphors, point to some systematic components of an understanding of the attitudes that characterize the intervention of each group involved. With such a small number of interviews, this study cannot generalize on the profession or occupational group as a whole. Nevertheless, these elements will give cause for reflection, which in turn provokes questions. Because the criteria used by officials from the justice and social sectors differed markedly, they are considered separately.

6.2.1 Judicial Services: A Question of Credibility

This section deals with interviews conducted with two judges of the Youth Court and five of the Chambre criminelle, as well as with ten crown attorneys, four defence counsel, and 22 police officers.

Notwithstanding variations between specific professional groups within the justice sector, the key issue in determining what is or is not sexual abuse is the credibility of the victim. Here, for example, are comments from the judges:

> A woman starts an orgy, she sleeps with 15 guys, she doesn't like the face of one of the guys and screams rape. It is not fair that this cannot be taken into account. (Interview [I] # 46)

> In the past, we had cases of real rape with penetration. Now we have cases involving touching and exhibitionism, which is not the same thing. (I # 38)

What is a "real" rape? Why should the fact that on the fifteenth occasion the woman said "No" not be taken into account? Interviews have shown that some cases of sexual abuse are viewed as being more "legitimate" than others (or

not legitimate at all), and that the dividing line between the two does not necessarily take the acts themselves into account. Ambiguity occurs as a result of the belief that children may lie, that divorce cases lead to manipulation of children in order to obtain revenge, that young girls sometimes place themselves in difficult situations, and that not all abuse is equally serious.

However, notwithstanding the variety of forms of abuse, or that "set-ups" may occur, a large number of cases that go to court are still viewed as probably being founded. Yet, very little is needed to tip the balance of reasonable doubt, and this "little" is found specifically in the credibility of the victim, who must not only be able to express himself or herself, but also must be able to do so clearly and precisely in accordance with his or her age.

Many interviewees, defence counsel in particular, expressed the view that child sexual abuse seems to be a fashion, a form of paranoia that will pass but that in the meantime "leaves traces in the lives of honest citizens". According to some, more and more people are being accused "for silly mistakes": for example, an adult touching an eight-year-old girl through her clothes, or a grandfather holding his granddaughter on his lap. "If it is no longer possible to touch children, we are heading toward a very repressive society; it's the Spanish Inquisition" (I # 7).

Those interviewed often feel that social workers and special-interest groups have created the impression that children cannot lie, although, they say, this is not true: adults can be manipulated by children without even being aware of it. Thus, some paternalistic judges "are hoodwinked by children who seem to them to be little saints".

> There are children who can imagine, and a child has a lot of imagination, and you do not need further evidence. For example, a girl who had slept with animals, with everybody, she was lying in order to go to a reception centre. That certainly does not help the defence. (I # 7)
>
> At 15 or 16 years of age girls are capable of giving consent. I have one who is 14 but acts like a woman of 25. There is seduction but then they are not capable of giving consent . . . . Not everybody is equal. A girl of nine had sex with several men and that can provoke men (I # 54).
>
> A man had sex with a girl in Alma; she hung around with motocycle gangs, she asked all the guys to have sex with her, she was a little harlot ... She was raped by four guys. She was used to having sex

> with everyone ... Why should those boys rape her, she was easy. She must have done it (accused them of rape) because she regretted having slept with so many men (I # 5).

Although they are generally more sensitive to the position of the young victim, crown attorneys are no less concerned about the credibility of the allegation and the complainant. "You have to check whether the child does not have a motive for lying and check his relationship with the abuser" (I # 11). Moreover, young children are regarded as being rather impressionable, while young adolescents, it is felt, often attract the abuse of which they are the victims.

In addition, some situations are seen as being more conducive to abuse: this is true of disadvantaged and closed communities, such as those on the North Shore, or those of native peoples.

> The mentality here is economically and psychologically disadvantaged. The lower North Shore is a closed community and contact with the outside world is reduced to a minimum. This mentality has prevailed for a very long time and sexual abuse forms part of the web of life and is one of the customs: they live together in 2 or 3 rooms and the parents sleep with the children, which encourages sexual abuse (I # 52).

> Among natives there are cultural differences. Added to the problem of sexual abuse are those of culture and language. They do not think the same way. They are not treated differently but it is more difficult to obtain evidence, they are less talkative (I # 62).

Furthermore, these situations cause difficulties for the prosecution, in that it is difficult either to allocate responsibility or to prepare the case.

Police officers, more often than others interviewed, expressed the view that there was no reason to doubt the facts disclosed by children:

> A child cannot invent things that are not true. It's already so difficult to say what he has to say . . . except that experience shows that he always reveals part of the assault and feels guilty at first . . . . (I # 27).

Yet, similar reservations about children's credibility were also found: children fantasize often, are easily influenced, repeat what they are told and are subject to manipulation, especially in divorce cases. Or, it was felt, the conduct of adolescents is ambivalent: they cry "Rape" because they are afraid of getting

pregnant; they have a dubious sexual history: "a girl sexually assaulted three times. She almost runs after them. What is the point in reporting this" (I # 24). With some police officers, this view prevailed to the point that they said that they did not want to interview girls alone and preferred to have someone with them, both to protect the complainant and to protect themselves from charges.

The police are exposed to all types of abuse, to all kinds of situations. That they hold a great variety of views should not be surprising. However, it must give rise to concern, in view of the fact that they, together with the Youth Protection Service, are in the front line and make the initial decisions. For this reason, a very wide range of decisions inevitably will be made.

Illness or societal overreaction? Does the problem lie in the ambiguous conduct of adolescents and the tendency of children to fantasize, or is it a problem of relations between men and women? Sexual abuse, in the view of people working in the legal system, is not limited to a list of "objective" forms of conduct recorded in the legislation. It raises a series of questions, it is based on a number of preconceptions that often have little to do with the official "definitions".

6.2.2 Social Services: An Issue of Individual Conditions

Professionals working in the Youth Protection Service and in children's aid (18 people were interviewed) have a mission both to protect children and adolescents, and to minimize intervention by the state with a view to keeping the family unit intact.

> If the parents have done their duty, we have no business there; we represent the State but we do not put ourselves in the parents' place.
>
> The functioning of the family unit must be supported so that it can work better . . . recreate a family dynamic . . . . A child does not remain a victim all his life . . . . There are ways to get people out of that (I # 10).

For these professionals, sexual abuse is more of a social problem linked to the material conditions of existence than it is for those working in the justice system. While they often ascribe the problems of abuse to inadequate family dynamics, if not pathologies, they still tend, rather, to regard these dynamics as resulting in turn from poverty or from unequal relations in society between men and women, adults and children.

Similarly, while they acknowledge that "manufactured" situations exist, they tend to believe the allegations of children: they quote fewer examples of cases that are "set-ups", and refer less often to ambiguities in the conduct of adolescents or the excessive permissiveness of society. The determining factor, for them, seems to be the particular circumstances of the case, the family milieu.

> There are links between sexual abuse and economic factors . . . when you are starving, you no longer have any values or any hope . . . . It is a social problem . . . . Sexual abuse among people who are well off exists but we do not see as much of them at the youth protection service; the sick, on the other hand, there are more of them among the poorer classes . . . . Misery leads to promiscuity (I # 38).

Similarly, the study heard more about the specific problem of sexual abuse among aboriginal peoples. Here there was a very strong awareness of a lack of resources, of not being able to reach these people.

> It is more difficult because of the language, manners, customs of the aboriginals, there is no language for sex (I # 62).

> It is taboo for Amerindians to speak about sex . . . . There is a great deal of alcohol consumption, a lot of promiscuity . . . no need to work and no responsibilities (I # 56).

Finally, those interviewed in social services make a distinction between major sexual abuse -- generally involving force or penetration, where intervention will be more immediate -- and minor abuse, which has little or no impact.

> If a child of ten touches a child of two, is it part of life or sexual touching? But in the case of an adolescent and a child of three, there are penalties (I # 62).

> There is horrible abuse with penetration extending over several years . . . and minor abuse, touching on only one evening . . . which does not have any consequences (I # 60).

> Sexual abuse most often involves touching of girls between 12 and 14 . . . cases involving rape and boys are extreme (I # 47).

In short, the complexity of the situations and their great variety leave room for a great deal of interpretation as to what constitutes or does not constitute sexual abuse, and as to when it is necessary or desirable to intervene. Here again,

the underlying "definitions" influence intervention practices, as do successful cooperation and consultation mechanisms, which are examined in the following section.

6.3 Coordination, Cooperation: From Goals to Reality

It is fair to say, on the basis of the interviews, that members of the judicial sector feel that coordination and consultation have significantly improved in the past few years. Crown attorneys observed that social workers, in particular, were more likely to allow cases to go to court. What was sometimes called the "Secret Service Centre", rather than the Social Services Centre, was no longer referred to in this ironic way. There was more consultation and coordination in intervention, and an increased spirit of collegiality.

Police also noted a clear change of attitude among social workers over the last few years. There is a greater willingness to allow cases to go to court and to cooperate with the criminal justice system. Everybody feels that this is a great improvement because people are prepared to recognize that legal intervention alone is not sufficient:

> The goal of the police is to report. For the others the goal is to find solutions and decide whether to prosecute. Unfortunately, we don't have a choice, it's to suppress. It is not up to us to help everybody. Simple intervention by the police is not sufficient because the little guy needs help, and then the adult also and then even the whole family (I # 16).

A closer relationship has also developed between the police and the Crown, although this change is less spectacular because the two groups have a history of cooperation in criminal prosecutions, especially in cases involving sexual assault. This closeness with the Crown has resulted in, among other things, clearer directives as to what is a "good" case, a good file.

A number of grey areas remain, however, especially in the definition of the specific roles of each intervenor. Thus, the police do not like interference in their investigations, although the involvement of crown attorneys and social workers from the very beginning could in many cases help add appropriate material to a file, or eliminate dubious files at the outset. On the other hand, social workers are still coming to grips with the concept of confidentiality in the YPA, and they continue to interpret it restrictively.

It follows, according to crown attorneys, that there is sometimes the impression of a power struggle between the various authorities involved, and this is ultimately being played out at the expense of the victims: the children. In effect, the fact that everybody wishes to "keep a piece of the cake" means that intervention is duplicated; in particular, this affects the number of times the child will be required to repeat his or her story.

Finally, crown attorneys regret the still-identifiable objective, in some cases, of placing protection of the family unit ahead of protection of the child. As one of them pointed out: Where there is sexual abuse, what is left of the family unit to protect? Similarly, social workers often will first try a therapeutic approach with the abuser; only when this fails will they refer the case to the police. However, often it is then too late and, since the case is contaminated, it can no longer lead to a prosecution. Changes in such approaches are accordingly a matter of urgency in the eyes of a number of crown attorneys.

> They often wait too long. Their intervention, they should not have given in to the suspect. The police are handicapped in their work. They have a conciliatory approach, a social approach. That may work in some cases. They don't want to destroy the family unit. Then when they come up against a wall, they call us. The suspect has been asked all the questions and has had a chance to consider his answers (I # 19).

Furthermore, even the Youth Protection Service tends to play "hide and seek". In one case, for example, the Montreal YPS did not know whether a father had committed offences against his children when he lived in the Beauce. On the other hand, the Youth Protection Service can offer assistance to victims that the police cannot provide.

The relationship with the Youth Protection Service also seems to vary greatly from large centres like Montreal to other parts of the province. In Baie-Comeau/Sept-Îles, for example, the Youth Protection Service is consulted before a decision is made to videotape testimony.

> You see him regularly; we're not in a big city like Montreal here. Everybody knows one another and the links are more than professional; we don't sleep together here but we are friends after all (I # 63).

It is often the social worker who has the first meeting with the child. Such cooperation hardly ever occurs in Montreal. Moreover, some people regret the fact that the Youth Protection Service has retained a family-oriented approach. There are still two different philosophies that in many cases are, if not

diametrically opposed, in conflict. Again, the result is that, too often, the Youth Protection Service does not disclose situations to the police, whereas the police are required by the YPA to disclose to it any report of sexual abuse. It should be noted here, however, that some police officers told the study that they reported only cases of abuse that occurred within a family. In other cases, they did not do so systematically. In any event, the police generally feel that the Youth Protection Service interprets the confidentiality rule too rigidly. The result is that, in many cases, the coordination protocol is only words on paper, or will only be used in a specific sense. Finally, it was found that there are still too many situations where intervention is duplicated, and the children must tell their stories several times to several people.

It is interesting to note that in many cases the study found that the front-line police -- those on patrol -- know little or nothing about the protocols in effect, whereas the investigators generally know them very well.

The views of social workers on a coordinated and concerted approach were harsh: to them the concept has not gone far beyond an expression of good intentions. In some cases, it was felt that crown attorneys never have enough time to spend on these cases, especially the meeting with the child:

> We experience a certain amount of difficulty in preparing the child with the Crown attorney: it is always at the last minute and we always feel that we are disturbing someone, that we are pawns, that we have no business there; the important thing for us is the child (I # 60).

> We spend days and days at the law courts with the abuser only to be told at the end of the day that the case has been adjourned . . . . The child is not prepared ahead of time and the Crown attorney meets with him for 10 minutes beforehand among all the other cases (I # 55).

In some cases, disclosure to the police of an incident of abuse does not result in any concrete action until several weeks later, given all the cases. Some people feel that the police even tend to downplay the whole situation:

> For the police the whole thing is very discretionary. It happened to me that I reported sexual contacts but it turned out that it was not the end of the world; they down-played it (I # 55).

Clearly, the professionals in the Youth Protection Service feel that everyone acts according to the logic of their own institution. For the police and

the crown attorneys, it is a matter of laying charges and obtaining a conviction; for the Youth Protection Service, it is a matter of protecting the child. As a rule, judges are not very aware of the reality of sexual abuse and its consequences. It follows that they are not very sensitive to the victims, who must "bare themselves in court . . . . I have the impression of having bared myself as a woman; it's embarrassing" (I # 62).

It is almost unanimously recognized that attempts have been made to improve consultation. It is recognized just as unanimously that they have not had much effect in everyday practice: "We do not really have a protocol; the job has not been done" (I # 42), "essentially it's been a flop" (I # 43). This lack of success in the consultation mechanisms applies not only to judicial intervention but also to consultation with abuser treatment programs:

> Robert Giffard has a different approach with a different clientele. It is geared to the abuser and takes a behavioral approach. We are geared to the child and use a systemic approach. Thus we compete more than we co-operate (I # 43).

Given this, social workers remain sceptical about taking cases to court, especially in the form of criminal proceedings:

> The Crown attorneys have problems with them; it doesn't make a damned bit of sense. I understand that their job is to defend society but that is not always what the child wants . . . . The Crown attorney doesn't always seem to understand that it is not always good for the abuser to go to prison. We seem to be cosseting the abuser and we had no credibility. Crown attorneys have a more scientific approach and are stuck on Robert Giffard, they consider that more serious (I # 42).

The institution of proceedings in the Chambre criminelle of the Quebec Court is avoided as much as possible: "It's too traumatic, that business. It makes an impression even on us. It causes insecurity in the child". The judges are said to be biased and insensitive to the insecurity of the children. Some social workers regret the fact that in the criminal courts the procedure is based on the concept of guilt, and that it is not accompanied by a notion of responsibility. In the Youth Court the child is accompanied and the proceedings are not as intimidating:

> Use of the courts is much more traumatic for everybody. It's cumbersome. However, it enables the child to understand what has happened and that it is not his fault, that he is not responsible and

that he will receive help. The goal is not to punish the abuser but to ensure that the child is protected (I # 48).

Social workers wish to retain responsibility for deciding on the best interests of the child, and feel that neither the police nor people working within the legal system should dictate their course of action (I # 56). They feel that, on the whole, they are the only ones whose primary responsibility is the welfare of the child and that this responsibility should be carried out within proper coordination mechanisms.

6.4 Problems and Shortcomings

In addition to the problems noted with respect to consultation and coordination, all persons interviewed identified problems with the legislation, especially in the way it is interpreted. In this regard, it is particularly noteworthy that the provisions allowing testimony to be videotaped or televised are very rarely used, and that the sentences imposed by judges in the criminal courts usually fall far short of expectations and the objectives of rehabilitation.

Views of police

Police officers who were interviewed raised two major problems: the protection of the rights of the accused, which would sometimes take priority over everything else, and inadequate sentences.

While recognizing that the Canadian and Quebec charters are essential instruments in a democratic society, police officers often felt that they go too far in protecting the rights of the accused or, conversely, that the rights of victims are not sufficiently protected. "The Charter is an open door to get away with it. The criminals know it by heart" (I # 24). "You get a strong feeling that there are only criminals who use their rights to excess" (I # 25). They also observed that the defence uses cross-examination techniques that are often inappropriate, given the ages of the children and the nature of the offences.

> The defence uses all possible tactics. It's the most disgusting thing there is. And the judges let it happen.

> On cross-examination (the defence counsel) shouts at the child . . . tries to trip up the child. He asks three questions at once and then insists that the child answer yes or no . . . they use hearsay although it's not allowed . . . drawings of children who are ten years old (I # 19).

Police often find the sentences imposed by the courts most inadequate. It is not necessarily because they think that imprisonment is appropriate in all cases, because, among other reasons, they recognize that it does not make any contribution to a "cure". Nevertheless, it is felt that the sentences are inappropriate, or that those who are convicted should at least serve the whole of their sentences and not simply one sixth or one third, as seems to happen often.

> It's a joke? Suspended sentences. The harshest sentence I've seen was seven years but that involved abuse that you couldn't even imagine . . . . The sentence imposed and the time served are two different things; they serve only 1/6 of their sentence (I # 21).

There are also complaints about regional disparities in sentences:

> There's no yardstick. Here sexual assault gets you six months; in Sept-Îles it's a year and in Montreal it's five years. However, sexual assault in Baie-Comeau is just as bad as in Montreal (I # 58).

The police also identify problems that result from delays in interviewing the child, and with the use of videotape. Delays occur primarily in Montreal and Quebec City: it often takes up to two years for a case to be concluded. The judicial system is found to be too cumbersome and this harms the case, especially because of the inevitable loss of memory on the part of child victims. Furthermore, in Montreal there is also the problem of delays caused by the need to obtain an arrest warrant. Often a month will go by, it was reported, and an accused will therefore have time to compose himself.

The police have two criticisms regarding the use of video: training for conducting interviews with children is often inadequate, and the fact that video is used essentially to obtain guilty pleas. It is used primarily with young children, and even then it is not used in court.

Views of crown attorneys

Crown attorneys identified similar problems: the cumbersome nature of the judicial process and the delays involved; the difficulty in sensitizing judges, and the lack of uniformity in the approaches and decisions of judges; the difficulty of using the technical resources at the prosecution's disposal; the inadequacy of the sentences, and problems of combining the two statutes.

One of the major problems for crown attorneys is limited resources, especially in Montreal. The lack of staff and the considerable workload mean that, despite all good intentions, it is often difficult to meet with the victim

sufficiently in advance of the hearing. It follows that the case may not be as well prepared as they might wish, especially preparation of the principal witness.

There are also limited social resources for the victims within the meaning of the YPA. When the court decides that the development or security of a child has been compromised, it is difficult to find an appropriate resource for the child, since it is the child that must be withdrawn from his/her environment and not the abuser within the family unit.

Crown attorneys confirmed, in most cases, that they prefer to use videotaping as a tool in plea bargaining with the defence, rather than as an evidentiary instrument, since in any event the use of a videotape does not prevent the child from having to testify and be cross-examined.

Crown attorneys generally felt that sentences were not an effective deterrent, since they were geared more to re-education than to punishment.

Views of judges

For the judges who were interviewed, problems occurred primarily in the technical aspects of certain substantive provisions of the legislation, such as those abrogating consent and recent complaint, and in sentencing.

Regarding consent, the problems that were raised relate primarily to how consent is defined or, in other words, its area of application.

> There are problems. Since 1985, when consent was codified in the criminal law, it was the first time it had happened. This created a problem: what is consent? Previously, for those under 14 years of age it was not a defence. For example, two boys, one with a girl of thirteen could not raise a defence of consent, the other with a girl of fourteen might have a defence and would be acquitted. This causes injustice (I # 45).
>
> Consent linked to age was considered to be unconstitutional. It makes no sense that an accused cannot raise a defence on this point (I # 6).

Regarding the recent complaint rule, some feel that its positive aspects have been lost; that is to say "independent evidence that gave weight to the child's testimony. (Especially when) a spontaneous complaint was left to the judge's discretion" (I # 45). Some feel that it would have been better to retain this provision and to have removed its negative features.

> Instead of removing him, we could have said that we should not penalize the victim because he did not complain after the crime was committed. Moreover, evidence of a spontaneous complaint could be used; before that gave the witness credibility. Now we are no longer supposed to consider it but it is considered anyway (I # 6).

Similarly, some feel that abrogation of the recent complaint rule means that a child's testimony may be considered to be hearsay, just like statements made outside the courtroom, which some people say are dangerous.

> I find that very dangerous, perhaps because I am too much of a purist. Hearsay does not provide authenticity or probative value, even in cases involving sexual abuse of children. It cannot be admissible; that is no good. It does not offer much of a guarantee of truth. I cannot imagine a sexual abuse trial without the child's testimony. Hearsay is okay for corroboration but then it is not hearsay. But not as evidence; I find that dangerous (I # 46).

In reality, however, hearsay would be increasingly admitted in court, and some would argue that even more latitude is needed.

Another substantive provision, the ban on evidence of earlier sexual activity, raises a number of difficulties for judges, especially in determining suitable limits that can be imposed without restricting the fundamental rights of the accused in an abusive way on cross-examination. According to some judges, defence counsel continue to ask the victims questions on this subject, and judges must remain very vigilant. One admitted that the tests prescribed by the Supreme Court in this area were not very clear.

> Counsel try to do indirectly what they are not allowed to do and it is necessary to be vigilant. In their arguments they can claim that we should ignore that (I # 53).

With regard to publication of the identity of the accused or the victim, all judges interviewed supported this ban, but often found it difficult to explain the ban to journalists since, in their view, a full understanding of the Code is needed in order to understand the scope and meaning of this provision.

The only problems caused by in camera hearings relate to their scope, and the question of whether they should be partial or total and under what circumstances. Once again, it was felt that the guidelines issued either by Parliament or by the courts of superior jurisdiction were vague.

> Every judge must refuse in camera proceedings when the aim is to avoid harming the reputation of the accused (I # 45).

Concerning sentencing, one judge said that, in his view, there was a lack of appropriate penal programs and that the question of adequate penalty rested too much on the shoulders of the judge alone, especially since there was a lack of clear guidelines.

Finally, the judges generally agreed that the process was too long and cumbersome, and that case overload meant that the routine thus created had an impact in the form of reduced severity of sentences. It was also felt, at least in some cases, that matters were simpler before, because the list of offences had now grown; that it was more the approach and attitude of those working in the justice system that had changed, and that Bill C-15 did not bring about change in the prosecution of sexual abuse cases; that the offences were much more descriptive of acts that were, in the final analysis, minor; and that the same offence was subject to differing interpretations from one region to another.

Views of defence counsel

Defence counsel criticized the fact that the legislation had reduced the number of defences that could be raised by the accused: the abrogation of examination concerning the victim's sexual reputation, or concerning previous sexual activity, and the restrictions imposed on the defence of consent, were among the irritants noted.

> There are fewer means of gauging the victim's credibility. She is pure and has a great deal of protection . . . . It is necessary to be really strong when you're cross-examining. That's the only thing you can use. Before, you could go into their previous sexual activity and their sexual reputation (I # 54).

They also stressed the fact that in camera proceedings were not always completely in camera and said that they should be better defined, given a specific framework, or abolished. The use of a screen and testimony on closed-circuit television, in their view, violated the fundamental right of the accused to confront his accuser directly, and they felt that video would be dangerous if it were used systematically. Moreover, it created more room for plea bargaining.

Views of social workers

Three problems were constantly mentioned by social workers: first, the inconsistencies between the two schemes, "the two worlds", Bill C-15 and the

YPA; second, the problem of the organization of the Youth Protection Service itself, which suffers considerable budgetary limitations; and third, the need for a complete review of the issue of the age of consent.

Chapter 4 detailed the difficulties of linking the two systems. A key element of these difficulties is section 11.2 of the YPA, which governs the confidentiality of reports made to the Youth Protection Service. The vast majority of social workers felt that this provision was often interpreted too rigidly.

To the extent that the YPA is intended to protect children, use of the courts does not make it possible to achieve this objective because their procedures and objectives were better adapted to the accused than to the victim. At the same time, section 11.2 of the YPA is itself an obstacle at certain times to the objective of protecting children. There is a kind of grey area between the two systems: many cases can be found that either should be taken to court but cannot under the YPA, or are taken to court but, in the interests of the child, should not have been.

> These are two separate worlds and there is no junction, each has its own rules of the game. What would be interesting would be for the two to join and become one (I # 42).

Several interviewees said that they were intimidated by Bill C-15 because of what they called its overly legalistic and procedural nature.

Criticism of the organization of the Youth Protection Service itself was virtually unanimous. Clearly, this issue goes beyond the limits of this study, since it relates only to the provincial legislative framework. However, these views must be considered because they may well have an impact on the manner in which cases involving child sexual abuse are handled in Quebec.

Many feel that administration, rather than clinical work (the provision of assistance) takes precedence within the Youth Protection Service. According to several people, there appears to be a lack of rigour in the application of the legislation, especially the provincial act, because of organizational difficulties, budgetary constraints, and the fact that each social worker must, in the final analysis, interpret the legislative framework for himself or herself, and determine what constitutes the best interests of the child. This leads not only to differences within each Youth Protection Service unit but, even more so, to considerable differences between the various administrative regions.

> Here it is not the clinical aspect that takes precedence but the administrative aspect (I # 43).

> An attempt has been made to conduct evaluative and formative research, to involve the youth protection services but they have always refused to follow a model saying that there were different ways to proceed and we do not impose any direction. It's never possible to involve the youth protection service in an evaluation process . . . . (I # 43).

> The emphasis is placed on productivity, the sooner you close your cases the better it is . . . . Budgetary restrictions. It is an institution that never takes a position toward this clientele. It's a joke here, the mission of the SSCs in Quebec is balancing budgets (I # 42).

Finally, the age of consent is unfortunately not well defined, despite the fact that it cropped up almost constantly in the study's interviews. Sometimes there was agreement in saying that the age at which it was possible to consent to sexual acts should be reviewed.

> The whole history of fourteen-year-olds should be clarified. The question of authority also. From the age of 14, the trollop wanted to do it. That's the way the police think. They are not aware of the dynamics behind this situation (I # 61).

To conclude, social workers often feel powerless because, in cases of intrafamilial abuse, the YPA does not provide the possibility of removing the suspect from the home, with the result that the child is removed from the family environment instead. In this situation, the lack of resources often makes it difficult to provide an appropriate environment for the child.

In short, in most cases it is not the application of Bill C-15 that causes problems as much as the lack of common ground between the two basic philosophies, the constraints involved in case management in the Youth Protection Service, the lack of adequate resources for women, especially mothers, and the lack of training of all staff involved to help them respond adequately to child sexual abuse.

6.5 Some Recommendations

While it is generally admitted that Bill C-15 is adequate, the problems encountered in implementing the legislation, as described in the preceding chapters, resulted in a number of recommendations.

First, all those who were interviewed, with the notable exception of judges, agreed that they wanted more training. Such training should deal both with the use of equipment (e.g., diagnostic tools or means of interviewing children) and with the specific problem of child sexual abuse.

Second, given the problem of the difficult links between the two areas of intervention, the social and the legal, a better integration of the two systems is strongly recommended. Some recommended the creation of a unified family court and the revision, if not elimination, of section 11.2 of the YPA, which contains the confidentiality requirement.

Similarly, problems of consultation between the various authorities involved and within each institution led those interviewed to recommend the establishment of closer links between the decision-making levels and the more functional levels, in order to ensure that coordination mechanisms do not depend solely on the wishes and interests of a few persons.

Third, a number of persons interviewed said that the system of criminal penalties should more adequately reflect the severity of the offence. In short, they wanted more severe sentences.

> There should be yardsticks for sentences throughout Quebec. There are gaps in the judicial system in this sense. It depends on the judge's mood; the guy plays with it (I # 58).

At the same time, people recognize the need to develop therapeutic approaches for the abuser that are more adequate, better structured, properly financed, and provided with sufficient trained staff.

Fourth, because of the specific nature of situations involving child sexual abuse, most of those interviewed wished that a way could be found to reduce delays and improve the cumbersome nature of the judicial process.

Concerning the technical aspects of the legislation as it relates to the admission of children's testimony on videotape or closed-circuit television, it was frequently recommended, in the case of the judges, that it be abolished purely and simply or, by most others interviewed, that it be reviewed in depth to clarify the circumstances and guidelines for the use of such equipment.

Finally, with regard to social and community services, a recommendation was made that the mothers of victims of sexual abuse should be given support both before the decision to lay a complaint and in facing the consequences of such abuse.

Bill C-15 is considered to be quite adequate legislation -- on paper. Given the shortcomings noted here, especially the lack of sufficient funding to ensure its proper implementation, almost everybody agreed that the legislative amendments alone were not sufficient when human and financial resources were lacking.

7.0 CONCLUSION

What impression can be gained from this extensive picture of the implementation of Bill C-15 in Quebec? It is not possible to determine the effectiveness of these provisions, their adequacy in suppressing situations of child sexual abuse, since this is not an evaluative study. Nevertheless, a number of conclusions can be drawn.

As stated at the beginning, this study had five objectives:

- to examine the procedures and protocols in Quebec that relate to the sexual abuse of children;
- to examine the treatment of cases within the legal system involving sexual abuse of children;
- to determine the extent to which the new provisions of the Criminal Code are used in cases involving the sexual abuse of children, and the reasons therefor;
- to examine the nature of the relationship between the persons involved in the criminal justice system and staff in the Youth Protection Service; and
- to identify the problems that might arise for workers in the criminal justice system in implementing Bill C-15.

Here, each of these objectives is considered in turn, with appropriate conclusions. **It should be noted, however, that Quebec has adopted an all-round strategy for the implementation of this legislation.**

In effect, whether one considers training programs provided for the key parties involved and the multipliers in each sector, the technological resources made available to the SQ and the law courts, the amendments made to the Youth Protection Act to adapt its procedures concerning testimony to those contained in the federal legislation, or even, in the final analysis, the many discussions surrounding the issue of better consultation between the two major sectors, we can only confirm the magnitude of the efforts made to ensure that this legislation would be implemented.

At the same time, however, it must be noted that all the components of these measures have not affected all levels of intervention in the same way. In particular, it was frequently pointed out that training programs were incomplete and had not been given to all those most directly involved.

7.1 To Examine the Procedures and Protocols in Quebec That Relate to the Sexual Abuse of Children

Conclusion

There is a problem, the seriousness of which varies from one sector to another, but which the study shows is of the greatest importance. It relates to the links between the two legislative schemes and their underlying philosophies.

It is clear that in Quebec there are two approaches to dealing with cases of child sexual abuse which, while striving to be complementary, are nevertheless contradictory in many ways. Both the basic philosophy and the procedures prescribed in the YPA seek to attain different goals from those in the Criminal Code: on one hand, there is a philosophy geared to the interests of the child that remains at heart a "family approach" and, on the other hand, there is an approach designed to suppress undesirable situations; on one hand, there is the expression of a desire to assist, and, on the other, the expression of a desire to voice social disapproval. As a result, the activities are essentially not geared to the same goals. It is necessary to consider how a "better fit" might be achieved without changing the objectives of either scheme.

If it can be assumed that more cases of sexual abuse are now reported to all the various authorities, at least since 1985, these changes may be attributed to Bill C-15. Furthermore, it was impossible, within the limits of this study, to determine whether these reports -- most of which are known to be made to the Youth Protection Service rather than to the police -- are actually followed up or, by extension, what action is taken in response.

Finally, the study's attention was drawn to the gaps in follow-up action and in the support given to victims and the mothers of victims, especially because they usually have to bear the burden of the decision to prosecute if the abuse takes place among family members.

7.2 To Examine the Treatment of Cases Within the Legal System Involving Sexual Abuse of Children

Conclusion

It is difficult to respond to a question that is essentially descriptive. It was seen that the reports made to the police account for almost 50 percent of the charges laid, that almost 60 percent of the accused are convicted or plead guilty, and that almost half of these are sentenced to imprisonment.

Is this an acceptable or adequate situation? Because there is no basis for comparison, either with the situation prior to Bill C-15 or with the treatment of comparable criminal offences, it is difficult to judge solely on the basis of these figures.

It should be noted, however, that, according to many of those interviewed, the criminal process remains essentially geared to the accused, it is too lengthy and cumbersome, especially for victims, and it often produces rather questionable decisions, particularly at the sentencing stage. In fact, many questions were raised concerning the judicial process in its current form, with witnesses testifying who are still children.

7.3 To Determine the Extent to Which the New Provisions of the Criminal Code Are Used in Cases Involving the Sexual Abuse of Children, and the Reasons Therefor

Conclusion

The provisions of Bill C-15 themselves do not seem to cause significant problems for those working in the legal system. However, this statement must be qualified in two respects: the new provisions, both substantive and procedural, are not used to any great extent, and they cause difficulties of interpretation for the judiciary.

First, it should be noted that the legislative amendments probably have not in themselves significantly changed the way in which cases of child sexual abuse are handled in Quebec -- at least considering the fact that in 1984 the authorities had begun to review the policies in effect relating to the Youth Protection Service and in certain law courts (e.g., Montreal). Moreover, it may be questionable whether these amendments led to changes in the view of what constitutes child sexual abuse. During this study, statements were frequently heard in interviews that would, among other things, lead one to believe that systemic bias still exists, particularly regarding the credibility of adolescents.

It is also noteworthy that the technological resources placed at the disposal of the legal system are used very little, as though they constituted excessively "radical" changes in the traditional practices of the judicial system, especially to the extent that they affect the rights of the accused. Thus, screens, and testimony on closed-circuit television or videotape in many respects cause problems of interpretation for judges; these are far from being resolved at the present time. Further, the use of these resources in the absence of adequately trained personnel or consistent funding, remains highly questionable.

Finally, this study confirmed that the substantive provisions specific to child sexual abuse are also used very little. Most charges laid by the police relate to the provisions that existed in the area of sexual assault before the amendments were enacted.

7.4 To Examine the Nature of the Relationship Between the Persons Involved in the Criminal Justice System and Staff in the Youth Protection Service

Conclusion

Despite many attempts to establish protocols of consultation between the two areas of intervention, the fact remains that each seems generally to operate in accordance with its own logic, and there is, in the final analysis, little genuine consultation.

Important though they may be, protocols of consultation will not fill the gaps that separate the two systems, especially since they are often still based on individual rather than structural demands. Persons interviewed identified inconsistencies in consultation, both within the same sector and region, and between sectors and regions.

The requirements of the YPA relating to the confidentiality of reports, and some of its limits -- for example, the impossibility of ordering an abuser to leave the family home (in the case of intrafamilial abuse), and the use, which some felt to be excessive, of voluntary measures to protect the family unit, when the latter might in fact prove to be nonexistent because of sexual abuse, or to exist in name only -- are some of the problems that are relevant to an understanding of the gaps between the two systems.

7.5 To Identify the Problems that Might Arise for Workers in the Criminal Justice System in Implementing Bill C-15

Conclusion

The major problem that continues to arise for legal workers in the criminal justice system is precisely that of the linkage between the two systems. Other problems relate to the definition, clarification and interpretation of some of the substantive and procedural provisions (e.g., consent and in camera proceedings); the lack of staff (especially crown attorneys) or, when there are specialized teams such as in the crown attorney's office in Montreal, the exhaustion following prosecutions of this type; the inadequate training (especially for judges); the lack

of abuser treatment programs; and, in the opinion of defence counsel, the reduction in the defences available to the accused.