Department of Justice Canada
Ministère de la Justice Canada

WORKING DOCUMENT

REVIEW AND MONITORING OF CHILD SEXUAL ABUSE CASES IN HAMILTON-WENTWORTH, ONTARIO

Studies on the Sexual Abuse of Children in Canada

Campbell Research Associates
and Social Data Research Ltd.

June 1992

WD1992-9e

Research and Development Directorate /
Sous-direction de la recherche et du développement

Corporate Policy and Programs Sector/
Secteur des politiques et programmes ministériels

Canada

WORKING DOCUMENT

REVIEW AND MONITORING OF CHILD SEXUAL ABUSE CASES IN HAMILTON-WENTWORTH, ONTARIO

Studies on the Sexual Abuse of Children in Canada

Campbell Research Associates
and Social Data Research Ltd.

June 1992

WD1992-9e

This study was funded by the Research Section, Department of Justice Canada. The views expressed herein are solely those of the authors and do not necessarily represent the views of the Department.

TABLE OF CONTENTS

LIST OF TABLES

LIST OF FIGURES

LIST OF APPENDICES

NOTE: *The following is a list of Appendices contained in the original version of this Report. To save duplicating expenses, Appendices A to C have not been reproduced in the present version. Complete copies of all the Appendices are available from the Department of Justice Canada on request.*

ACKNOWLEDGMENTS

Over the 17-month period of this research a number of individuals contributed their time, effort and knowledge to the endeavour. We would like to thank them for their assistance.

Carolina Giliberti of the Research Section of the Department of Justice Canada helped in shaping the final product with her suggestions and her patience. The Advisory Committee for the study offered both advice and concrete assistance in preparing the way for a number of the research tasks. This committee included April Takeda, Ministry of the Attorney General of Ontario, Sgt. Douglas Fletcher, Hamilton-Wentworth Regional Police Force, Andy Bell and Fred Campling, Crown Attorney's Office of the Hamilton-Wentworth District Court of Justice, Paul Kidney, Hamilton-Wentworth Children's Aid Society, Rocco Gizzarelli, Hamilton-Wentworth Catholic Children's Aid Society, and Darlene Sykes, Association of Agencies for Treatment and Development.

Sgt. Linda Bowen of the Hamilton-Wentworth Regional Police Force Court Bureau was particularly helpful in facilitating the court observations. Members of the police force Child Abuse Branch were very interested in the study and we appreciated their contribution as respondents to our survey. His Honour Judge Anton Zuraw of the Hamilton-Wentworth Court of Justice (Provincial Division) assisted us in making contact with other members of the bench. We are grateful for his help as well as for the time and insight that other judges and justices of the Provincial and General Divisions offered to this project.

We also want to thank those crown attorneys and Children's Aid Society workers who took the time to respond to our survey even though their work demands are often overwhelming.

EXECUTIVE SUMMARY

This evaluation of Bill C-15, An Act to Amend the Criminal Code and the Canada Evidence Act, focuses on the extent to which its provisions, effective as of January 1, 1988, have been implemented in the Region of Hamilton-Wentworth, Ontario. Campbell Research Associates and Social Data Research carried out the 15-month study. Alleged occurrences of child sexual abuse reported over the period from September 1, 1989, to August 31, 1990, were followed through the child welfare and criminal justice systems to determine how children were being dealt with and whether their experience had been affected by changes to the Criminal Code resulting from Bill C-15.

Objectives of the Review

One of the statutory requirements of the Bill was a review of its provisions and operations to be reported to Parliament in 1992:

> s. 19(1) On the expiration of four years after the coming into force of this Act, the provisions contained herein shall be referred to such committee of the House of Commons, of the Senate, or of both Houses of Parliament as may be designated or established by Parliament for that purpose.
>
> (2) the committee designated or established by Parliament for the purpose of subsection (1) shall, as soon as practicable, undertake a comprehensive review of the provisions and operations of this Act and shall, within one year after the review is undertaken or within such further time as the House of Commons may authorize, submit a report to Parliament therein including such recommendations pertaining to the continuation of those sections and changes required therein as the committee may wish to make.

This review was designed to answer a number of questions about the implementation, operation and results of Bill C-15 on the justice system as well as on the children who come to the attention of the criminal justice system in cases of alleged sexual abuse. The broad goals of the Bill are:

- to provide better protection to the child sexual abuse victim;
- to enhance successful prosecution of child sexual abuse cases;

- to improve the experience of the child victim/witness; and
- to bring sentencing in line with the severity of the offence.

Within each of these overall goals, a number of related and more specific objectives were identified and questions based on these objectives were defined for the purpose of this research. The specific objectives that guided the focus of this review were:

Goal 1:
1. to broaden the range of conduct captured by the Criminal Code;
2. to provide more protection for young victims;
3. to eliminate gender bias regarding victims and offenders;
4. to provide protection for children in cases where disclosure is delayed;

Goal 2:
5. to minimize the problems of the child sexual abuse victim giving evidence;
6. to recognize the credibility of the child victim/witness in child sexual abuse cases;

Goal 3:
7. to avoid repetitious interviews with the child victim/witness;
8. to provide support and assistance to the child victim/witness while giving testimony;
9. to provide protection to the child victim/witness from public knowledge of the child's identity and the circumstances of the occurrence; and

Goal 4:
10. to provide for a range of sentence responses to a broad range of severity of abuse.

The list of specific questions addressed in the research can be summarized as two major concerns:

- Are the new Criminal Code and Canada Evidence Act sections being used?
- When they are used, are the desired outcomes being achieved?

Research Activities

A variety of research methodologies and data sources were used to track cases of alleged child sexual abuse from the initial report to the child welfare agencies and police through to the conclusion.

- Reviews were made of the following documents:
  - Hamilton-Wentworth Regional Police offence reports for the period September 1, 1989, to August 31, 1990;
  - Hamilton-Wentworth Catholic Children's Aid Society "records of inquiry" and family files;
  - Hamilton-Wentworth Children's Aid Society "records of inquiry" and family files;
  - Hamilton-Wentworth District Ontario Court of Justice informations and court records; and
  - selected transcripts requested from the Ontario Court of Justice.
- Representatives or selected individuals from the following groups were interviewed:
  - children who testified in court;
  - parents/guardians of children who testified in court;
  - judges and justices of the Ontario Court of Justice Provincial and General Divisions; and
  - steering committee members and selected others who represented the police, crown attorney, and child welfare organizations in Hamilton.
- Children testifying in court at preliminary inquiries and trials were observed.
- Self-administered questionnaire surveys were conducted with the following groups:
  - Catholic and Hamilton-Wentworth Children's Aid Societies' intake workers;
  - Hamilton-Wentworth Regional Police officers;
  - Judicial District of Hamilton-Wentworth assistant crown attorneys;
  - members of the private bar appearing as defence in cases of child sexual abuse; and
  - some members of the bench at provincial and divisional levels.

Limitations of the Research

- This research has primarily emphasized a review of Bill C-15 in terms of its level and areas of implementation. This study could not address questions about the effectiveness and impacts of the Bill because the research design did not include a control group.
- The most severe constraint on analyzing the information collected for this study has been the small number of cases in many of the data sets. This has especially

affected the extent to which court outcomes and dispositions could be analyzed, as well as assessing children's treatment in court as a result of the new Bill C-15 provisions.

- The numbers of respondents to the surveys of professionals in the child welfare and criminal justice systems are also low. The response rates of less than 50 percent for these groups indicates a need for considerable caution in accepting responses as representative of their respective populations.

- An attempt was made to bring comparability into the police and CAS data sets by basing the definition of a "case" on the individual victim plus at least one allegation of child sexual abuse during the September 1, 1989, to August 31, 1990, period. Thus, although police reports and CAS family files may have more than one victim included in the alleged incident, each victim was treated as a separate "case." In most instances, one incident constituted the basis for the report but other sexual abuse incidents might have occurred or the abuse may have been ongoing. In a small proportion of reports to the police and to the CAS more than one offender was involved. Nonetheless, the victim/occurrence is the unit for analysis. The victim/occurrence identity was the linking factor between these two data sets.

- In carrying out the analysis of the outcomes of cases in which charges were filed, the unit of analysis shifts from "case" to charge. More than one offence may be identified for a specific incident, thereby giving rise to more than one criminal charge. This shift in the unit of analysis is noted where it occurs. It does, though, occasionally introduce some discrepancies into the data because the information has been brought together from paper records in several locations.

- The quality, completeness and availability of the documents varied, with the result that it was sometimes difficult to reconcile the information or to understand the progress of a case because of gaps in records.

Findings and Conclusions

Implementation and Outcome Relevant to Goal 1

Goal 1: To Provide Better Protection to Child Sexual Abuse Victims

Objective 1: To broaden the range of conduct captured by the Criminal Code

Clearly, the new offences are being used and cover a broader range of conduct than the former offence section 146 which referred to intercourse only. In the 34 cases charged under sections 151 (sexual interference) and 152 (invitation to sexual touching)

vaginal intercourse occurred only in four. Section 153 (sexual exploitation of children 15 to 18 years) involved vaginal penetration in just one of the nine cases. As calculated for this study, the conviction rate for offences of sexual interference was 80 percent and for invitation to touching, 100 percent. This is persuasive evidence regarding the appropriateness of these Criminal Code sections for the kinds of child sexual abuse occurrences that are reported to police. If the conviction rate is calculated according to the customary method used in Ontario, they fall well below this at 26.7 and 50 percent respectively of all charges filed under these sections. The extent to which these offences are being successfully prosecuted is a matter of how these rates compare with those for other types of offences.

Objective 2: To provide more protection for younger victims

Protection is being extended to younger children in that charges are being filed for exposing to children under 14 and these charges are being successfully prosecuted. The finding that as many of these charges were dismissed as resulted in guilty pleas suggests that this is a difficult offence to prosecute. Convictions were obtained more often through guilty pleas than through findings of guilt after trial. The testimony of younger children is also being accepted in that neither mistaken age nor consent have been advanced as defences in the cases reviewed here. This suggests that the new provisions of Criminal Code section 150.1 are being fully implemented.

Objective 3: To eliminate gender bias regarding victims and offenders

The effectiveness of Bill C-15 changes to the Criminal Code in eliminating gender bias is evident in the rate of charging in cases involving male complainants. It is less clear that prosecution of these offences has yet been as successful as those involving females.

Objective 4: To provide protection for children in cases where disclosure is delayed

Although the number of charges related to offences where disclosure was delayed is relatively small, convictions are being obtained in these cases. These precedents argue that the new offences are being successful in providing protection to children or adults who make a disclosure a year or more after the event.

Implementation and Outcome Relevant to Goal 2

Goal 2: To Enhance Successful Prosecution of Cases Involving Child Sexual Abuse

Objective 5: To minimize the problem of child sexual abuse victims giving evidence

It is not clear to what extent the evidence here permits the conclusion that the new provisions "minimize the problem" of child sexual abuse victims giving evidence. All who appeared were deemed able to be sworn after questioning (except for one case where the outcome is unknown although the child did proceed to testify). Since videotapes are not currently in use, the impact of this on the introduction of the child's testimony is difficult to ascertain. It is highly probable that the police decision to charge and the crown attorney's decisions in prosecuting the case screen out at an early stage children who are not seen to be potentially capable of testifying under oath.

Objective 6: To protect the credibility of the child victim/witness in cases of child sexual abuse

On the evidence here, it can be concluded that the credibility of the child witness is being protected in cases of sexual abuse. While suggestions for the need for corroboration have been alluded to by the defence, there is no indication that this is being required. In addition, convictions are being successfully obtained on the child's sworn evidence. It appears, as well, that defence counsel generally realize the need to protect the child from damaging allegations of sexual behaviour on the part of the child. At the same time, it is difficult to attribute this directly to the provisions of Bill C-15 as these provisions have been available for some time to adult complainants in cases involving sexual offences.

Implementation and Outcome Relevant to Goal 3

Goal 3: To Improve the Experience of the Child Victim/Witness

Objective 7: To avoid repetitious interviews with the child victim/witness

On the basis of the information available to this study, it cannot be determined whether repetitious interviews with the child victim/witness are being avoided. There is a presumption, however, that the use of videotapes at the initial investigation stage will accomplish this aim. Both the Hamilton-Wentworth Regional Police and the child welfare agencies are prepared to implement videotaping, as evidenced by having a protocol in place as well as the necessary equipment and renovated interview rooms. However, until a definitive ruling is made by the Supreme Court regarding the constitutionality of the practice, videotaping interviews has been left to the discretion of the investigators. Since the child's disclosures or statements are not being taped, it may be concluded that this objective is not now being met.

Objective 8: To provide support and assistance to the child victim/witness precourt and in court so that they can give their testimony.

It is clear that devices such as having a support adult and using a screen, and Criminal Code provisions such as clearing the public, are helpful to the child victim/witness when they are used. The most frequently used measure reported here was having the support adult stay in the courtroom. Since the completion of this review, key informants have reported that supports (such as a teddy-bear, or having a social worker on the stand with the child), have been permitted. Screens were used to some extent for the cases examined here, but more often the child was permitted to testify turned away from the accused. This appears to be a useful strategy that enables children to relax somewhat. Based on interviews carried out with children and parents, adequate preparation of child victim/witnesses ahead of time is the most important kind of assistance. One critical element of this preparation is to have the child visit the actual courtroom in which he or she will testify.

Objective 9: To provide protection for the child victim/witness regarding identity and the circumstances of the occurrence

Overall, the provisions of Bill C-15 which extend this protection to children are being widely used. The necessity for shielding the child from public inspection, stigma or possible ostracism by peers is accepted by all those involved in the criminal justice process.

Implementation and Outcome Relevant to Goal 4

Goal 4: To Bring Sentencing in Line with the Severity of the Incident

Objective 10: To provide for a range of sentence responses to a broad range of severity of abuse

It is difficult to assess the attainment of this objective on the basis of the information available here because of the limited number of cases. The range of sentence responses appears wider for the offence of sexual assault, which is not a product of Bill C-15, than for that of sexual interference, an offence created by the adoption of this Bill. Both of these offences have the same maximum punishment. Because sentencing is closely related to many of the particular circumstances of the specific case, there is no basis for true comparability with such a small number of cases as could be defined here. Identifying the relationship between the characteristics of the cases and their sentences has not been possible for the same reason.

Summary of Survey of Professionals

According to the CAS workers, police officers, defence, crown attorneys and judges who responded to the survey regarding Bill C-15, the amendments are having some impacts and most are positive. The provisions most frequently requested and implemented in the court are the ban on publication of information that would identify the child and the clearing of spectators from the court. An additional measure being used in Hamilton-Wentworth is to permit the support adult to remain in the courtroom.

A minority of the justice system professionals who were surveyed pointed to some changes that they have experienced since the adoption of Bill C-15. These changes include greater ease in being able to prosecute cases of child sexual abuse involving younger children, increases in the number of child sexual abuse cases being prosecuted, more and younger children giving sworn testimony, and more convictions. At the same time, most of the CAS workers and some of the other participants in the criminal justice system also describe the effects of testifying as being negative for the children involved.

Assessment of the Extent of Change in the Criminal Justice System's Handling of Cases Since the Implementation of Bill C-15

A review of this report by key participants in the criminal justice system in Hamilton-Wentworth produced some important observations on their part. This subsection offers these observations as one additional, and important, perspective regarding the impact of Bill C-15.

One of the most impressive impacts of the implementation of Bill C-15 in Hamilton-Wentworth (as this research seems to indicate) is the observation of changing attitudes between police and child welfare agencies. This attitudinal change has also affected other types of cases, such as physical abuse and gross neglect, which have been brought to criminal court. One case, in particular, which demonstrates the new attitudes and acceptance of children's testimony was a case relating to Munchausen's syndrome[1] where the witness was only three years old. The judge was prepared to hear the child's evidence. Upon hearing this the defence entered a guilty plea. In the past, child witnesses in Hamilton-Wentworth courts were seldom heard and those under seven years of age were simply not permitted to testify. The change in this practice is very encouraging for those working with cases of child sexual abuse.

---

[1] Munchausen's syndrome is a psychiatric disorder characterized by repeated fabrication of illness, usually acute, dramatic, and convincing, by a person who wanders from medical facility to medical facility for treatment. In one variant of the syndrome, called "Munchausen by proxy", a child may be used as a surrogate patient. The parent falsifies history and may injure the child with drugs, add blood or bacterial contaminants to urine specimens, etc., to simulate disease.

Judges also appear to be more sensitive to the dynamics related to swearing child witnesses, as borne out in the report by the fact that all six children gave sworn evidence. Previously, even 12-year-old witnesses were forced to give unsworn testimony, partly as a result of confusing questioning.

Although not identified in the cases reviewed for this research, crown attorneys are now calling more expert witnesses and judges appear to be allowing such evidence, either regarding the case directly, about the potential impact on the child, or related to victim/witness impact statements.

One additional recent development that deserves to be noted is that defence counsel appears to be allowing support witnesses to remain in the court, either by allowing them to testify earlier or by not requesting their removal. In the past, defence counsel would often subpoena every person who came to court accompanying the child, whether or not they had anything substantial to add.

These observations reinforce several of the conclusions of this research. They also go beyond the specific framework of this review to document further changes in the handling of child abuse cases and to provide a context within which to grasp the magnitude of these changes. Most importantly, these conclusions from people working within the criminal justice and child welfare systems, show the results possible in a community where people have deliberately tried to establish mechanisms for cooperation and collaboration between organizations and systems. This is a challenge that quite clearly can be met by police, child welfare agencies, crown attorneys and courts when all those involved give a high priority to the ultimate objectives.

1.0 INTRODUCTION

This evaluation of Bill C-15, An Act to Amend the Criminal Code and the Canada Evidence Act, focuses on the extent to which its provisions, effective as of January 1, 1988, have been implemented in the Region of Hamilton-Wentworth, Ontario. Campbell Research Associates and Social Data Research carried out the 15-month study. Alleged occurrences of child sexual abuse reported over the period from September 1, 1989, to August 31, 1990, were followed through the child welfare and criminal justice systems to determine how children were being dealt with and whether their experience had been affected by changes to the Criminal Code resulting from Bill C-15.

This report outlines the process of this study, describes the research findings and presents a number of conclusions regarding the major objectives of the legislation adopted under Bill C-15. First, however, the following sections provide a more detailed account of the study rationale and a picture of the organization of this report to assist the reader who may be interested in specific aspects of the evaluation.

1.1 Background to the Study

Bill C-15 was introduced into Parliament in late 1986 and received assent on June 30, 1987. Its primary purpose was to improve the criminal justice system's handling of cases involving children who had been sexually abused. Provisions included adding new, more relevant offences, extending the applicability of other offences, and changing the Canada Evidence Act so that children could testify under less restrictive conditions than adults. An examination of the appropriateness of the Criminal Code and the Canada Evidence Act for sexually abused children was originally prompted by the 1984 Report of the Committee on Sexual Offences Against Children and Youths (the Badgley Report). A more detailed description of the Bill's history and specific sections follows in Section 2.0.

One of the statutory requirements of the Bill was a review of its provisions and operations to be reported to Parliament in 1992:

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

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

One additional feature characterized the research undertaken in Hamilton-Wentworth and reported here. A study of child sexual abuse cases carried out in 1986 for the Department of Justice Canada was designed to provide a pre-Bill C-15 baseline picture of case processing. Some of this data has been used here for comparisons of the two periods where warranted. A more comprehensive discussion of the research design, instruments and activities is given in Section 3.0.

Recognizing that the various provincial and local jurisdictions would undergo different experiences in implementing the Bill, the Department of Justice Canada contracted evaluations of Bill C-15 in four communities of three provinces: Calgary and Edmonton, Alberta; Saskatoon, Saskatchewan; and Hamilton, Ontario. The design of the research is similar in all sites and the instruments have been developed in concert. This was intended to provide not only a comparative basis for the findings but also to permit the data collected in each jurisdiction to be combined where appropriate for analysis at a later date. Such a combined data set offers a larger number of cases and therefore smaller margins of error in the results.

This study was contracted in May 1990 and data collection terminated at the end of June 1991. The 12-month period was not totally adequate for the cases reported from September 1989 to August 1990 to be completed in court. This limitation primarily affects the information available at the disposition stage of the process. Data was successfully obtained for most cases at all stages in the criminal justice process prior to this.

1.2 Organization of This Report

Section 2.0 gives the reader a detailed picture of Bill C-15, its sections, objectives, and potential implications. In so doing, the goals and objectives of this review of the Bill are outlined, as are the strategies for approaching the research questions.

Section 3.0 describes this research in terms of its design, based on the objectives previously discussed, and the specific activities that were carried out to answer the questions outlined. This section presents the instruments, samples, and data types involved. The limitations and constraints of the research are also outlined.

The progress of cases through the criminal justice and child welfare systems is shown in Section 4.0. Attention is paid to the relevant aspects of the Ontario police and court structure as well as of the Children's Aid Societies since these differ from province to province. Both the "ideal" processing of cases through these systems and the actual processing of the cases being tracked for this research are outlined.

The implementation and impacts of Bill C-15 in terms of each of the Bill's goals are addressed in Section 5.0. These are based on the research findings from the various activities brought together in response to the questions posed.

Section 6.0 deals with the perceptions of the parties involved in both the criminal justice and child welfare systems with regard to the Bill, the extent of its implementation, and problems or recommendations for changes.

The final Section 7.0 presents the overarching conclusions suggested by the research results.

2.0 BILL C-15, AN ACT TO AMEND THE CRIMINAL CODE AND THE CANADA EVIDENCE ACT: GOALS, OBJECTIVES, AND RESEARCH QUESTIONS[1]

2.1 Focus of the Chapter

This chapter includes a brief review of the issues that led to the development and proclamation of Bill C-15 and a discussion of the goals and changes enacted by the Bill. At the end of the chapter, a list of specific research questions derived from the objectives or reasons for the specific changes are identified. These research questions are required to assess the impact of Bill C-15. Identification of these questions will require at least a brief review of the changes enacted by Bill C-15. However, this section should not be considered a thorough presentation or review of the Bill since it does not contain legal interpretation or references to relevant case law.[2]

2.2 Background to Bill C-15

It is well documented that the reported incidence of sexual abuse of children has increased over the past decade. Concern about this problem and a better understanding about the nature and scope of the problem have led to major changes in the law and social programs.

In 1980, these concerns led to the establishment of the Committee on Sexual Offences Against Children and Youths, chaired by Dr. Robin Badgley. Over the next few years, this Committee obtained factual information on the incidence and prevalence of sexual offences against children in Canada and made recommendations for dealing with the problems identified. In all, the Committee made 52 recommendations directed at all levels of government, as well as the private sector. Many of the recommendations suggested improvement in the laws for the protection of children (Report of the Committee on Sexual Offences Against Children and Youths, 1984).

---

[1] This chapter relies on information contained in the report: Department of Justice Canada, (1988), Bill C-15: Amendments to the Criminal Code and the Canada Evidence Act.

[2] Readers interested in a more detailed review of Bill C-15 may refer to: Stewart, C., and Bala, N. (1988), Understanding Criminal Prosecutions for Child Sexual Abuse: Bill C-15 and the Criminal Code or Wells, M. (1990), Canada's Law on Child Sexual Abuse, Ottawa: Minister of Supply and Services Canada.

The federal government's response to the recommendations explicitly recognized two realities: (a) that an effective attack on the personal and social ills resulting from the sexual abuse of children required action by all levels of Canadian society; and (b) that leadership in this effort must come from the government of Canada. Thus, the federal government embarked on a course of action that involved using criminal law, as well as supporting social and educational reforms.

On October 15, 1986, the Honourable Ramon Hnatyshyn, Minister of Justice and Attorney General of Canada, introduced Bill C-15, An Act to Amend the Criminal Code and the Canada Evidence Act, which was enacted by Parliament and received Royal Assent on June 30, 1987. Bill C-15 became law in Canada on January 1, 1988 (S.C. 1987, c-24; now R.S.C. 1985, c.19 [3rd Supp.]). By the proclamation of this Bill, the federal government sent a clear message that the protection of children and youths was a priority in Canada and that sexual abuse of children was unacceptable and would not be tolerated.

2.2.1 Limitations of Criminal Code Provisions Prior to Bill C-15

The first step in amending the Criminal Code to better protect children was to critically review the sexual offenses in the Code prior to January 1, 1988, that were relevant to child sexual abuse. Table 1 identifies the relevant sections of the Criminal Code prior to Bill C-15, indicating which sections were repealed or carried over to the new Criminal Code, as well as amendments and new provisions added by Bill C-15.

While we do not intend to discuss each section of the old Code sections listed, it is useful to summarize some of the inadequacies of the old provisions regarding the protection of children. Among the limitations of the Criminal Code are the following:

- Gender Bias

  Girls and boys were given different protection by the law. In many offences, the victim had to be female and the accused, male. For example, although stepfathers and foster fathers committed a crime if they had sexual intercourse with their stepdaughters or foster daughters, the same prohibition did not apply to stepmothers with stepsons or foster sons. Also, only females could be victims of the seduction offences and only males could be the offenders.

- Limited Range of Sexual Activity

  Most offences prohibited only vaginal sexual intercourse and did not encompass the range of sexual activities that could constitute child abuse, such as fondling, masturbation and oral intercourse activities from which both girls and boys should be protected.

- Requirement of Previous Chaste Character

  Girls who had been sexually active and/or sexually abused in the past could not be considered of "previously chaste character" and therefore could not be protected. Victims of such sexual abuse could well need more protection from the law rather than less, after the first forcible acts of sexual intercourse.

- Victim's Sexual Reputation and Activity Used as Defence

  Proving the defence that the accused is "not more to blame" than the victim required cross-examination of the victim's sexual reputation and past sexual activity. To many observers and to women's groups, this was often seen as unjust. They believed that victims were being victimized a second time by a legal system that permitted such tactics.

- Presumption that a Male Under 14 is Incapable of Intercourse

  The legal presumption in the Criminal Code that a boy under 14 years is incapable of sustaining a penile erection and engaging in sexual intercourse is no longer consistent with biological reality. This level of maturity now occurs in boys at least as young as 12, which is also the age of criminal responsibility. Under the former law, youths under 14 could not be held criminally responsible for acts of sexual intercourse with girls under 14 or for such acts committed in an incestuous relationship.

Table 1 Criminal Code Number Transformations Relevant to the Assessment of Bill C-15[1]

Old Criminal Code Prior of January 1, 1988		New Criminal Code as of January 1, 1988		
XCC	Section Description	Interim[2] 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)			
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

Table 1 (cont'd)

Old Criminal Code Prior of January 1, 1988		New Criminal Code as of January 1, 1988		
XCC	Section Description	Interim[2] Code C-15	CC	Section Description
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 asault with a weapon/ threats/bodily harm	s. 246.2	s. 272	Sexual asault 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[3]	Corroboration not required
s. 246.5	Rules re: recent complaint abrogated	s. 246.5	s. 275[3]	Rules re: recent complaint abrogated
s. 246.6(1)	No evidence concerning sexual activity	s. 246.6(1)	s. 276(1)[3,4]	No evidence concerning sexual activity
s. 246.7	Reputation evidence	s. 246.7	s. 277[3]	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)[3]	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] Throughout this report old Code numbers (XCC) will be used when the old Code (prior of January 1, 1988) is referred to. When the new Code is referred to, the new Code numbers (CC) will be used, and Interim Code numbers (Bill C-15) will be ignored.
[2] 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.
[3] These sections were enacted by Bill C-127 (August 1982), however, they were extended to the sexual offences enacted by Bill C-15.
[4] Since completion of this review of the legislation, this section has been ruled as being unconstitutional; see R. v. Seaboyer; R. v. Gayme (1991) 2 S.C.R., p. 577.

- Issues Regarding Age and Consent

The age of legal consent varied, depending on the particular sexual act and the sex of the participant. A male could consent to sexual intercourse at any age. A female of 14 years or more could consent to vaginal intercourse. Neither sex could consent to acts of anal intercourse or gross indecency until age 21, with the exception that a female could marry at age 16 and then consent to such acts with her husband.

- Invitation to Sexual Touching

Sexual assault legislation prior to Bill C-15 did not make it an offence for a person to invite a child to touch him or her in a sexual way. In surveying the incidence of sexual abuse, the Badgley Committee found this to be a common type of activity.

- Time Restrictions

Under sexual assault legislation prior to Bill C-15, certain sexual offences had to be prosecuted within a year after their commission. Many children have difficulty talking about such experiences, and delayed disclosure often precluded the prosecution of sexual offences against children.

2.3 Bill C-15: Goals, Objectives and Amendments

The design of amendments to the Criminal Code outlined in Bill C-15 were driven by four broad goals identified in debates in the House of Commons. The official position, a broad policy statement, was that the amendments to the Criminal Code should:

(1) provide better protection to child sexual abuse victim/witnesses;

(2) enhance successful prosecution of child sexual abuse cases;

(3) improve the experience of the child victim/witness; and

(4) bring sentencing in line with the severity of the offence.

The overall strategy for accomplishing the above goals involved: (a) overall simplification of the law relating to sexual offences; (b) creation of new offences specific to acts of child sexual abuse; (c) changes regarding procedure

and evidence; and (d) changes to the Canada Evidence Act regarding the testimony of child witnesses.

Simplification of the law involved legislative changes of several kinds (see Table 1). Some provisions were repealed completely (sections 146, 151, 152, 153, 154 and 157 XCC). Other sections were rewritten to extend their protection to young males (sections 166, 167 and 168 XCC) or to add additional provisions where the offence involved a child under the age of 18 (sections 155, 169 and 195 XCC). Three new offences were also created: sexual interference, invitation to sexual touching, and sexual exploitation (sections 151, 152 and 153 CC). As a result of these changes, there are now ten sexual offences in the Criminal Code that are applicable to cases of child sexual abuse:

(1) Sexual assault

(2) Sexual interference

(3) Invitation to sexual touching

(4) Sexual exploitation

(5) Indecent acts and indecent exposure

(6) Incest

(7) Anal intercourse

(8) Bestiality and associated offences

(9) Parent or guardian procuring sexual activity

(10) Householder permitting sexual activity

Changes regarding procedure and evidence included (see Table 1): omitting the requirement for corroboration (section 274 CC); abrogating the rules regarding recent complaint (section 275 CC); excluding evidence concerning sexual activity with persons other than the accused (subsection 276(1) CC); permitting testimony outside the courtroom (subsection 486(2.1) CC); creating an order restricting publication of the identity of the victim or a witness (subsection

486(3) CC); and permitting the use of videotaped evidence (section 715.1 CC).[3] Finally, amendments to the Canada Evidence Act allow both victims and witnesses less than 14 years old to give sworn evidence if they understand the nature of the oath and are able to communicate the evidence. The amendment also makes it possible for a child under 14 years old, who does not understand the nature of the oath, to give unsworn evidence if the child is able to communicate and "promises to tell the truth."

How these changes relate to the general goals of the legislation is not totally clear. However, it is necessary to identify linkages in order to measure the impact of the Bill. Thus, specific changes made by Bill C-15 are linked to the specific goals by expected outcome or objectives. These objectives will then provide the basis for the specific research questions that must be answered in order to assess the impact of Bill C-15.

2.3.1 Goal 1: To Provide Better Protection to Child Sexual Abuse Victims

The specific amendments that seem to relate to this goal can be viewed as falling into four areas of expected outcome. First, the repeal of subsection 146(1) XCC (intercourse with a female under 14 years) and subsection 146(2) XCC (intercourse with a female 14 to 16 years) and the replacement of these sections with section 151 CC (sexual interference), section 152 CC (invitation to sexual touching), and section 153 CC (sexual exploitation), seem to have at least two intended outcomes. These are: (a) broadening the range of conduct captured by the Criminal Code; and (b) eliminating gender bias regarding victims and offenders.

Second, the proclamation of section 150.1 CC (consent of child under 14 years old no defence), subsection 173(2) CC (exposure to a child under 14 years old), subsection 212(2) CC (living off the avails of a prostitute under 18) and subsection 212(4) CC (obtaining a person under 18 years old for sexual purpose) seem to be aimed at providing more protection for young victims.

Third, the proclamation of section 275 CC removes the one-year time limitation for reporting offences under the previous Criminal Code provision (section 141 XCC) for the new sections 151, 152, 153, 155, 159, 160(2) and (3),

---

[3] A number of these provisions (specifically sections 274, 275, 277, and subsection 276(1) CC) were brought about by Bill C-127 proclaimed August 4, 1982; however, they have been repeated in provisions established by Bill C-15.

170, 171, 172, 173, 271, 272, and 273. This change is obviously aimed at protecting children in cases where disclosure is delayed.

Thus, the expected outcomes associated with the amendments relevant to Goal 1 are expressed as the following objectives:

Objective 1: To broaden the range of conduct captured by the Criminal Code.

Objective 2: To provide more protection for young victims.

Objective 3: To eliminate gender bias regarding victims and offenders.

Objective 4: To provide protection for children in cases where disclosure is delayed.

2.3.2 Goal 2: To Enhance Successful Prosecution of Child Sexual Abuse Cases

The amendments that relate to Goal 2 seem to fall into two areas. First, the introduction of section 715.1 CC, permitting a videotape of the victim's description of events to be admissible in evidence, and subsection 16(1) of the Canada Evidence Act, allowing victims/witnesses under 14 years old to give testimony under oath or on a promise to tell the truth, seem to be facilitating the giving of evidence by children. Second, the removal of the requirement for corroboration under section 274 CC for charges related to child sexual abuse and the exclusion of evidence of sexual activity (subsection 276(1) CC) and reputation (section 277 CC) of the victims seems to be an attempt to eliminate previous impediments to the credibility of the child victim/witness.

The expected outcomes associated with the amendments relevant to Goal 2 are expressed as the following objectives:

Objective 5: To minimize the problems of the child sexual abuse victim giving evidence.

Objective 6: To recognize the credibility of the child victim/witness in child sexual abuse cases.

2.3.3 Goal 3: To Improve the Experience of the Child Victim/Witness

This particular goal is broader than the other goals; however, some of the amendments of Bill C-15 are relevant. First, the proclamation of section

715.1 CC, which permits the use of videotape of the victim's description of events, is intended to avoid repetitious interviews with the child victim/witness. The videotape can also be used to support a child's testimony by allowing the child to refresh his or her memory by viewing the tape both prior to and during proceedings. Second, support and assistance can be provided to the child victim/witness through the exclusion of the public from the courtroom by subsection 486(1) CC. Third, support can be provided by subsection 486(2.1), which permits the child witness to testify outside the courtroom or behind a screen. Fourth, subsection 486(3), which provides for a ban on publication of the identity of the witness, can be viewed as providing protection to the child victim/witness by preventing broad public knowledge of the child's identity and the circumstances of the occurrence.

Thus, the expected outcomes associated with the amendments relevant to Goal 3 above are expressed as the following objectives:

Objective 7: To avoid repetitious interviews with the child victim/witness.

Objective 8: To provide support and assistance to the child victim/witness while giving testimony.

Objective 9: To provide protection to the child victim/witness from public knowledge of the child's identity and the circumstances of the occurrence.

2.3.4 Goal 4: To Bring Sentencing in Line with Severity of the Offence

Consistent with the fact that, as already mentioned, the new legislation is designed to cover a broad range of behaviour, most of the sections (specifically sections 151, 152, 153, 159, and 160 CC) are hybrid offences. Thus, the range of sentencing alternatives is also broad. The expected outcome associated with the amendments relevant to Goal 4 can be expressed as the following objective:

Objective 10: To provide for a range of sentence responses to a broad range of severity of abuse.

Table 2 Bill C-15, Goals, Objectives and Research Questions

Goal 1: To provide better protection to child sexual abuse victims.		Research Questions:
	Objective 1: To broaden the range of conduct captured by the Criminal Code.	**s. 151 (sexual interference for children under 14), s. 152 (invitation to sexual touching for children under 14), and s. 153 (sexual exploitation for children 15-18)** 1.1 Are overall rates of charges under ss. 151, 152, 153 CC compared to s. 146(1) (sexual intercourse with female under 14), s. 146(2) (sexual intercourse with female 14-16 years) XCC going up? 1.2 Are the new offences ss. 151, 152, 153 covering a broader range of conduct, not just intercourse? 1.3 What is the rate of conviction? 1.4 What factors are associated with: (a) charges being laid? (b) guilty pleas? (c) convictions?
	Objective 2: To provide more protection for young victims.	**Under 18** **s. 212(2) (living off the avails of a prostitute under 18 years) and s. 212(4) (obtaining person under 18 years for sexual purpose)** 2.1 Are charges being laid under ss. 212(2) and 212(4)? 2.2 Are convictions obtained?

Table 2 (cont'd)

Under 14
s. 173(2) (exposure to child under 14 years)

2.3 Are charges being laid under s. 173(2) (exposure to child under 14)?

2.4 What conduct is being associated with s. 173(2)?

2.5 What is the rate of conviction?

s. 150.1 (consent no defence)

2.6 Has consent been accepted by the courts as a defence?

2.7 Has mistaken age been accepted by the courts as a defence?

s. 150.1(2)

2.8 How does the age difference between the victim (age 14-17) and the offender relate to charges under ss. 151, 152, 173(2), and 271 (sexual assault)?

Objective 3: To eliminate gender bias regarding victims and offenders.

s. 151 (sexual interference for children under 14), s. 152 (invitation to sexual touching for children under 14), and s. 153 (sexual exploitation for children 15-18)

3.1 Are charges being laid in cases involving male victims?

3.2 Are these charges resulting in guilty pleas/convictions?

Table 2 (cont'd)

		3.3 Are charges being laid in cases involving female offenders?
		3.4 Are these charges resulting in guilty pleas/convictions?
Objective 4:	To provide protection for children in cases where disclosure is delayed.	**s. 151 (sexual touching for children under 14), s. 152 (invitation to sexual touching for children under 14), s. 153 (sexual exploitation for children 15-18), s. 155 (incest), s. 159 (anal intercourse), s. 160(2) & (3) (bestiality), s. 170 (parent/guardian procuring sexual activity), s. 171 (householder permitting sexual activity), s. 172 (corrupting children), s. 173(2) (exposure to child under 14 years), s. 271 (sexual assault), s. 272 (sexual assault with a weapon/threats/bodily harm), s. 273 (aggravated sexual assault)**
		4.1 Are charges being laid in cases where reporting to police is more than one year after the incident occurred? (s. 275, recent complaint)
		4.2 Are these charges resulting in convictions?
Goal 2: To enhance successful prosecution of child sexual abuse victims.		
Objective 5:	To minimize the problems of the child sexual abuse victim giving evidence.	5.1 Are videotapes being used in evidence? (a) Has their use been challenged? (b) What arguments have been used to challenge? (c) Is the use of videotape leading to convictions? (d) In what types of case is the use of videotape aiding prosecution? (e) Does use of the videotape reduce the time that the child must testify? (f) What other uses are made of video tapes?

Table 2 (cont'd)

5.2 Are child victim/witnesses under 14 years of age being sworn?

5.3 Are younger child victim/witnesses giving testimony under the new "promise to tell the truth" provision of 16(3) CEA (testimony on promise to tell the truth)?

5.4 What types of questions are asked by the judge and others?

5.5 What factors are associated with the use\non-use of the provisions under 16(1) (witness whose capacity is in question):

(a) children under 14 taking oath?
(b) children under 14 giving testimony under "promise to tell the truth"?

5.6 Is unsworn testimony (i.e., promise to tell the truth) weighed differently by the courts?

Objective 6: To protect the credibility of the child victim/witness in cases of child sexual abuse.

s. 274 (corroboration not required)

6.1 Is corroboration still important in the decision to:

(a) commit to trial?
(b) convict at trial?

6.2 Are there areas of alleged behaviour and/or types of cases where credibility of the witness is a problem (e.g., status/occupation of offender)?

6.3 Are expert witnesses used?
What type of evidence are they giving?

Table 2 (cont'd)

		subs. 276(1) (no evidence concerning sexual activity), s. 277 (reputation evidence)
		6.4 Is "sexual activity" and/or "reputation" evidence being raised as a defence in court proceedings?
Goal 3: To improve the experience of the child victim/witness.		
Objective 7:	To avoid repetitious interviews with the child victim/witness.	7.1 Are videotapes being made at the initial investigative stage?
		7.2 Who is present at the videotaped interview?
		7.3 How many times are victims/witnesses made to repeat their disclosures?
		7.4 Does use of the videotape reduce the number of times a child must tell the story?
Objective 8:	To provide support and assistance to the child victim/witness while giving testimony.	8.1 Have any innovative programs or procedures been implemented such as: (a) a victim assistance program? (b) the crown attorney's preparing the witness? (c) court workbooks, etc.?
		8.2 Has a videotape been used to refresh the child's memory?
		8.3 Have screen and/or closed-circuit television been used in the court (s. 486(2.1), testimony outside courtroom)?

Table 2 (cont'd)

		8.4 Have supporting adults accompanied the child witness to court? (a) Who are these adults? (b) Do supporting adults accompany the child to the stand?
		8.5 Are other innovative supports used?
		8.6 What is the effect of these procedural and evidentiary changes on the child witness?
		8.7 Has s. 486(1) (exclusion of public) been used?
Objective 9:	To provide protection for the child victim/witness regarding identity and the circumstances of the occurrence.	9.1 Has s. 486(3) (order restricting publication) been used to ban publication of identifying information? In what type of cases?
Goal 4: To bring sentencing in line with the severity of the incident.		
Objective 10:	To provide for a range of sentence responses to a broad range of severity of abuse.	10.1 Does the type of sentence relate to: (a) characteristics of the offence (e.g., nature of incident, frequency, etc.)? (b) conditions and/or characteristics of the victim? (c) characteristics of the offender?

2.4 Research Questions Relevant to the Impact of Bill C-15

Given the expected outcomes of Bill C-15, expressed as the ten objectives just discussed, it is possible to identify specific research questions related to each objective. These questions provide the framework for the data analysis given in Section 5.0. The specific questions listed in Table 2 can be summarized as two generic questions: (a) Are the sections being used? and (b) When used, are the desired outcomes being achieved?

3.0 METHODOLOGY

This chapter describes both the research design and the methodologies used in the review of Bill C-15 in Hamilton-Wentworth. The level of detail should be adequate for other interested researchers to undertake similar studies. For readers who are not research-oriented or who wish to move past the detailed discussions but still have an overall picture of the process, the subtitles for each activity present a quick overview.

3.1 Design of the Review

The review of Bill C-15 carried out in Hamilton-Wentworth was based on a number of design requirements:

- that identified cases of alleged child sexual abuse be tracked from initial disclosure to the child welfare and/or law enforcement authorities through to their conclusion in the criminal justice/child welfare systems;
- that information about these cases be collected in a form that would make it comparable to similar data in the three other research sites;
- that information about these cases be collected in a form that would make it comparable to similar data collected in the Hamilton-Wentworth baseline study carried done in 1986;
- that the number of cases to be tracked provide an adequate basis for the necessary analysis to answer the questions posed;
- that the point at which cases for tracking are initially reported be early enough for cases to be completed through the courts by the end of the research but also current enough in their processing so that children can be observed while testifying in court.

3.1.1 Selecting a 12-Month Period over which Cases Reported to the Catholic Children's Aid Society (CCAS), the Hamilton-Wentworth Children's Aid Society (HWCAS) and Hamilton-Wentworth Regional Police could be Identified for Subsequent Tracking

The period over which cases were to be selected was specified in the terms of reference for the study as September 1, 1989, to August 31, 1990. One of the reasons for this particular starting point was that it coincided with the creation of the new Child Abuse Branch in the Hamilton-Wentworth Regional Police Force.

Subsequent assessment of the timing of this period indicated that it was, in fact, optimal for both the completion of cases and the appearance of these cases in court over the 12-month research time frame. "Optimal" in this case meant that, although some cases would be missed at both points, there would be a balance between the losses.

3.1.2 Optimizing the Number of Cases Available for Analysis by Following All Reports to the Police and to the CASs over this Period

The research design and feasibility phase determined that approximately 300 occurrences of child sexual abuse had been reported to the police and about the same number to the two CASs. According to the baseline study and estimates by the police and child welfare agencies, one-quarter to one-third of the reported cases would proceed further than the investigation stage. It was therefore decided that, in order to have an adequate number of cases to follow through the court (given attrition of cases at various points), no sampling would be done. Instead, all cases reported to the three organizations from September 1, 1989, to August 31, 1990, were included in the panel for tracking. This yielded 400 allegations reported to the CASs and 325 victim/occurrences reported to police. Seventy-eight (24 percent) of the cases reported to police proceeded past the initial investigation stage.

3.1.3 Standardizing Data Sources and Instrument Design across the Four Sites and, to Some Extent, with the Baseline Study Instruments

These two demands were not always compatible. Where they conflicted, e.g., as with the values assigned to some variables when researchers collected data, conformity was sought primarily with the other sites. Examination of the baseline information indicated that no original data sets were available and only the final tables included in the baseline report could provide any information potentially useful for comparison. Our more recent review has had the advantage of the previous development of data collection instruments for the baseline study and could, therefore, include similar items and response categories. However, in many instances, the tables in the final baseline report aggregated values in the analysis quite differently than was required by the cross-site analysis. For this reason, we were unfortunately not able to develop valid comparisons between our data and the data available in the baseline report.

3.2 Data Collection Methodologies and Data Sources

Altogether, this research collected data from 12 different sources over the study period. As previously mentioned, sampling was not applied to any of the study populations since the numbers involved were not large. This was true for both the file reviews and the interview/questionnaire surveys. Methodologies and data sources are described below according to whether these were based on documentary or on observation and interview data.

3.2.1 Documentary Data

3.2.1.1 Hamilton-Wentworth Regional Police (HWR Police) Offence Reports

A report to the police of an incident of alleged child sexual abuse is the point of entry to the criminal justice system. When the case is reported, an "offence form" is completed by the investigating officer. The officer may also fill out a suspect description form and, each time he or she works on the case, the officer completes a "supplementary" or "incident report." The officer may or may not assign charges during the course of the investigation. The police officer at the Police Court Bureau may also file charges; this officer then attends the Judicial Interim Release ("bail") Hearing. The primary investigating officer maintains his or her own file and updates this as often as information is received. If a case proceeds to court, the officer is notified by a "court notice." When a case is completed the officer should (but does not always) receive information about the plea, conviction and sentence.

Over the period from September 1, 1989, to August 31, 1990, the Child Abuse Branch recorded all reports of alleged child sexual abuse known to their branch in a log book. Some sexual assaults (primarily peer-related charges of sexual assault, or anyone over 16 years of age reporting sexual abuse that occurred when they were under 16) are handled by the Youth Division or the Criminal Investigation Division. These numbers could not be calculated but would certainly affect the overall number of offences. In addition, other cases may be investigated directly by a uniformed police officer, with the offence reports going directly to the Records Bureau.

For this research, a review of the offence forms and accompanying information for reports to the Child Abuse Branch was done. These offence reports involved 325 cases of alleged sexual abuse where a case is defined as one victim/one reported occurrence/at least one offender. Thus, 325 complainants

were identified as potentially having been subjected to sexual offences in which a total of 332 accused were involved. Of these 325 cases, 24 percent or 78 were cleared by charge (Table 3). These 78 cases became candidates for further tracking through the judicial system.

Table 3 **Child Sexual Abuse Cases Reported to Hamilton-Wentworth Regional Police by Investigation Outcome and Clearance Method - September 1, 1989, to August 31, 1990**[1]

Investigation Outcome	N	%
Substantiated	253	77.9
. Cleared by charge	78	24.0
. Concluded otherwise	142	43.7
. Concluded - not cleared	24	7.4
. Still under investigation	9	2.8
Unfounded	72	22.2
Total	325*	99.9*

[1] In this table a case is defined as one victim/occurrenced report. Thus a case consists of (i) at least one incident (ii) one victim and (iii) at least one perpetrator.

* Not exactly 100 percent because of rounding.

Source: Hamilton-Wentworth Regional Police Offence Reports

Unit of Analysis: Victim/Occurrence (see footnote 1)

3.2.1.2 Hamilton-Wentworth Catholic Children's Aid Society (CCAS) Reports of Inquiry and Family Files

When a case is reported to either of the Children's Aid Societies (CASs) the intake worker completes the "Record of Inquiry." This initiates an immediate investigation, which may also involve the police, to determine whether there is reason to consider the allegation as substantiated. A report is completed on this investigation within 24 hours. Record checks of the CAS files and the Provincial Child Abuse Register are done during this period as well.

If there are indications that the child may be at risk, a file is opened under the family name and a fuller assessment of the situation is done. Court proceedings under the Child and Family Services Act[1] may be initiated to place the child in protective custody. When this is done, a file is opened on the child as well. Both the family and child files are kept together. Other treatment services may be provided by the CCAS special or family services units or the child may be referred to an external agency.

In the period from September 1, 1989, to August 31, 1990, 107 files were opened by the CCAS in response to allegations of sexual abuse. In reports of sexual abuse, a file consisting of at least a record of inquiry is always opened. A review of these files defined 110 cases, based on victim/report (Table 4). Of these, a total of 27 or 24.6 percent were substantiated and another 20 (18.2 percent) were "substantiated but not verified." Cases in the former category proceeded further, primarily in the criminal justice system. Cases described as "substantiated but not verified" were those where the CAS investigation convinced the worker that the allegation was true but where no confirming external evidence could be found upon which the case could proceed.

[1] Statutes of Ontario, 1984, Chapter 55.

Table 4 Child Sexual Abuse Cases Reported to the Catholic Children's Aid Society of Hamilton-Wentworth Region by Investigation Outcome - September 1, 1989, to August 31, 1990

Investigation Outcome	N	%	Total
Sexual Abuse Substantiated			
. Abbreviated Short-term File[1]	-	-	
. Short-term File	21	19.1	
. Long-term File	6	5.5	24.6
Sexual Abuse Substantiated but Not Verified			
. Abbreviated Short-term File	-	-	
. Short-term File	17	15.5	
. Long-term File	3	2.7	18.2
Sexual Abuse not Substantiated	-	-	
. Abbreviated Short-term File	61	55.5	
. Short-term File	2	1.8	
. Long-term File			57.3
Total	110	100.1[2]	

[1] The "abbreviated short-term file" is not used by the Catholic Children's Aid Society but only by the Hamilton-Wentworth Children's Aid Society. However, to maintain a comparative basis it is included on both this table and the following.

[2] Does not add to 100 percent because of rounding.

Source: Catholic Children's Aid Society Records of Inquiry and Case Files

Unit of Analysis: Victim/Report

3.2.1.3 Hamilton-Wentworth Children's Aid Society (HWCAS) Reports of Inquiry and Family Files

The handling of child sexual abuse reports by the HWCAS is similar to that described above for the CCAS with one notable difference. Whereas the CCAS carries out investigations on all allegations of child sexual abuse, it is the policy of the HWCAS to investigate only reports of intrafamilial sexual abuse or extrafamilial cases where the alleged perpetrator is in a position of trust or authority or if he or she is known to have contact or live with other children. This policy has been established largely as a result of economic restraints. Other reports of the sexual abuse of a child are referred directly to the HW Regional Police.

A list of 293 reports was generated by the HWCAS for the same 12-month period. A file review identified 274 victim/reports because some of the files could not be located at the time of the review. Files could be on a worker's desk or in the legal department at any given point so that repeated searches usually turned up some files that could not formerly be located. However, by the conclusion of the data collection period, 19 files were still outstanding. Of the 274 cases, 75 or 27.4 percent were substantiated and another 18 (6.6 percent) were substantiated but not verified (Table 5).

Table 5 Child Sexual Abuse Cases Reported to the Hamilton-Wentworth Children's Aid Society by Investigation Outcome - September 1, 1989, to August 31, 1990

Investigation Outcome	N	%	Total
Sexual Abuse Substantiated			
. Abbreviated Short-term File	27	9.9	
. Short-term File	36	13.1	
. Long-term File	11	4.0	
. Missing	1	.4	27.4
Sexual Abuse Substantiated But Not Verified			
. Abbreviated Short-term File	5	1.8	
. Short-term File	12	4.4	
. Long-term File	1	.4	6.6
Sexual Abuse Not Substantiated			
. Abbreviated Short-term File	102	37.2	
. Short-term File	72	26.3	
. Long-term File	6	2.2	
. None Opened	1	.4	66.1
Total	274	100.1[1]	

[1] Does not add to 100 percent because of rounding.

Source: Hamilton-Wentworth CAS Records of Inquiry and Case Files

Unit of Analysis: Victim/Report

3.2.1.4 Hamilton-Wentworth District Ontario Court of Justice Informations and Court Records

In cases where charges were filed, the "informations" on which charges were sworn were available from the Court Records Office after the case had entered the court system. Of the 78 cases in which offences were charged, four did not proceed because of outstanding warrants. A total of 66 cases as defined from the police reports had entered court by June 30, 1991. No information regarding the progress of the remaining eight cases could be located (Table 6).

Table 6 **Charge and Disposition Data Available for Reports to Police From September 1, 1989, to August 31, 1990, by Status of Case at Conclusion of Data Collection Period, June 30, 1991**

	Complete By June 30	Not Complete June 30	Total Cases/ Charges
Occurrences Cleared by Charge	66	12	78
Charges Filed	120	-	120
Cases for which Outcome Data Was Available	60	6	66
Cases on which Sentence Pronounced (of convictions/ guilty pleas)	50	16	66
Charges for which Outcome Data Was Available	111	9	120
Charges for Which Sentence Was Available	27	17	44

Source: Hamilton-Wentworth Regional Police Offence Reports and Computerized Court Dockets; Ontario Court of Justice, Hamilton-Wentworth, Informations and Court Records

The 66 cases being tracked resulted in 120 charges. The number of cases completed in court by the end of the research period was 60 with six cases outstanding. These six cases represented six accused and eight charges.

Outcomes were obtained for 111 of the 120 charges being tracked.

3.2.1.5 Selected Transcripts Prepared from Ontario Court of Justice (Hamilton-Wentworth District) Provincial and General Divisions Preliminary Inquiries and Trials

In the Hamilton-Wentworth Judicial District, preliminary inquiries and trials are attended by a court reporter but are not audio-taped or recorded in any other way. Transcripts are not prepared from the court reporter's recordings unless an appeal is filed or unless ordered by the crown attorney or defence counsel who may need them for preparing to take the case further. The time and cost involved in obtaining transcripts therefore precluded ordering these for all the cases which went to preliminary and/or trial. Instead, for this research, transcripts were ordered only for cases being tracked in which a child testified and whose testimony could not be observed in court (see below).

Ultimately, transcripts could be obtained for seven accused over eight appearances by the end of the data collection period. Because no information was available as to whether a victim had testified, the court reporters were asked to provide only transcripts in the named cases where the child had testified. This resulted in nine child victim/witnesses being included in the transcripts. However, six of these also turned out to have been observed in court as well. The transcript review therefore added only three cases to the roster of victim/witness appearances.

3.2.2 Observation and Interview Data

3.2.2.1 Observations of Children Testifying in Court at Preliminary Inquiries and Trials

Of the 78 cases in which charges were filed, warrants remained outstanding in four. The other 74 cases proceeded through the court to various points.

A protocol for observing and interviewing child victim/witnesses and their parent/guardians was developed with the crown attorney's office. The court observer was given a list of court dates by the police sergeant attached to the court. Prior to the court date, the observer contacted the crown attorney's office to determine which crown attorney was prosecuting the case and then to ask that individual if she could attend the court to observe the case. In no instance was permission denied. In one case, however, the observer was asked to leave the court along with the spectators. This occurred at the request of the accused after the crown attorney and the child both agreed that her presence was acceptable. The judge then asked the counsel for the accused, who left the decision up to his

client. The accused did not want the observer to remain because the case, as he put it, was "a family matter."

Because of the time taken to arrive at an approved protocol, court observation could not be started until five months into the research. This left only seven months for carrying out this activity. Since most cases resulted in a guilty plea without the necessity for the child to testify, just 11 children were able to be observed. One child was observed twice, once at the preliminary inquiry and once at trial (Table 7).

Table 7 **Victims Observed in Court, Using the Court Observation Rating Scale, by Proceeding Type and Stage**

Proceeding Stage	Proceeding Type	
	Preliminary Inquiry	Trial
. Oath/Affirmation	7	3
. Examination in Chief	8	3
. Cross-examination	8	3
. Re-examination	-	2
Total Observations	23	11

Twenty-one additional cases were defined in which some observations could perhaps have been carried out. Seven of these, however, could not be observed because they were young offenders who were heard in the Unified Family Court. Although permission to track young offenders had been requested, it was not granted.

Of the other 14 cases, ten had further court dates beyond the research period. Up to the point at which data collection terminated, no child had testified in these cases. Since the accused may plead guilty at any stage, no one could predict whether any of the child victims would testify. In the end, four cases of child testimony were missed, but transcripts for two of these were reviewed.

Carrying out court observations was also complicated by the occasional slippage in obtaining the correct dates or in obtaining them before they had passed. Although the court observer always attended when a date was known, it very frequently happened that the accused entered a guilty plea and no observation was carried out. In some instances court dates conflicted, so the one trained and qualified observer could not attend both.

3.2.2.2 Interviews with Children who Testified and with Their Parents/Guardians

One aspect of the court observation/interview protocol was the requirement for the court observer to obtain the crown attorney's permission to interview the child. On a couple of occasions, the crown attorney either did not feel that it would be in the best interests of pursuing the case or else felt that an appeal might be filed. If the case were to proceed further, there was a concern that accusations of contaminating the evidence could result should an interview with the child be done in the interim.

The crown attorney introduced the court observer to the children and their parents/guardian following their court appearance. The observer asked them if they would agree to an interview at their convenience and at whatever location they preferred. She attempted to arrange the interview within a week of the court appearance if possible. While no one refused to be interviewed, the court observer could not always contact the family again later to do the interview.

The two interviews together (parent and child) lasted approximately two hours and a total of five children and four parents participated (two of the children were in the same family).

3.2.2.3 Survey of and Interviews with Judges and Justices in the Ontario Court of Justice (Hamilton-Wentworth) Provincial and General Divisions

In the Judicial District of Hamilton-Wentworth, eight judges are attached to the Ontario Court of Justice (Provincial Division), one of whom carries out an administrative role only. This division is the first court level that hears criminal charges that proceed summarily. The General Division, which hears cases proceeding by indictment, has ten justices. Letters were sent to the senior judges in each case to request their assistance in involving members of their court district in a survey about the court handling of child sexual abuse cases. The option of a self-administered questionnaire or a personal interview was offered.

Questionnaires were sent to members of the bench of the General Division and to one judge of the Provincial Division. Interviews were held with the other judges at the provincial level. Of the 17 judges approached, seven were either interviewed or completed a questionnaire (Table 8).

Table 8 **Return Rate of Child Sexual Abuse Questionnaires by Professionals**

Status	Judges	Crowns	Defence	Police	CAS
Returned completed	7	6	3	6	12
Return rate (completed)	(41%)	(46%)	(14%)	(43%)	(40%)
Returned not completed	3	5	5	6	4
Total returned	10	11	8	12	16
Return rate	(59%)	(84%)	(38%)	(85%)	(53%)
Total Sent	17	13	21	14	30

3.2.2.4 Self-administered Questionnaire Surveys of

- Children's Aid Societies' (CCAS and HWCAS) intake workers;
- Hamilton-Wentworth Regional Police officers;
- Judicial District of Hamilton-Wentworth assistant crown attorneys; and
- Members of the private bar appearing as defence counsel in cases of child sexual abuse.

A mail-out survey of each of these populations was done using different instruments, although these shared some similarities in the questions and topic areas (see Section 3.3). The questionnaires were mailed individually to each prospective respondent with an enclosed self-addressed return envelope to ensure confidentiality. All intake workers in both CASs along with their supervisors (N=30) were included, as were all assistant crown attorneys (N=13). In addition to police officers in the Child Abuse Branch, a list of other officers was developed from the file review of child sexual abuse cases. Where an officer had handled two or more such cases in the 12-month period from September 1, 1989, to August 31, 1990, he or she was sent a questionnaire. In total, 14 members of the police force were asked to respond.

The sample of defence lawyers was prepared by identifying those who had appeared for accused in the cases being tracked (where this information was available). This generated a list of 21 such individuals, each of whom was sent a questionnaire with a covering letter from the Department of Justice Canada explaining the purpose of the survey.

Table 8 presents the return rates for the surveyed professionals. The lowest rate of response was from defence lawyers while the highest response rate was from crown attorneys. Return rates were high for both crown attorneys and police officers, as some questionnaires were returned with the explanation that the potential respondent had not had any cases upon which to base a response.

3.3 Instruments Developed for the Research

Each of the above data sources required a separate data collection instrument. Since the objective was to compare the practices and outcomes across four communities, the instrument development had to be approached so that at least a certain amount of information would be defined in a standardized fashion in the several sites. Site-specific data could be added to this core of standard items. However, the length of the instruments precluded the collection of much additional information. A brief outline of the objectives and format of each of the instruments follows. Because of their size and number, the instruments themselves are not included here.

3.3.1 Documentary Data

3.3.1.1 Police Offence Reports: Police File Review Schedule and Multiple Offenders Form

The police file review schedule was developed for extracting information from the police offence form, supplementary, and suspect description where these were included in the file. All offence-related, victim and accused characteristics were collected from this source and a computer file was produced for this data set (see Tables A.1 to A.33 in Appendix A). The schedule was based on a common core of items that were used in all four research sites. For the Hamilton-Wentworth location, the form was revised based on the kinds of data available from police offence forms. Some of the information available in other locations from police files had to be collected here from other sources.

3.3.1.2 CCAS/HWCAS Records of Inquiry and Family Files: Abbreviated, Short-term and Long-term File Review Forms

A file review schedule was designed to record data from all identified CCAS and HWCAS records of inquiry and accompanying information. Because of the types of files that are opened by the CASs, three versions of this form were prepared. Each version had the same section for information taken from the record of inquiry, while additional sections were included depending upon whether files were short-term abbreviated, short-term or long-term (see Tables 4 and 5).

Only the HWCAS has short-term abbreviated files. These are primarily completed for cases that are either quickly determined to be unsubstantiated and have no other risk factors for the child, or that are transferred to the jurisdiction of another CAS. Short-term files in both agencies are carried for cases that have few complicating factors requiring additional services or court applications by the agency. Conversely, long-term files represent cases where the agency becomes more heavily involved with the family and with the child. There is no necessary relationship between the type of file opened and whether the sexual abuse is substantiated.

Data collected from the two CASs were entered in one computer file and treated together for analysis (see Tables B.1 to B.39 in Appendix B).

3.3.1.3 Judicial District of Hamilton-Wentworth Informations and Court Records: Court Records (Informations) File Review Schedule

The only recorded source of information regarding charges, the progress of the court case and the dispositions is the "Information" laid by police when charging an accused. Police officers lay charges when they determine that there are reasonable and probable grounds to do so. However, these informations were not available until the case entered court. At that point, the court record file was reviewed to obtain data on the charges filed, whether summary or by indictment, the pleas, charges proceeded with, court dates, the outcomes at various stages and the sentences. Because of the time lag completing cases, the outcomes for six of 60 cases and sentences for 18 of 45 convictions/guilty pleas could not be determined (see Table 6).

This file review schedule was based upon items designed in common for the four research sites. Two data sets were produced from the results of the file review. One was based on the case as a unit of analysis (74 cleared by charge) and one was based on the charge as the unit of analysis (120 charges).

3.3.1.4 Transcripts: Preliminary Inquiry and Trial Transcript Reviews

The transcripts were reviewed using a schedule developed for the four research sites. This schedule was used for reviewing seven transcripts where children had testified in the cases being tracked and one guilty plea proceeding. Nine different child witnesses appeared in these cases with one child testifying both at a preliminary inquiry and a subsequent trial. This yielded data on ten child witness appearances.

3.3.2 Observation and Interview Data

3.3.2.1 Observations of Children Testifying: Child Victim/Witness Court Observation Schedule and Court Observation Rating Scale

A similar court observation form was used in all research locations to gather information about the treatment of children in court and about the responses of child victim/witnesses to this. A court observation rating scale was devised by the Canadian Research Institute for Law and the Family which had started a similar review of Bill C-15 in Calgary and Edmonton one year prior to the Hamilton-Wentworth study.[2] This observation rating scale was adapted from the work of Achenbach and Edelbrock (1983) and Goodman (1988). It is a one-page check-off form with 43 items describing the child's behaviour and verbal responses while on the stand. One form was completed for each stage of the court process, i.e., oath-taking or solemn affirmation, examination in chief, cross-examination, re-examination, and re-cross-examination, for each distinct court appearance of the child. Table 7 describes the number of observations completed at each stage for preliminary hearings and for trials.

3.3.2.2 Interviews with Child Victim/Witnesses and with Parents/Guardians: Child Interview Schedule and Guardian/Parent Interview Schedule - Post Court

The interview form for child victim/witnesses and their guardian/parents had essentially similar questions across the four Bill C-15 review locations. These questions focused on the children's perceptions of their treatment in court, how they had reacted to it and how they felt about it. The parent or guardian was also asked a number of questions which basically parallelled those put to the child. Because ultimately relatively few children were actually called upon to testify, and

---

[2] For an account of the development of the scales and list of those items included see Section 3.4 following.

Because ultimately relatively few children were actually called upon to testify, and because the period of time available for this activity was reduced (see 3.2.2), only five children and four parents could be interviewed.

3.3.2.3 Interviews/Survey of Judges and Justices, CAS Workers, Police Officers, Assistant Crown Attorneys, Defence Counsel: Self-Administered Questionnaires

These questionnaires were the same from site to site. Some judges were interviewed by the principal researchers who used the self-administered questionnaire to record responses. A couple of judges completed the instrument themselves. These interviews ranged from 30 minutes to two hours (depending on the time the judge had available between court sessions).

The major areas addressed in these instruments included the criteria for decisionmaking about substantiating cases, filing charges, prosecuting, and determining sentence. Other questions asked about the actual child sexual abuse cases that the respondent had dealt with since January 1, 1988 (the implementation date of the Bill), focussing on their professional practices and the perceived impacts of the Bill on their handling of these cases.

3.4 Scale Development[3]

Analysis of the data of this study required the development of several scales, and the use of measurable indicators. The development of these scales and measures are discussed below.

---

[3] This section is taken from Review and Monitoring of Child Sexual Abuse Cases in Selected Sites in Alberta, Canadian Research Institute for Law and the Family. July 1992.

Table 9 **Items Included in "Nature of Abuse" in Hamilton-Wentworth Bill C-15 Evaluation**

Nature of Abuse	Categories From File Review Form
Exposure	Indecent exposure
Invitation	Invitation to sexual touching
Show Pornography	(no cases appear)
Undress	Undressing victim/ watching victim undress
Masturbation	Performing sexual acts in front of victim
Inappropriate Kissing	Unwanted/inappropriate kissing; kissing breasts
Chest Fondling	Grabbing/fondling breasts
Buttock Fondling	Grabbing/fondling buttocks
Genital Fondling	Grabbing/fondling genital area
Victim Fondles Offender	Forcing victim to fondle offender; mutual fondling; mutual genital contact
Forced Sexual Activity with Others	(no cases appear)
Simulated Intercourse	Rubbing genital area; motions of intercourse; anal touching with penis
Vaginal Penetration with Finger	Vaginal Penetration with fingers
Attempted Vaginal Penetration	Attempted vaginal penetration with penis or fingers; penetration with foreign objects
Anal Penetration with Finger	Anal penetration with fingers; penetration with foreign objects
Oral Sex on Offender	Victim performed oral sex on offender; mutual oral sex
Oral Sex on Victim	Oral sex performed on victim
Vaginal Penetration with Penis	Vaginal penetration with penis; forcing victim to perform vaginal penetration on offender
Anal Penetration with Penis	Anal penetration with penis
Forced Prostitution	(no cases appear)

3.4.1 Scale Development

Sexual Abuse: Level of Intrusion

The types or forms of sexual abuse are described in the research literature in various ways. Specific behaviours or categories of behaviour can be confusing because of the different methodological procedures used in various studies. Definitions of sexual abuse vary, sample sizes are usually limited, populations often consist of students or clinical groups of adult survivors, and the methods of collecting the descriptions of abuse vary. Information regarding types of abuse has generally been used to demonstrate that the nature of the sexual experience is related to the degree of emotional trauma in victims. The level of severity of the sexual acts, i.e., the most common concept, is discussed primarily in the context of emotional trauma and treatment. Analysis of the possible contributing factors to severity have generally only used bivariate methods. Therefore, when researchers try to understand the types of abuse and the perceived severity of these actions, the combinations of factors that may reflect the complexity of abusive behaviours more accurately are difficult to find.

Specific sexual behaviours are described in the victim literature (Badgley, 1984; Badgley and Young, 1987; Finkelhor, 1979; Fritz, et al., 1981; Kendall-Tackett and Simon, 1987; Kercher and McShane, 1984; Pierce and Pierce, 1985; and Tufts New England Medical Centre, 1984). Exhibitionism by the perpetrator is generally identified as the least intrusive act and penetration (anal/vaginal) as the most intrusive. Behaviours perceived as "less sexual" or least intrusive are also thought to be the least damaging in terms of emotional trauma.

Russell (1983, 1984, 1986) seems to have most clearly defined categories of child abuse that relate to reported emotional trauma in adults:

(1) Very serious abuse: completed and attempted vaginal, oral, and anal intercourse, cunnilingus, analingus, and fellatio, forced and unforced.

(2) Serious sexual abuse: completed and attempted genital fondling, simulated intercourse, digital penetration, forced and unforced.

(3) Least serious sexual abuse: completed and attempted acts of intentional touching of buttocks, thigh, leg or other body parts, clothed breast or genitals, kissing, forced and unforced.

Dube and Hebert (1988) used the three categories of seriousness defined by Russell to conduct a retrospective file review of 511 children, 12 years of age

and under. Also, Sorrenti-Little, et al. (1984) found that the seriousness of early childhood sexual abuse correlated with self-reported poor self-esteem.

Margolin and Craft (1990) also developed a severity scale for child sexual abuse. Sexual behaviours were rated on a scale from one to six based on the intrusiveness of the action and whether or not threats or physical abuse occurred. These scales were validated by demonstrating a significant relationship between the level of severity and the probability of police charges being laid. The categories used were:

(1) Sexual exhibitionism;

(2) Nonviolent behaviour without intercourse;

(3) Intercourse (oral, anal or vaginal) without physical threat or injury;

(4) Intercourse with threats;

(5) Sexual aggression with physical injury - without intercourse; and

(6) Sexual intercourse with physical injury.

Unfortunately most of the current research has focussed on the resulting trauma of adults and children as the main indicator of the seriousness or severity of a childhood sexual abuse experience. This process appears to have been used mostly for therapy purposes. Research is not readily available that is specific to child victims, in close proximity to the assault, and includes a multivariate analysis of factors describing the severity or seriousness of an abuse occurrence. How this information relates to decisionmaking by social workers, teachers, police, judges or individuals working with children disclosing sexual abuse is not clear.

In this study, as a result of the above ambiguity, we chose to focus specifically on the nature of the behaviour shown. When conceptualizing sexual abuse as a combination of behaviourial events, a total of 20 categorical variables were used. When it was necessary to view the abuse behaviour as a continuous concept, the Intrusion Scale shown in Table 10 was used.

In accordance with the Intrusion Scale, individuals are assigned the number corresponding to the highest level of "intrusion" experienced, regardless of how many other lesser behaviours they might have experienced. Other variables, such as duration of abuse, age of victim, or relationship of offender, are then measured separately in terms of their significance.

Table 10 Intrusion Scale[1]

Intrusion	Categories From File Review Form
Exposure	Indecent exposure; nude photos of victim; victim photographed accused; accused in bed with victim
Invitation	Undressing/watching victim undress; introducing victim to pornography; invitation to sexual touching; bathe/shower together; written/verbal instruction; dress victim in adult clothing
Masturbation	Performing sexual acts in front of victim
Inappropriate Kissing	Unwanted/inappropriate kissing; kissing breasts; victim sucks offender's breasts
Non-genital Fondling	Grabbing/fondling breasts; grabbing/fondling buttocks
Genital Fondling	Grabbing/fondling genital area
Mutual Genital Fondling	Forcing victim to fondle offender; forcing the victim to masturbate; forcing/enticing victim to perform sexual acts with another victim; mutual fondling; mutual genital contact (male); biting breasts/bum; using massager; urinating on victim
Simulated Intercourse	Ribbing genital area against the victim's body; motions of intercourse; anal touching with penis
Digital Penetration	Attempted but failed penile penetration; vaginal penetration with fingers; vaginal penetration with foreign objects; anal penetration with fingers; anal penetration with foreign objects; attempted vaginal penetration with fingers
Oral Sex	Victim forced to perform oral sex on offender; oral sex performed on victim; mutual oral sex; anal licking
Vaginal Penetration with Penis	Vaginal penetration with penis; forcing victim to perform vaginal penetration on offender
Anal Penetration with Penis	Anal penetration with penis; bestiality
Forced Prostitution	Forced victim to prostitute

[1] Developed by J. Hornick, Institute for Research on Law and the Family, University of Calgary, Calgary, Alberta, 1992.

Child Behaviour in Proceedings

Since one of the purposes of this study was to examine the nature of the child's experience in court proceedings, the Court Observation Rating Scales were developed from the previous work of Achenbach and Edelbrock (1983) and Goodman (1988). The nature of "child behaviour ratings" and the "child communication" items required the development of summated variables.

The first step in developing the scale involved a factor analysis of all 29 items related to child behaviour. This analysis yielded three distinct subscales: Anxious/Withdrawn, Sad/Cries, and Able to Communicate. As indicated by Table 11, Anxious/Withdrawn is composed of six items having a reliability coefficient of .819; Sad/Cries is composed of three items, with a reliability coefficient of .681; and Able to Communicate is composed of four items, with a reliability coefficient of .812.[4]

Analysis required the development of an overall indicator of child performance throughout various court proceedings. Thus, scale scores were tested for change according to the stage of proceedings. This analysis indicated that oath-taking tended to produce relatively lower levels of Anxious/Withdrawn behaviour, particularly in comparison with cross-examination. None of the differences for Sad/Cries behaviour were significant. Ability to Communicate, however, decreased during cross-examination.

Although some of the differences in scores at different stages of proceedings were significant, the overall findings indicate relatively stable performances by the child witnesses. Thus, the overall scale of performance for Anxious/Withdrawn, Sad/Cries, and Able to Communicate were developed in order to facilitate data analysis.

[4] Reliability coefficient is a measure of the internal consistency of the group of items. It ranges between zero and one, with higher numbers indicating greater degrees of internal consistency.

Table 11 Reliability of Subscales Developed for the Court Observation Rating Scale[1]

Subscale and Component Items	Reliability Coefficient[2]
Anxious - Withdrawn	.8190
Fidgets	
Anxious	
Withdrawn	
Worried	
Shy/Timid	
Appears Confused	
Sad - Cry	.6808
Sad	
Cries	
Easily Embarrassed	
Able to Communicate	.8115
Child's Speech - How Fluent?	
Child's Speech - How Audible?	
Detail Child Spontaneously Provided	
Degree of Confidence While Testifying	

[1] Factor analysis was used to develop subscales from the original items.

[2] Cronbach's Alpha.

3.5 Analysis

The data collected from tracking cases were organized for both descriptive analysis and for testing relationships. Each of the instruments described above produced a data set, a number of which had parallel information from different sources, while others had different types of information about the same cases. Some of the elements of the police, child court observations and court records data files were combined to create second generation files for assessing relationships between a number of variables and several outcomes. The analyses were carried out using Reflex Database software, SPSS/PC+ software, and Knowledge Seeker software.

The outcomes examined were: the factors leading to police determination that a case is "founded," those that explain the police decision to file charges in a case, factors related to the CAS substantiation of cases, and those influencing the CAS decision to report to the Provincial Child Abuse Register. Unfortunately, this research lacked sufficient numbers of cases at the levels required to account for convictions in cases charged and the sentences resulting. Although child victim/witness performance in court was observed and rated, the small number of cases did not permit analysis to determine the predictors of the child's performance. Descriptive and qualitative information related to these outcomes is provided instead.

Measures of outcomes are presented where appropriate. The measures used include:

a) The reporting rate

This is the number of victim/occurrences, unfounded as well as substantiated, reported to police expressed as a proportion for each 100,000 population.

b) The "unfounded" rate

"Unfounded" cases are proven to be false, and either for which no evidence is found that an offence was committed (e.g., misperception of touching), or for which insufficient information exists to substantiate an offence (i.e., this does not mean that the offence did not occur). "Unfounded" does not necessarily mean that an allegation is false. The unfounded rate is the ratio of unfounded cases to those that are substantiated (or established as true) by police investigation.

c) The clearance rate

The proportion of cases cleared by charge out of all substantiated victim/occurrences is the clearance rate. Charges in Hamilton-Wentworth, as a practice, are condensed to include a time frame (between dates) as opposed to individual counts for each allegation. This practice reduces the overall number of charges laid but has been more successful, in the experience of police, in resulting in guilty pleas or convictions.

"Cleared otherwise" means that the case has been solved. There are a number of reasons why a case, even though substantiated and the child believed, might not be charged (also see 4.3.3.4). For example, it may be resolved through referral to an agency (as per the Young Offenders Act, section 3), or the laying of charges may not be supported by the family or the child (victim). The latter

situation may occur even if the evidence has been collected and the perpetrator is known. If the family or the child refuses to testify, charges will not be laid. However, the charges can and are deferred so, if the child becomes more stable and will testify, the case can be re-opened. The primary reason given in the cases examined here was "lack of evidence to proceed."

d) The conviction rate

In this report, a specific definition of "conviction rate" has been used to produce a measure consistent with that used in the other studies of the implementation of Bill C-15. This definition of the conviction rate describes the extent to which the prosecution process was successful, i.e., resulted in a conviction or guilty plea in court. Calculation of the rate, therefore, is based on the ratio of the number of convictions and guilty pleas to the number of charges acquitted and discharged. Charges that have been withdrawn, stayed, not completed in court, or are outstanding on warrants are not included. Since this definition of conviction rate essentially represents the performance of the crown in prosecuting, only charges that are pursued by the crown are included.

The Ministry of the Attorney General of Ontario normally uses another basis for calculating conviction rates. This definition also regards the rate as a measure of the degree of success of the prosecution. However, it is calculated as the ratio of convictions and guilty pleas to <u>all</u> charges laid. This definition of the conviction rate would substantially reduce the rates given in this report.

3.6 Limitations of the Research

This study primarily emphasized a review of Bill C-15 in terms of its level and areas of implementation. It did not deal with the effectiveness and impacts of the Bill, a true test of which would require a pre- and post test research design with a control group. Although a baseline study had been done on cases from 1986 to 1988, the limited availability of that data has not permitted a wide range of comparisons to develop an accurate "before and after" picture.

The most severe constraint confronting analysis of the information collected for this study has been the small number of cases in many of the data sets. This has especially affected the extent to which analysis of court outcomes and dispositions could be undertaken as well as assessment of the treatment of children in court as a result of the new Bill C-15 provisions. Much of the information about child victim/witnesses, their response to court and their handling by the court, is described in Section 4.10.

The number of respondents to the surveys of professionals in the child welfare and criminal justice systems is also low. The response rates of less than 50 percent for these groups indicates a need for considerable caution in accepting responses as representative of their respective populations.

An attempt was made to bring comparability into the police and CAS data sets by basing the definition of a "case" on the individual victim plus at least one allegation of child sexual abuse during the September 1, 1989, to August 31, 1990, period. Thus, although police reports and CAS family files may have more than one victim included in the alleged incident, each victim was treated as a separate "case." In most instances, one incident constituted the basis for the report but other sexual abuse incidents might have occurred or the abuse may have been ongoing. In a small proportion of reports to the police and to the CAS more than one offender was involved. Nonetheless, the victim/occurrence is the unit for analysis. The victim/occurrence identity was the linking factor between these two data sets.

In carrying out the analysis of the outcomes of cases in which charges were filed, the unit of analysis shifts from "case" to charge. More than one offence may be identified for a specific incident, thereby giving rise to more than one criminal charge. This shift in the unit of analysis is noted where it occurs. It does, though, occasionally introduce some discrepancies into the data because the information has been brought together from paper records in several locations. The quality, completeness and availability of the documents varied, with the result that it was sometimes difficult to reconcile the information or to understand the progress of a case because of gaps in records.

4.0 PROCESSING CHILD SEXUAL ABUSE CASES THROUGH THE CHILD WELFARE AND CRIMINAL JUSTICE SYSTEMS

This chapter examines the process from the point of entry of child sexual abuse cases into the child welfare and criminal justice systems to conclusion. In some cases this conclusion is very early with the allegation not being substantiated while, in other cases, the conclusion is at the furthest possible point of processing, i.e., a sentence being handed down in court. The extent to which an allegation continues to these various points, and the factors affecting this progression are the subject of analysis of the police and CAS reports discussed in the following pages.

4.1 Policy and Protocol

In 1988, the Hamilton-Wentworth Regional Police formed a Child Abuse Branch (CAB) to investigate allegations of child abuse. A child abuse protocol, "Procedures for Coordinated Investigations of Child Abuse in Hamilton-Wentworth," was developed by the two CASs, police and crown attorney and proclaimed in February 1989. This followed the conclusion of a highly publicized child welfare case involving ritual abuse of two young girls, and an accompanying period of strained relations between police and the child welfare agencies.

A suspected incident of child sexual abuse is reported either to the police or to one of the Children's Aid Societies. As outlined in the "Child Sexual Abuse Protocol," police and CAS agencies must inform each other of a possible offence. Because of the legislated mandate of CASs under the Child and Family Services Act (Statutes of Ontario, 1984, chapter 55)[1] the child welfare agencies are most concerned about intrafamilial cases of child sexual abuse (abuse by immediate family members). The CCAS does investigate and provide follow-up service for cases of extrafamilial abuse (where the offender is not a family member) whereas the HWCAS does not - a policy resulting primarily from budgetary constraints. Extrafamilial cases are turned over to police as criminal offences if there is no indication of other protection issues or of further risk to the child because of inadequate family care. The ratio of cases handled by the CCAS to those dealt with by the HWCAS is 1:4.

While police, in turn, may inform the appropriate child welfare agency about a report of child sexual abuse, they may not always do so if it is clearly a case of abuse by a stranger or another individual totally unrelated to the family.

---

[1] The Child and Family Services Act is often abbreviated as CFSA.

Figure 1 **Child Sexual Abuse Occurrence Reports - Case Flow Model**

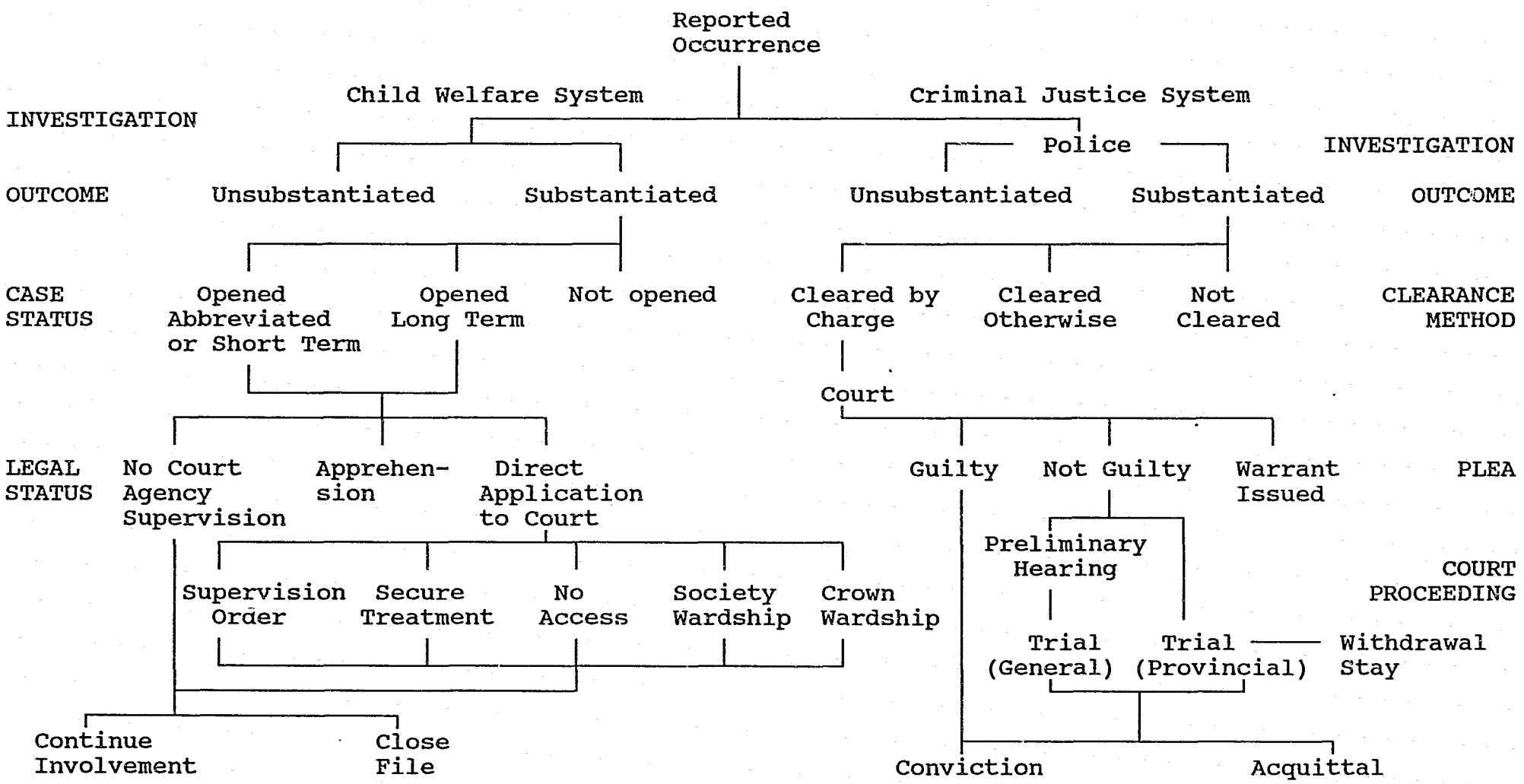


Figure 1 depicts the typical path followed through the child welfare and criminal justice systems by a reported case of child sexual abuse. The discussion below describes the various steps in this process as they occurred during the study period from September 1989 to June 1991.

4.1.1 Model of Case Flow through the Criminal Justice System[2]

- An incident of child sexual abuse may first be reported to an officer of the Hamilton-Wentworth Regional Police Department (HWR Police). It is then referred to an investigating officer of the specialized Child Abuse Branch (CAB) which responds to calls during 12-hour daytime shifts. If the call comes at night or on weekends, it is assigned to an investigating officer from another division. The CAB keeps track of all cases, whether they are handled directly by this unit or by other officers. The case remains the responsibility of the officer to whom it is first assigned.

- The officer, whether with investigation or CAB, either makes an arrest and completes an offence report or simply completes a report if no arrest is possible at the time. A suspect description form may be completed and ongoing investigation is recorded on a supplementary or incident report. At this point, several possibilities may occur, for example:

  . The case may be substantiated and charges laid.

  . The case may be substantiated and charges filed but the accused cannot be located, so a warrant may be issued.

  . The case may be substantiated but the accused may be a "young offender" who may or may not be charged or who may be subject to other non-criminal proceedings.

  . The case may be substantiated but the suspect may be unknown and therefore no arrest or charges follow.

  . The case may be unfounded (i.e., unsubstantiated) and a decision is made not to proceed.

---

[2] The following description was true for the period during which the cases were tracked through the criminal justice system in 1990 and to July 1991.

- Once an arrest is made, an information sheet is completed naming the charges against the accused. The CAB (or other officer) may or may not assign the charges. Often the charges are assigned by the police officer at the court. This officer appears at the Judicial Interim Release ("bail") hearing to swear the charges and enter any arguments regarding bail.

- Following an arrest, if a bail hearing is held, it occurs within 24 hours before a justice of the peace or a judge of the Ontario Court of Justice (Provincial Division).

- A court date is set for first appearance.

- When a case is cleared by charge and a court date set, the investigating or CAB officer completes the crown attorney envelope and instructions to the crown attorney which are then sent to the Police Court Division. Placed in the crown attorney's envelope are the following: offence reports[3], supplementary reports, record of arrest, criminal record, photographs, and property receipts of property involved in the offence. A sticker is put on the outside of the envelope to alert the crown attorney to a child sexual abuse case.

- The head crown attorney[4] receives the crown envelope, opens a crown file, and assigns an assistant crown attorney to the case at the earliest possible point, according to the recent policies adopted by that office for handling child sexual abuse charges.

- The crown attorney contacts the officer in charge of the case to receive a synopsis of the case and interview the child.

- The crown attorney and the police make appointments with the victim to help prepare him or her for court. As well, the coordinator of the Victim/Witness Assistance Program attached to the Provincial Division of the Ontario Court of Justice, may send the victim/witness or parent/guardian a letter about the program's services. The victim or the victim's family decides whether or not to use these services. (The letter is sent if police or the crown attorney contact the coordinator, or if the

---

[3] Offence reports are the forms on which the first report of the incident is recorded with the details about the victim, accused, alleged offence and action taken at that point.

[4] "Crown attorney" is used throughout this report to refer to all assistant crown attorneys. They actually appear in court on behalf of the crown attorney, who directs them. The Crown Attorney Office is attached to a particular court jurisdiction.

coordinator has received the court file long enough before the child's court appearance to do so.)

- The crown attorney must decide whether to proceed summarily or by indictment. Summary offences proceed to completion in Provincial Division. Indictable offences can proceed in a variety of ways at the choice of the accused.

- At any point in the justice process up to the actual judgement the crown attorney may decide to stay the proceedings. The crown attorney may also decide to withdraw any or all charges to which the accused has pleaded not guilty at any point up to a change of plea or judgement. This is often done, especially where the plea is "bargained," i.e., the accused agrees to plead guilty to some charges in exchange for the withdrawal of others by the crown attorney.

- The accused charged with an indictable offence generally has an election as to how to proceed. The accused may elect to be tried immediately in the Provincial Division by a judge. Alternatively, the accused may elect to be tried at the General Division level (a single division which combines the former District Court and Supreme Court of Ontario) by a justice alone or by a judge and jury.

  The accused who elects to proceed in General Division has the right to a preliminary inquiry before a Provincial Division judge. The purpose of this hearing is to determine if the crown attorney has sufficient evidence to proceed to trial. Otherwise, the accused will not be ordered to stand trial. With the consent of the crown attorney, the accused can waive his right to hear evidence at the preliminary inquiry and be committed for trial directly.

- On the date of the preliminary inquiry, the accused may choose how he or she will treat this day in court.

  Depending on the defence's assessment of the evidence, the client's instructions, and the particular judge and prosecutor, the accused may enter a plea before the Provincial Division judge. If a guilty plea is entered at this point, the agreed-upon facts can be read into the record and will be spoken to. Sentencing usually takes place on another date. If the plea is "not guilty," a trial before the Provincial Division judge will proceed. If the election is to proceed before a judge and jury or only a judge at General Division, the preliminary inquiry will go ahead before the provincial level. The accused has the option to waive the evidence at the

preliminary inquiry and let the matter be committed directly to the general level for trial.

- The child victim may be required to testify at either the preliminary inquiry, the trial, or both.
- If a trial occurs, the accused may be acquitted, found guilty, or found not guilty by reason of insanity.
- Where the verdict is guilty or if the offender pleads guilty, a pre-sentence report is prepared.
- The crown attorney returns to court for the sentencing and the victim may also attend the sentencing hearing.
- At sentencing, a victim impact statement may be entered and a decision is made about whether to enter a conviction. If no conviction is entered, the offender may be granted an absolute discharge or a conditional discharge accompanied by probation. If a conviction is entered, the offender may be fined, receive a suspended sentence, probation, a jail term or some combination of the preceding.
- Crown attorney envelopes are completed with court information including the case disposition. Envelopes are stored at the General Division (Clerk's Office) or the Provincial Division (Clerk of the Peace Office).

4.1.2 Model of Case Flow through the Child Welfare System[5]

- The Children's Aid Societies complete a Record of Inquiry or an abbreviated Short-Term Intake when a call alleging child sexual abuse is received. An investigation is carried out within 24 hours in which HWCAS/CCAS and Provincial Child Abuse Register records are checked and the child, guardian, and possibly siblings are interviewed. These interviews are often carried out with a member of the Hamilton-Wentworth Regional Police Child Abuse Branch.
- Case numbers are assigned and entered into a computerized database by both CASs.

[5] The following description is valid for the period during which this study was carried out, i.e., in 1990 and to July 1991.

- Following investigation, the case worker decides either to continue with or to close the case, depending on whether the incident is substantiated or other circumstances place the child at risk. Also at this point a report to the Provincial Child Abuse Register may be submitted once the incident has been verified. However, this step may not be taken until either later in the investigation process or even after a conviction.

- If the case is one of extrafamilial abuse, the HWCAS does not open a file unless there are conditions that put the child at risk. The CCAS usually opens a file on extrafamilial cases. However, the society's ongoing involvement may not be as great as with intrafamilial cases of child sexual abuse.

- Service is provided by CCAS/HWCAS for the child victim of sexual abuse. This may include:

  . child welfare proceedings,
  . sexual abuse treatment (individual therapy, family therapy, group therapy), and
  . support services.

- The HWCAS/CCAS may also refer these children to external resources available in the community, one of which is the Victim/Witness Assistance Coordinator attached to the Provincial Division of the Ontario Court of Justice.

The above descriptions provide an account of the "ideal model" of case processing. Not all cases proceed through all these stages and not all cases are handled in exactly the same manner. The next sections outline just how the cases identified for tracking in this research were actually dealt with and the points at which they concluded in both the child welfare and criminal justice systems.

4.2 The Parallel Processing of Cases in the Child Welfare and Criminal Justice Systems

The extent to which reports of child sexual abuse from September 1, 1989, to August 31, 1990, were dealt with by either the CASs, the police, or in common between the two systems was examined. All individual victim/occurrences over this period were identified from police and CAS reports. Two data files were created, one for the police and one for the two CASs. In addition, a centralized file was set up using Reflex Database software in which each victim from either source was assigned a unique identification number. This number was then given

to the victim of the reported offence or allegation in the separate CAS and police data files so that the extent of the match in numbers could be established.

While more than one incident might be reported for a single victim, both the police offence forms and the CAS records of inquiry are based on the victim/complainant. A second or additional allegation at a different time during the 12-month period would be recorded on a separate offence form by the police. In the police file this appears as another offence report number. Additional reports to the CAS concerning the same child are recorded on a new record of inquiry but placed in the same family file. In the research data set, this information is included in the data record under the victim identification. The CAS file review found 12 victims out of a total of 384 that had been reported twice within the year and on whom a new record of inquiry had been completed.

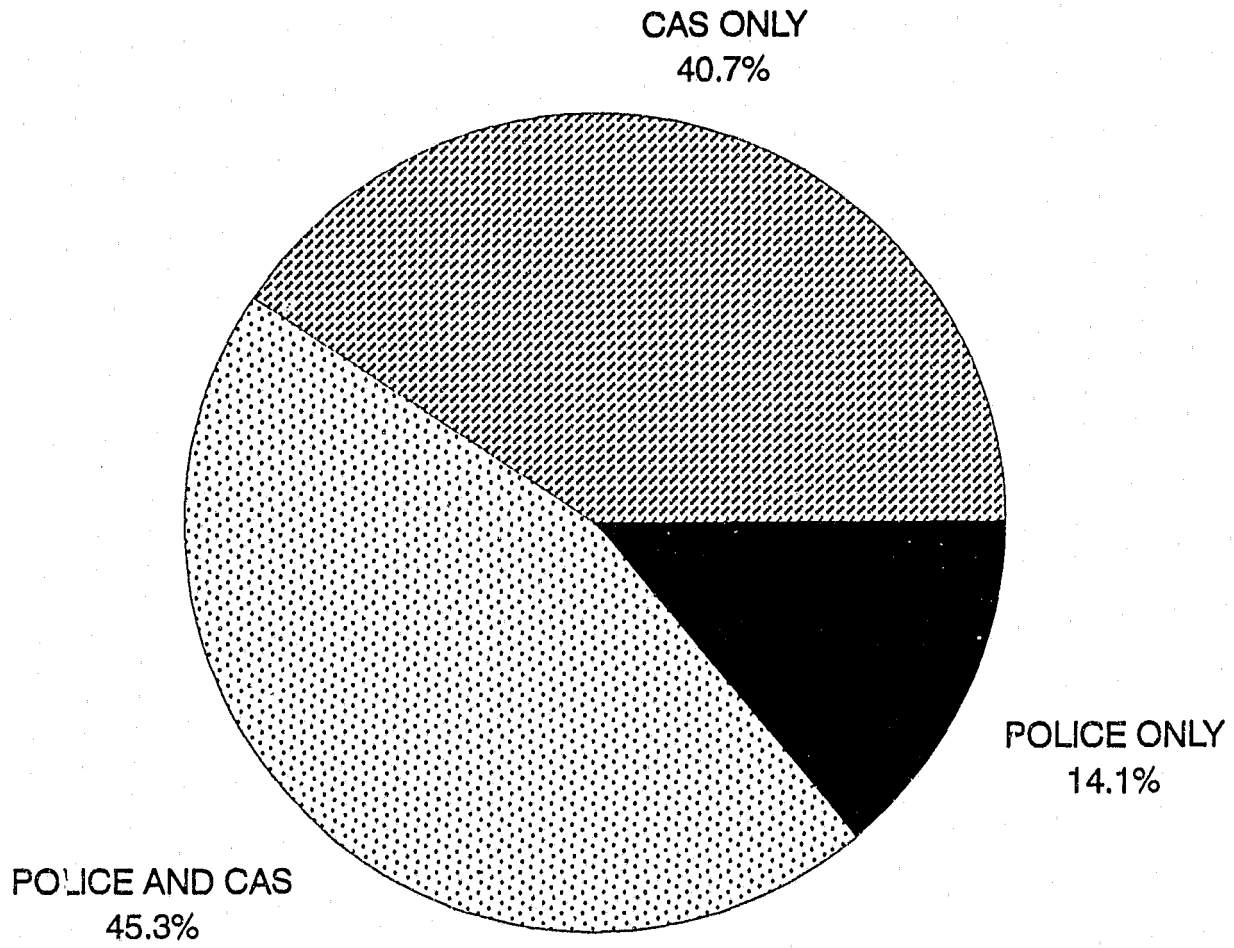
To determine the degree of overlap in reports between the police and CASs, the Reflex database coded whether the victim had been originally identified from the police offence reports, from the CAS records of inquiry, or from both. Ultimately, this database contained a population of all individual children who had been reported to either agency along with the name of the agency(ies) to which report(s) had been made. Table 12 and Figure 2 illustrate the amount of overlap between the police and the CASs. Just under one-half (45.3 percent or 248) of a total of 548 victims were known to both systems. Those known only to one of the CASs (223) are likely to be cases where the CAS investigation did not substantiate an abuse occurrence. A total of 104 or 27.1 percent of cases had been substantiated by CAS intake workers, while 244 (63.5 percent) were not substantiated. Another 36 cases (9.4 percent) were substantiated but not verified.

Table 12 **Children's Aid Societies and HW Regional Police Overlap of Child Sexual Abuse Cases - September 1, 1989, to August 31, 1990**

Agency	# of Cases
Hamilton-Wentworth Children's Aid Society and Catholic Children's Aid Society	471
Hamilton-Wentworth Regional Police	325
Overlap between HWCAS/CCAS and Police	248
Total reported to either	548
Percentage of cases overlapped	45.3%

Source: CCAS, HWCAS Records of Inquiry and Case Files; HW Regional Police Offence Reports
Unit of Analysis: Victim/Report; Victim/Occurrence

Figure 2 **Cases Reported to Police and CASs**



548 Victim/Occurrences Reported

September 1, 1989 - August 31, 1990

Table 13 indicates that there is very little difference between the proportions of cases known to police only and of cases known to both police and CASs that are determined by police to be substantiated. This provides strong evidence that the child abuse protocol is working well and that the level of

cooperation between police and child welfare agencies is very high. Approximately three-quarters of cases known to both organizations were deemed "founded" by police, while 80 percent reported only to police were deemed valid. This relationship is shown graphically in Figure 3.

Table 13 **Characteristics of Child Sexual Abuse Cases Recorded on HW Regional Police Occurrence Reports According to Whether Reported to the CCAS or HWCAS - September 1, 1989, to August 31, 1990**

Characteristic	Cases Reported to Police Only		Cases Reported to Both Police and CAS	
	n	%	n	%
Case Status:				
Substantiated				
· cleared by charge	16	20.8	62	25.0
· cleared otherwise	31	40.3	111	44.8
· not cleared	15	19.5	18	7.3
Unfounded	15	19.5	57	23.0
Total	77	100.1*	248	100.1*
Relationship of Accused to Complainant:				
· Family[1]	4	5.2	88	35.5
· Relatives[2]	5	6.5	36	14.5
· Friend or Acquaintance[3]	37	48.1	101	40.7
· Stranger	30	39.0	15	6.1
· Other	1	1.3	8	3.2
Total	77	100.1*	248	100.0

[1] "Family" includes father, mother, brother, sister, stepbrother, and mother's common-law husband.

[2] "Relatives" include uncle, grandfather, cousins.

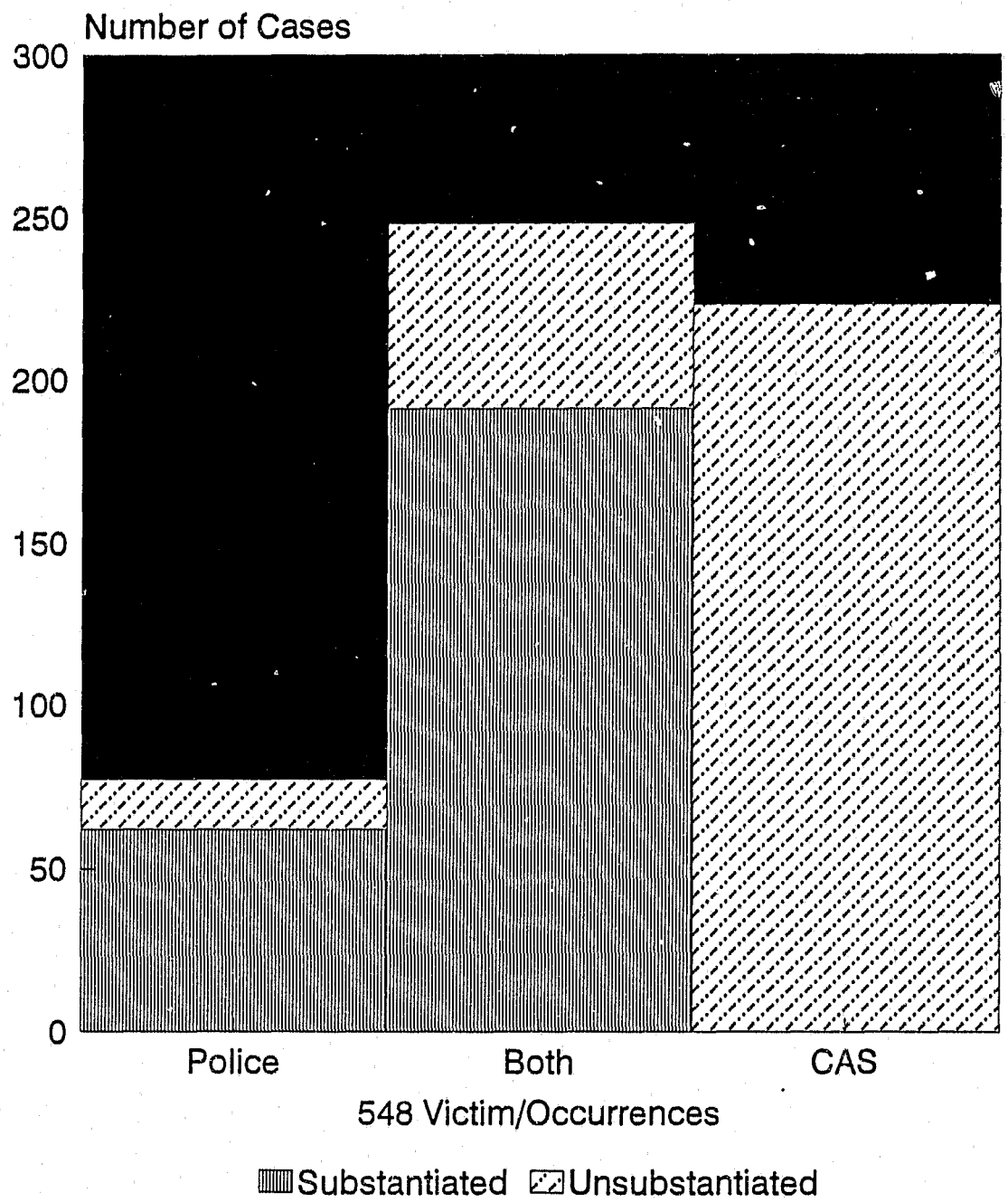
[3] "Friend or acquaintance" includes mother's boyfriend, baby-sitter, teacher, social worker, neighbour, peers, adult friends.

* Does not add to 100 percent because of rounding.

Source: HWR Police Offence Reports; HWCAS and CCAS Records of Inquiry and Case Files

Unit of Analysis: Victim/Occurrence; Victim/Report

Figure 3 **Cases Substantiated by Police**



September 1, 1989 - August 31, 1990

The clearance rate (i.e., the proportion of cases cleared by charge out of all substantiated cases) is slightly higher for cases where both the CAS and police are involved (32.5 percent) than where only the police are involved (25.8 percent).

Based on the nature of the relationship of the accused to the victim, there is a distinct difference between the types of cases with CAS involvement and those without. A total of 11.7 percent of those known only to police were intrafamilial cases, whereas 50 percent of the cases reported to both child welfare organizations can be characterized as intrafamilial (where this extends to all relatives). Almost 90 percent (87.1 percent) of cases reported only to police were occurrences where the accused was a friend, acquaintance or stranger. The CAS quite properly is involved in "friend or acquaintance" cases since these people may be close enough to the parent of the child to present a continuing risk for the victim.

4.3 Processing Cases in the Criminal Justice System - Reports to Police and Investigation Outcome

The following sections detail the nature of reports of alleged child sexual abuse received by the Hamilton-Wentworth Regional Police over a 12-month period from September 1, 1989, to August 31, 1990. The characteristics of these reported cases, the process of police investigation, and the investigation outcome are described. The relevant tables for the data presented are found in Appendix A.

The Hamilton-Wentworth Regional Police received 325 reports over the period of interest. Based on the mid-point population of the Region of Hamilton-Wentworth for the same 12 months (447,600), this yields a reporting rate of 72.6 per 100,000 population.

4.3.1 Profile of Reported Cases[6]

4.3.1.1 Age and Sex of Victims

Of the 325 cases of alleged child sexual abuse reported to police, female victims accounted for almost three-quarters (71.7 percent). One-fifth (18.2

[6] Supporting tables for the results reported in Sections 4.3.1 to 4.3.4 are found in Appendix A.

percent) of all children involved were four years of age or younger. Another 43.7 percent were aged from five to 11 and 33.6 percent were teenaged (i.e., up to 16 years). There were 11 cases where the alleged victim was 16 years old or more but who was reporting a case that had occurred at some previous time.

4.3.1.2 Sex, Age of Offender[7] and Relationship to Victim

Alleged offenders were predominantly male (94.3 percent of 332 identified offenders). The majority of reported perpetrators were between 18 and 45 years of age (48 percent). Eleven alleged offenders (3.3 percent) were young offenders under 12 years of age and another 13.8 percent or 45 were alleged young offenders from 12 to 17 years of age inclusive. Cases involving these youthful accused were not tracked for this research because of restrictions on the access to information where a child or youth is subject to the Young Offenders Act (Revised Statutes of Canada, 1985, C. Y-1).[8]

The most frequently appearing relationship between victim and alleged offender is that of father or father substitute (24.4 percent). Second in frequency of occurrence is "adult friend or neighbour" (17.8 percent of alleged offenders). Persons in authority unrelated to the child, including teachers, counsellors and social workers, make up only 4.5 percent of reports to police. Baby-sitters were accused in 6 percent of cases.

The marital status of most alleged offenders is not known. Nearly one-third (28.3 percent) could be identified though as single/separated or divorced and 19 percent as married or in common-law relationships.

4.3.2 Characteristics of Reported Incidents

4.3.2.1 Number of Victims and Alleged Offenders Involved

The majority of reported occurrences involved one alleged victim (71.1 percent) and one accused person (96.6 percent). A sizeable proportion (29 percent), however, were reports involving more than one victim, 13 reports having

---

[7] There are 332 alleged offenders in these 325 cases (victim/occurrences) because of 11 cases in which more than one offender was involved.

[8] The short title for this act is Young Offenders Act. 1980-81-8283, c. 110, s. 1, although it is often abbreviated as YOA.

as many as six and eight possible victims. Where more than one alleged offender was reported, most often the number involved was two (2.5 percent of victim/occurrences reported).

4.3.2.2 Forms of Abuse Reported and Location of Incidents

The most common behaviour reported in the alleged incident was grabbing or fondling the genital area (45.5 percent of cases) (Table 14). This is followed by grabbing or fondling breasts (16.9 percent). Approximately ten to 13 percent of reported incidents involved one or more of the following: undressing the victim or watching the victim undress; oral sex performed on the victim; vaginal penetration with the penis; grabbing or fondling the buttocks; invitation to sexual touching; and the offender's rubbing the genital area against the victim's body.

Incidents occurred primarily at the home of both the victim and alleged perpetrator or in the home of the latter, these two locations accounting for one-half of all reported incidents (24.9 percent and 24.6 percent respectively). The home of the victim only was the setting for 14.8 percent of reports. Playgrounds, alleys, vehicles, schools, other nonresidential buildings and common areas of residential buildings were offence locations in 27.7 percent of reported cases.

4.3.2.3 Intimidation, Force, Use of Weapons, Enticement and Presence of Alcohol or Drugs[9]

Instructions given by the alleged offender to the child not to tell anyone were specifically mentioned in the police offence forms in 10.8 percent of cases. The use of physical force was documented in 16.3 percent and/or verbal intimidation in 6.8 percent. Weapons appeared in only five or 1.5 percent of reported incidents.

[9] The information in this section was coded from the police offence forms on the basis that it appeared or was at least mentioned there. The absence of mention, therefore, does not mean that this behaviour or characteristic was not present during the incident, merely that there is no documentation to indicate its occurrence.

Table 14 Nature of Abuse for Cases Reported to Police - September 1, 1989, to August 31, 1990

Nature of Abuse	N	%
. Invitation to sexual touching	33	10.2
. Undressing victim	43	13.2
. Performing sexual acts in front of victim	-	-
. Unwanted/intimate kissing	20	6.2
. Grabbing/fondling breasts	55	16.9
. Grabbing/fondling buttocks	35	10.8
. Fondling genital area	148	45.5
. Mutual fondling	36	11.1
. Forcing victim to have sex with others/ masturbate self	5	1.5
. Rubbing genital area against victim's body	32	9.8
. Vaginal penetration with fingers	25	7.7
. Attempted vaginal penetration or penetration with foreign objects	4	1.2
. Anal penetration with fingers or with foreign objects	7	2.2
. Victim performs oral sex on offender	24	7.4
. Offender performs oral sex on victim	36	11.1
. Vaginal penetration with penis	37	11.4
. Anal penetration with penis	17	5.2

Source: HWR Police Offence Reports

Unit of Analysis: Victim/Occurrence

A range of enticements was used with alleged victims in at least ten percent of cases (more than one type of enticement could occur in a single incident). The most common lure was money followed distantly by that of offering special privileges to the child. Drugs and alcohol were reported as enticements in four cases or 1.2 percent.

Alcohol was associated with the alleged offence in 8.5 percent of reports, most often being used by the accused. Drugs were found and recorded in six instances. Their use was evenly divided between alleged offenders and victims.

4.3.3 Background to and Investigation Outcome of the Allegations

4.3.3.1 Disclosure of Incident and Initial Report to Police

In over one-third of cases (37.2 percent) the child first disclosed the incident to his or her mother. Social workers were the first to be told in another 12.3 percent. Between six and eight percent of children told the police, their father or a teacher/school counsellor. Following disclosure, the incident was reported to the police in almost two-thirds of cases (60.6 percent), to the HWCAS in 26.8 percent of cases and to the CCAS by 8.6 percent of complainants.

The Child Abuse Branch (CAB) of the police received the report most frequently (48.6 percent) while a police constable outside this branch was the recipient in 41.5 percent of reports. When the police were the first official agency involved, the files indicate that the CCAS or HWCAS were notified 59.9 percent of the time. This is related somewhat to the type of case in that extrafamilial cases are probably more likely to be reported to police. The order in which the incident was reported to official sources was, first, the police, and, secondly, one of the child welfare agencies. Medical sources were seldom notified.

Most often the report to the police was made by a social worker (35.1 percent of reports) followed closely by the mother of the victim (27.4 percent), together accounting for almost two-thirds of the reports. Twenty percent (19.7 percent) of the incidents were reported immediately and another 16.6 percent within two days. One-quarter of all reports were received two days to one week after the alleged occurrence. A significant proportion (13.8 percent) were reported to the police more than one year following the alleged sexual abuse incident.

4.3.3.2 Police Investigation

The investigation was carried out by police alone in 43.4 percent of the occurrences. In most of the remaining cases (52.3 percent) one of the CASs participated in the investigation as well. The number of police officers involved in the cases ranged from one (in one case only) to 12 (in two cases), although this may be because regular police officers received initial reports that were ultimately handed over to CAB officers. Most commonly, from two to four officers were involved (77.2 percent). Before the report to the police was even made over 40 percent (43.7 percent) of the alleged victims had already been interviewed by school, social work or medical personnel once or twice. Police file information contained indications in three cases that a videotape of the police interview had been made.

Resistance on the part of the child's family to the police investigation was mentioned in 23.4 percent of the 325 cases reported.

4.3.3.3 Evidence and Witnesses

According to the police offence reports, witnesses were present in 27.7 percent of the cases. In 38.8 percent of these, there were two or more witnesses.

The alleged victim was given a medical examination in 23.7 percent of the occurrences. Physical injuries were documented in 39 cases or 50.7 percent of those examined. Of the 39 cases with injuries, 43.6 percent of victims were found to have vaginal anomalies. A pregnancy was documented in one case. The police files recorded indications of emotional injuries sustained or exhibited by the children in 25.2 percent of the reported cases.

Offenders admitted guilt to police in 18.4 percent of the cases. In 5.4 percent the offender admitted guilt to someone other than the police. A statement was given to police in four percent of the reported incidents and a polygraph test was administered to one offender.

4.3.3.4 Outcome of Police Investigation

<u>Unfounded Rate</u>

Of 325 victim/occurrences reported to police from September 1, 1989, to August 31, 1990, nine remained still under investigation by the police at the

conclusion of the study period (Figure 4). Seventy-two cases or 22.2 percent had been classified as unfounded (i.e., proven to be false; no evidence of an offence having occurred; or insufficient information to substantiate the offence). Another 7.4 percent of all cases had been concluded although not cleared. This yields an "unfounded" rate of .29 or 1:3.5 (i.e., one "unfounded" occurrence to 3.5 substantiated occurrences).

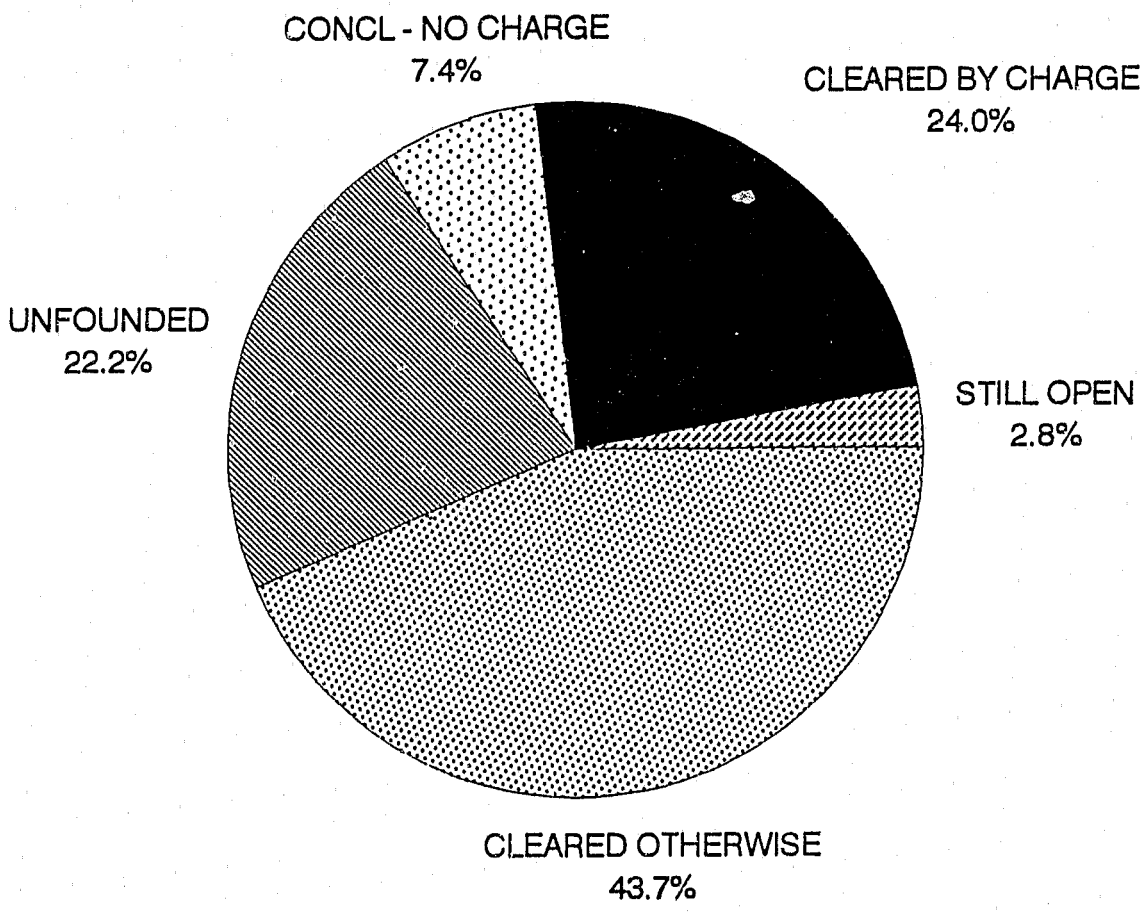
Of the 72 unfounded cases, two-thirds (65.3 percent) were deemed unfounded due to "lack of evidence" as recorded on the police reports. In less than 5 percent of all reports, the child had made a false allegation, a rate consistent with that reported in the literature.

Clearance Rate

Two-thirds of all reports had been cleared, one-third of these by filing charges against the accused and the remainder cleared otherwise. The clearance rate (both cleared by charge, 30.8 percent of substantiated cases, and cleared otherwise, 56.1 percent of substantiated cases) based on the number of substantiated cases was 86.9 percent. Only 9.5 percent (calculated on the basis of 253 substantiated cases) were not cleared, while 3.6 percent were still open.

Of the 238 cases not cleared by charge, almost 80 percent (78.8 percent) were not charged as a result of police decision, while the rest were not charged at the request of the parent/guardian for a variety of reasons. In most cases, more than one reason was given for not filing charges. Lack of evidence on which to base a prosecution was the largest single reason recorded for a police-initiated decision not to charge (48.9 percent of cases not charged). The second most important reason, though a distant second, was that the victim was not found to be credible (15.2 percent). In 9.7 percent of reports, the identity of the offender was not known. The victim was unable to testify in 6.7 percent of reported incidents and the sex was determined to be consensual in 4.2 percent. A parent/guardian request that no prosecution take place was primarily because the victim had either retracted the story (11.4 percent) or feared retaliation from the accused (10.1 percent). The family wanted the offender only to be cautioned in 9.3 percent of the occurrences and they themselves did not want to go to court in 7.6 percent.

Figure 4 **Police Occurrences Investigation Outcome**



325 Victim/Occurrences

September 1, 1989 - August 31, 1990

4.4 Processing Cases in the Criminal Justice System - Prosecution and Dispositions

This section describes the progress through the criminal justice system of cases reported to police from September 1, 1989, to August 31, 1990. The processing of the 78 cases that resulted in charges is therefore the focus of the subsequent discussion. The data pertaining to this section is in Appendix C.

4.4.1 Case Clearance by Police

Figure 5 presents an outline of the typical case flow for reports entering the criminal justice system. The decision points and potential paths are pictured from the initial report to the disposition (see Section 4.1 for an explanation of these stages). Figure 4 demonstrates the results of the first level of decision regarding the 325 reported occurrences of child sexual abuse defined for tracking. This level can be described as the outcome of the investigation into the allegation. Of the 325 cases 22 percent were determined to be unfounded. Two-thirds of all cases were cleared, whether by charge or otherwise. The clearance rate, as already indicated, was 87 percent (i.e., of substantiated cases).

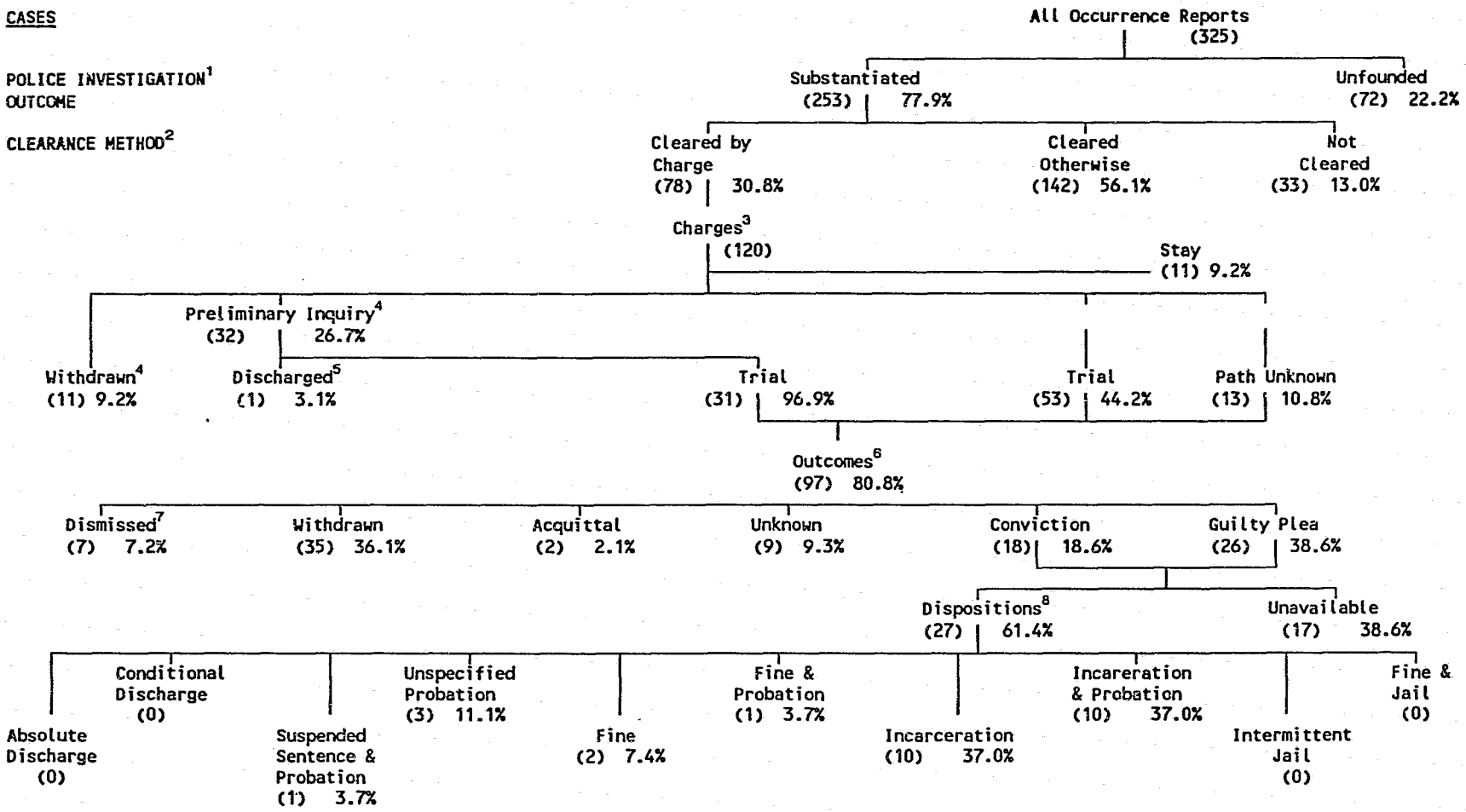
Seventy-eight cases were cleared by charge. Warrants were issued for the accused in four of these cases. Information was lacking on another eight cases. The remaining 66 cases resulted in 120 charges. The information on which charges were filed were made available to the researchers once the case had entered the courts. Therefore, only the 120 charges in the 66 cases proceeding to court were tracked here. These cases represented 66 victims and 50 accused.

At the point in Figure 5 that shows "charges," the unit of analysis for all subsequent case-flow levels becomes "one charge" as opposed to "one case." A report of child sexual abuse alleges certain harmful behaviour towards a child-victim. This is the "case" that police (or CAS) investigate to determine what has actually happened and who the perpetrator could be. Once an incident (or more than one) is substantiated, police establish, on the evidence known to them, what elements of the incident fall under the definitions of offences as described in the Criminal Code.

Thus more than one charge can flow from a single incident. Once a charge has been filed against an accused, the original "case" proceeds through the justice system based on the individual charges pertaining to it. Although a single accused and a single victim may appear, all the related charges will be treated on their own merits. Some may be stayed; some may be withdrawn; other charges may be reduced to a related charge of lesser gravity; the court may discharge the accused after a preliminary inquiry; the court may dismiss any or all charges at trial; or the accused may be acquitted of some and may either plead guilty or be found guilty by the court of others.

At the point at which charges are filed, therefore, it makes more sense in analysis of progress and outcomes to talk about the fate of each charge instead of about the victim or about the accused. Table 15 outlines the flow of the 120 charges that could be tracked for 66 cases in this research.

Figure 5 Criminal Justice System Case Flow Model



1 Percentage of "substantiated" and "unfounded" are based on the total number of occurrence reports.
2 Percentages of reports cleared and not cleared are based on the total number of substantiated reports.
3 "Charges" represents all charges filed as a result of the 78 reports cleared by charge.
4 Percentages are based on the total number of charges.
5 Percentages are based on the total number of charges proceeding through a Preliminary Inquiry.
6 Percentages on this line are based on the number of charges with outcomes.
7 Percentages on this line are based on the total number convictions and guilty pleas.
8 Percentages on this line are based on the number of dispositions known.

Table 15 Trial Outcomes and Dispositions for Child Sexual Abuse Charges in Hamilton - September 1, 1989, to August 31, 1990

Outcomes For Charges	N	% of all charges
Total Charges Tracked	120	100.0
Charge to Proceed by Indictment	50	41.7
Charge to Proceed by Summary Conviction	70	58.3
	120	100.0
Total Charge Stayed	11	9.2
Withdrawn - all Stages	46	38.3
Total Charges Discharged	1	.8
	58	48.3
Stayed/withdrawn/Discharged Before Trial	23	19.2
Proceed to Trial by Indictment	31	25.8
Proceed to Trial Summarily	53	44.2
Status Unknown	13	10.8
	120	100.0
Stayed/withdrawn at Trial	35	29.2
Dispositions		
. Guilty Plea	26	21.7
. Conviction	18	15.0
. Acquittal	2	1.7
. Dismissed	7	5.8
. Missing	9	7.5
	97	80.9

Table 15 (cont'd)

Disposition Type	N	% of All Charges
Sentence unavailable	17	14.2
Sentences	27	22.5
. Absolute Discharge	-	-
. Conditional Discharge	-	-
. Suspended Sentence + Probation	1	.8
. Probation	3	2.5
. Fine	2	1.7
. Fine and Probation	1	.8
. Incarceration	10	8.3
. Incarceration + Probation	10	8.3
. Intermittent Jail	-	-
. Fine + Jail	-	-
Probation		
. 0-6 Months	-	-
. 7-12 Months	5	4.2
. 13-18 Months	2	1.7
. 19-45 Months	3	2.5
. 25-36 Months	4	3.3
Conditions		
. Community Service Order	UNK	N/A
. Treatment/Counselling	1	.8
. No Contact with Victim	UNK	N/A
. No Contact with Children	UNK	N/A
. Weapons Prohibition	UNK	N/A
. Other	UNK	N/A

Table 15 (cont'd)

Disposition Type	N	% of All Charges
Fine - Amount		
. $ 1 - 100	-	-
. 101 - 200	-	-
. 201 - 300	1	.8
. 301 - 400	1	.8
. 401 - 500	-	-
. Over $500	1	.8
Fine - Default		
. 1-10 Days	-	-
. 11-15 Days	1	.8
. 16-30 Days	-	-
. Over 30 days	-	-
. Missing	-	-
Fine - Time to Pay		
. 1-30 Days	-	-
. 31-60 Days	-	-
. Over 60 Days	-	-
Incarceration		
. Single Charge	13	10.8
. Consecutive Charges	UNK	NA
. Unspecified (With Other Charges) (4 accused)	7	5.8
. Intermittent	UNK	NA

Table 15 (cont'd)

Disposition Type	N	% of All Charges
Incarceration Time		
. 1 Month	8	6.7
. 2 Months	-	5.8
. 3 Months	3	2.5
. 4 - 6 Months	4	3.3
. 7 - 12 Months	-	-
. 13 - 18 Months	-	-
. 19 - 24 Months	4	3.3
. 25 - 36 Months	-	-
. 37 - 48 Months	1	.8
. 49 - 60 Months	-	-
. Over 60 Months	-	-

Source: Ontario Court of Justice, Hamilton-Wentworth, Informations and Court Records

Unit of Analysis: Charge

4.4.2 Prosecuting Charges

Forty-two (41.7) percent of the charges initially were to proceed by indictment and 58.3 percent by summary conviction. Proceeding by indictment leads through the General Division with a preliminary inquiry to determine the soundness of the evidence as a basis for going to trial. Alternatively, as explained above, the accused can elect to waive this hearing and proceed at the provincial level or to consent to a General Division trial without hearing the evidence.

At some point of the court process, i.e., either at a preliminary inquiry, prior to the committed trial date or at the trial itself, 48.3 percent of the original 120 charges were stayed, withdrawn, or discharged. Almost 80 percent (79.3 percent) of this group were withdrawn, some of these most likely in exchange for a guilty plea to a lesser charge. "Plea bargaining" is an important aspect of the process which not only speeds up the machinery of justice for the accused but also spares the child both a protracted wait for appearing in court and the necessity to testify in court. Crown attorneys must balance these considerations in determining the handling of the case and most are anxious to protect the child

from the ordeal of being a court witness and enduring what could be an unpleasant cross-examination.

4.4.3 Trial Outcomes and Dispositions

Close to 40 percent (39.7 percent) of the withdrawn/stayed/discharged charges disappeared prior to the trial. As a result, approximately 60 percent (60.3 percent) of the charges proceeded to trial, 43.3 percent at provincial level and 25.8 percent at the general level. During the trial, the remaining half of the withdrawn/stayed charges were disposed of and 53 or 44.2 percent of the original 120 charges were dealt with otherwise by the court (7.5 percent remaining unknown). Guilty pleas make up 21.7 percent of the ultimate dispositions of all original 120 charges and convictions were determined in 15 percent of these charges.

This yields a conviction rate of 83 percent (i.e., 44 of 53) where this represents the proportion of guilty pleas and convictions together of the total of guilty pleas, convictions, acquittals and dismissals. In other words, the cases proceeding to trial have a high probability of a guilty verdict or guilty plea for the accused.[10]

Of all 120 charges, a total of 36.7 percent resulted in sentencing for the offender.

4.5 Processing Cases in the Child Welfare System

Case progression through the child welfare system begins with a report of alleged child sexual abuse to one of the two CASs (the Hamilton-Wentworth Children's Aid Society or the Catholic Children's Aid Society) mandated by provincial legislation. Once the intake worker receives a report, the initial investigation is carried out within 24 hours to determine whether there is a child protection issue that requires immediate action to remove or otherwise safeguard the child. A case of child sexual abuse may be substantiated (or not substantiated) quickly or it may take additional time beyond the 24-hour period to conclude this investigation. Regardless, the first concern is the child's safety and security, even though the investigation may continue.

---

[10] If the conviction rate is calculated according to accepted practice in Ontario, then it would be based on the proportion of all charges that result in guilty pleas or convictions, i.e., 36.7 percent or 44 guilty pleas and convictions out of 120 original charges (although the conclusions for 13 of these were unknown).

The stages in processing child sexual abuse cases have been described in Section 4.1.2 and depicted in Figure 1. The subsections below describe the actual progress of the 384 cases reported to the two CASs from September 1, 1989, to August 31, 1990, on which data could be obtained. Relevant data tables are included in Appendix B.

4.5.1 Profile of Reported Cases

4.5.1.1 Age, Sex and Family Composition of Victims

The reports of alleged child sexual abuse received by the CASs overwhelmingly involve female victims (72.1 percent).[11] Almost one-quarter (23.4 percent) of the purported victims are four years of age or less and another 42.2 percent are from five to 11 years of age. Teenagers (up to 15 years) comprise one-third of the reported victims (31.8 percent). One-quarter (27.6 percent) of the reported victims are in one-parent families and one-half are in a two-parent household (48.2 percent).

4.5.1.2 Age of Offender and Relationship to Victim

One-third of the alleged offenders are family members, primarily the child's biological father. Other relatives make up 13.5 percent of alleged perpetrators. Persons outside the family in positions of authority, i.e., teachers, school counsellors, social workers and day care workers, are reported as alleged offenders in a small proportion of cases (3.4 percent). Baby-sitters are reported twice as often (6.8 percent). Reports to the CASs involving strangers represent only 6.8 percent of cases. This percentage may, in part, result from the fact that cases involving extrafamilial abuse are more likely to be reported to and handled by the police. Almost one-fifth (18.2 percent) of the reported allegations involve young offenders.

4.5.1.3 Previous History of Victim's Family with CAS

Forty-two percent (41.6 percent) of the <u>families</u> of the reported victims had been previously known to the CAS, with one in ten (9.9 percent) of these families having been first reported in 1980 or earlier. However, only one-fifth

[11] Data reported in this section are in the supporting tables of Appendix B.

(17.9 percent) of all children had been reported because of alleged sexual abuse prior to this.

4.5.2 Background to and Investigation Outcome of the Allegations

4.5.2.1 Disclosure of Incident and Source of Referral to CAS

The person to whom the alleged victim first disclosed the incident of sexual abuse could be determined for only 178 or 46.4 percent of the reported cases. In these incidents, one-half (51.7 percent) of purported victims made their disclosure to their mother or stepmother. The second most frequent individual was a school teacher or counsellor (11.8 percent). The case was most often referred to the CAS by either the child him/herself (20.8 percent) or the police (21.9 percent). Medical personnel referred 15.9 percent of the cases and schools 9.1 percent.

4.5.2.2 Forms of Abuse Reported

The most common form of reported abuse which could be determined from the files (239 short- or long-term files) was grabbing or fondling the genital area (36.4 percent). This was followed by grabbing or fondling the child's breasts (14.6 percent). Reports of vaginal penetration with fingers, objects or penis, and oral sex on the alleged victim or the victim being forced to perform this on the accused each occurred in anywhere from 1.7 to 7.5 percent of cases. Other forms of abuse were reported in 2.5 percent of incidents or less.

4.5.2.3 Opening a File, Type of File Opened and Presence of Other Protection Issues

When the CAS received a report, it either opened or reopened a file in all cases and an investigation was undertaken. In 48.2 percent of the 384 individual child-victim cases the file was reopened from a previous report while the remaining 51.8 percent represented new openings. One-third of the files, in which the investigation concluded quickly, were abbreviated short-term (HWCAS only) and primarily resulted in an unsubstantiated case or a case of extrafamilial abuse which was turned over to the police. These cases move out of the jurisdiction of the HWCAS where no further protection issues regarding the child's welfare are involved.

Short-term files (CCAS and HWCAS) were opened or reopened for 57 percent of the reports and long-term files for 7.6 percent. The latter usually represent more complex cases with a range of problems concerning the safety and security of the child or children involved. Other protection issues were identified in 7.6 percent of all reported cases.

4.5.2.4 Substantiation of Sexual Abuse

Sexual abuse was clearly substantiated in one-quarter (26.6 percent) of the allegations investigated. In another 9.9 percent, the abuse was substantiated in the view of the intake worker but could not be verified.

4.5.3 CAS Response to the Allegations

4.5.3.1 Internal and External Record Checks, Recommendations of CAS Investigating Workers

An internal record check of CAS files was undertaken in all cases except one. This check established that at least one-third (35.4 percent) of the families of the reported victims had had previous CAS involvement of some type. In another third of cases, the information regarding CAS involvement was not noted in the file. Our review indicated that there were, in fact, already files on 41.6 percent of the families involved. Indication of a record check of the Provincial Child Abuse Register could be found in the files in 16.9 percent of cases (65 of 384). This check determined that six alleged offenders had been previously entered on this register (9.2 percent of those checked). In 11.5 percent of all the current reports (44 cases), CAS workers ultimately recommended that the alleged offender be reported to the register, arrested and prosecuted.

4.5.3.2 Reports to Police by CAS

For cases on which short- and long-term files had been opened, information was usually available regarding whether the incident had been reported to police. From these 219 files, researchers could determine that a report to the police had been made in three-quarters (75.4 percent) of the cases. Thirty-eight (38.2) percent of these had been reported within five days of the incident, 40.6 percent from one month to one year later, and 21.2 percent one year or more after the incident. Cases with the longer intervals (i.e., more than

five days) had not been initially reported to the CAS until some time had passed since the abuse.

4.5.3.3 Charges Filed in Cases Reported to Police

Ultimately charges were filed in 62 or 16.2 percent of all 384 reports received by the CASs between September 1, 1989, and August 31, 1990. This represents 37.6 percent of the cases reported by the CASs to the police. The CAS files contained information about why charges were not filed in only 40 instances (24.2 percent) of reports to the police. The most common reason was that police determined the case to be unfounded (25 percent).

4.5.4 CAS Methods of Handling Cases in Which Sexual Abuse was Alleged

4.5.4.1 Abbreviated Short-term Files

The HWCAS opened or reopened abbreviated short-term files for 134 reports. In 32.8 percent of these cases, referrals were made to other agencies, primarily to CASs in other jurisdictions (the CCAS in most cases here). One-third (32.1 percent) of these 134 cases had a history of previous abuse, although not necessarily sexual in nature. Contacts with the family were most often in person (42.5 percent) or by telephone (32.1 percent). The resulting services provided depended on the needs of the case after the investigation had been completed. "None provided" was the determination in 61.2 percent of cases and "referrals" were coded as the service provided in 15.7 percent.

4.5.4.2 Short- and Long-term Files

The short- and long-term files opened or reopened[12] provide information about who was interviewed during the course of the investigation. In over 90 percent of these cases (252 files) the alleged victim (91.3 percent) or the non-offending parent (90.9 percent) was interviewed, while siblings of the victim or the alleged offender were interviewed in 34.5 and 33.3 percent of reports respectively. The CAS intake worker alone carried out the initial interview two-thirds of the time (65.1 percent) and police alone were involved at this stage in 9.1 percent of

[12] Information in addition to that usually found on the record of inquiry was coded for 252 cases although only 248 short- and long-term files had been identified.

the interviews. Police and CAS did joint initial interviews in 22.6 percent of cases. Only six cases could be found where the interview was audiotaped and no cases of videotaping were documented.[13]

In 1989 a protocol for videotaping children's statements was developed at the same time as that for the investigation of reports of alleged child sexual abuse. Initially there was a high level of commitment by the police and the two CASs. Each renovated interview rooms and installed appropriate videotaping equipment.

However, in April 1989 both Children's Aid Societies experienced a lengthy strike, lasting over three months. Following the strike there was a particularly high turnover of staff, estimated by some to have been 60 percent. This had a significant impact on the use of videotaped interviews because of training issues and a lack of staff who were both comfortable and qualified to carry out this task. As a result, the protocol for videotaping was put on hold for a prolonged period while each CAS recovered from the effects of the strike and the subsequent staff turnover.

4.5.4.3 Reports to the Provincial Child Abuse Register and Court Applications Made in Reported Cases

Ultimately, the file review found information in 43 cases that a report to the Provincial Child Abuse Register was made, two of these cases also involved "failure to prevent abuse" on the part of the parent/guardian. This is a reportable offence under the Child and Family Services Act (Statutes of Ontario, 1984) but is rarely reported. It indicates that the parent/guardian of the child was either aware of the sexual abuse and took no steps to prevent further occurrences, or else was grossly negligent in protecting the child under circumstances where a reasonable presumption of abuse should have been acted upon.[14]

Of the 43 cases in which a report to the register was made, the child was apprehended in two and requests for protection hearings were made to the Unified Family Court (UFC) in eight. One request was made for CAS standing

---

[13] One-fifth of the files had no information to confirm or disconfirm either of these activities.

[14] According to the Act, S.O. 1984, chapter 55, section 37(2)(c): "A child is in need of protection where, the child has been sexually molested or sexually exploited, by the person having charge of the child or by another person where the person having charge of the child knows or should know of the possibility of sexual molestation or sexual exploitation and fails to protect the child."

at divorce proceedings, and a UFC hearing was held at the time of the registration in one instance, with the result that the offender was incarcerated.

Eight children were taken into care, three into temporary care upon consent of the parent/guardian and five under apprehension. Of those who were apprehended, four were made non-society wards and one a society ward. The placements included six in group home care and one each in a foster home and emergency care.

4.5.4.4 Applications to Unified Family Court based on All Files Reviewed

In the review of 384 CAS files, UFC applications were found in a total of 13 cases. Throughout the period of CAS involvement with a family, several court applications of different types may be made where warranted. In the 13 cases identified here, the most common application was for protection: six for society wardship at some point and five for society supervision of the case while the child remained in the home. Five applications for apprehension of the child and five for orders forbidding access to the child by the offender were put before the court.

Of the 13 cases in which an application to the court had been made, three were withdrawn - two because of the death of the offender and one as a result of the offender leaving the child's home. All five of the requested orders for society supervision were granted, as were five out of the six for society wardship. Apprehension orders were approved in four of five applications and "no access" orders in three of the five requests.

A total of four protection orders were established by voluntary agreement with the family. One was a society wardship while the remainder were supervision agreements.

The progress of cases through the Unified Family Court was examined in terms of the number of court dates and adjournments in the 13 cases in which applications had been made. Four cases were resolved with one hearing each. This included the three in which applications were withdrawn. Five had two court dates, two had three, and one case each went through six and seven court hearings. The number of adjournments ranged from one to five where the case proceeded. Five of the ten cases not withdrawn had from three to five adjournments.

4.5.4.5 "Special Services" Provided

Ten children in the 384 reported cases of alleged sexual abuse were admitted to "Special Services." The most common service provided was one-to-one therapy (five cases). Other services included play therapy, crisis counselling, assessment, and the on-site after-school program. By the time of the research six of these special services files had been closed because the service was completed.

4.5.4.6 Closing Files

All files reviewed for this research were either opened or reopened for the reports of alleged sexual abuse received by the CASs between September 1, 1989, to August 31, 1990. When the files were reviewed, from four to 16 months after they were submitted, 90.9 percent of the files in the 384 cases identified and tracked had been closed. Eighty-four percent of these were closed because the services had been completed. In 8.6 percent the family had rejected CAS services. Other reasons for closing files included the family's having moved, the child's reaching the age of 16 (and therefore beyond the jurisdiction of the CAS), and the child's moving into wardship status or being treated elsewhere.

4.6 Decisionmaking in the Criminal Justice System

The following sections examine a number of possible decisionmaking paths that suggest some of the factors in decisions to regard a case of reported child sexual abuse as substantiated and to charge or not charge the alleged offender in the case.

4.6.1 Parameters for Analysis

Factors influencing both the determination that a case of reported child sexual abuse is substantiated and that the accused should subsequently be charged were examined. This analysis is based on data collected from the police offence reports. The independent variables included are outlined in Table 17. These were selected from a much larger number on the basis that there was adequate information available (i.e., few "missing" or "unknown" cases for each variable) and that they were logically related to the decisions being analyzed.

The four modelled decisions in Figures 6 to 9 each include a different set of cases from the police offence report data file. Figure 6 examines all cases reported over the 12-month period for the first decisionmaking level of finding a

case substantiated or not substantiated. Figures 7 to 8 analyze only cases where the sexual abuse has been substantiated, the offender is known, and the offender is not under 12 years of age[15] (Table 17). The analysis presented in Figure 8 is based on cases of intrafamilial child sexual abuse while that of Figure 9 looks at cases of extrafamilial sexual abuse only.

Some cautionary notes should be added about these analyses. First, some of the variables excluded from examination because of the quality of the data may, in fact, be more important in the decision to substantiate or file charges than those inspected here. Secondly, these models present only one of a number of potential paths leading to the decisions, although the rejection of other possibilities after inspection of the relationships was determined on the basis of their being less plausible in logical terms.

Thirdly, the number of cases suitable for analyzing decisions to charge (particularly of the two populations of intrafamilial and extrafamilial cases) is not great. While all the relationships depicted here are significant at the .01 level or smaller, the order of the relationships and the selection of these specific relationships were not guided solely by statistical criteria; they were also influenced by the extent to which these paths were consistent with actual decision requirements.

4.6.2 Decisionmaking Models

The determination that an allegation of child sexual abuse reported to police was substantiated appears to be influenced by the fact that there either was a witness to the event or the accused admitted his guilt to the police (Figure 6). Although this relationship is statistically significant, it does not explain much. Eighty-eight (87.6) percent of reports with a witness present were deemed substantiated but almost three-quarters of those without a witness were also substantiated. In the latter group, the fact that the offender admitted his guilt increases the likelihood that the case was considered valid. However, a high proportion of cases where this did not happen were also determined to be "founded." There were no other statistically significant relationships among the remaining variables in the analysis.

---

[15] According to the Young Offenders Act, children under 12 years of age cannot be charged with a criminal offence.

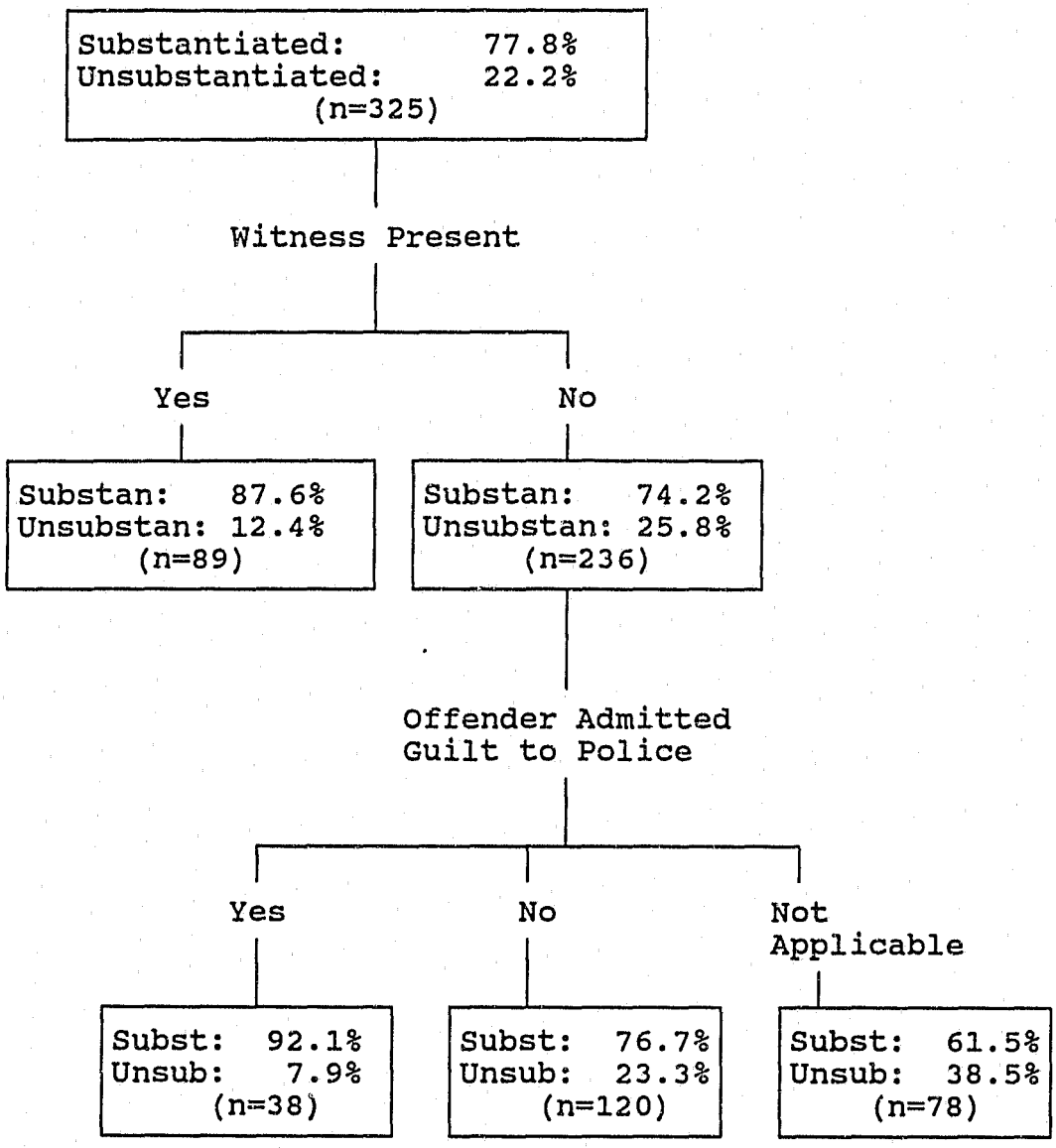
Table 16 List of Sample Parameters for "Knowledge Seeker" Analyses for Figures 7 through 9

	Sample Parameters
Figure 7	1) Omit unsubstantiated cases 2) Omit cases where offender is unknown 3) Omit cases where offender is under 12 years of age
Figure 8	1) Omit unsubstantiated cases 2) Omit cases where offender is unknown 3) Omit cases where offender is under 12 years of age 4) The relationship of the offender to the victim is intrafamilial
Figure 9	1) Omit unsubstantiated cases 2) Omit cases where offender is unknown 3) Omit cases where offender is under 12 years of age 4) The relationship of the offender to the victim is extrafamilial

Table 17 List of Variables for "Knowledge Seeker" Analyses for Figures 6 Through 9

		Variables	Range
Independent Variables for Figures 6, 7, 8 and 9	1.	Person child disclosed to	1 - 13
	2.	Family resistance	1 - 2
	3.	When occurrence was reported	1 - 6
	4.	Who reported	1 - 13
	5.	Number of victims	1 - 8
	6.	Gender of victim	1 - 2
	7.	Age of victim when reported	1 - 7
	8.	Medical examination	1 - 2
	9.	Relationship of offender to victim	1 - 13
	10.	Level of intrusion	1 - 11
	11.	Use of enticement	1 - 2
	12.	Witness	1 - 2
	13.	Physical injuries	1 - 2
	14.	Emotional injury	1 - 2
	15.	Age of offender	1 - 5
	16.	Offender admitted guilt	1 - 3
	17.	Who conducted investigation	1 - 3
	18.	Location	1 - 2
	19.	Intra/extrafamilial	1 - 3
Dependent Variable for Figure 6		Substantiated and Unsubstantiated Cases	
Dependent Variable for Figures 7, 8 and 9		Charged and Other Cases	

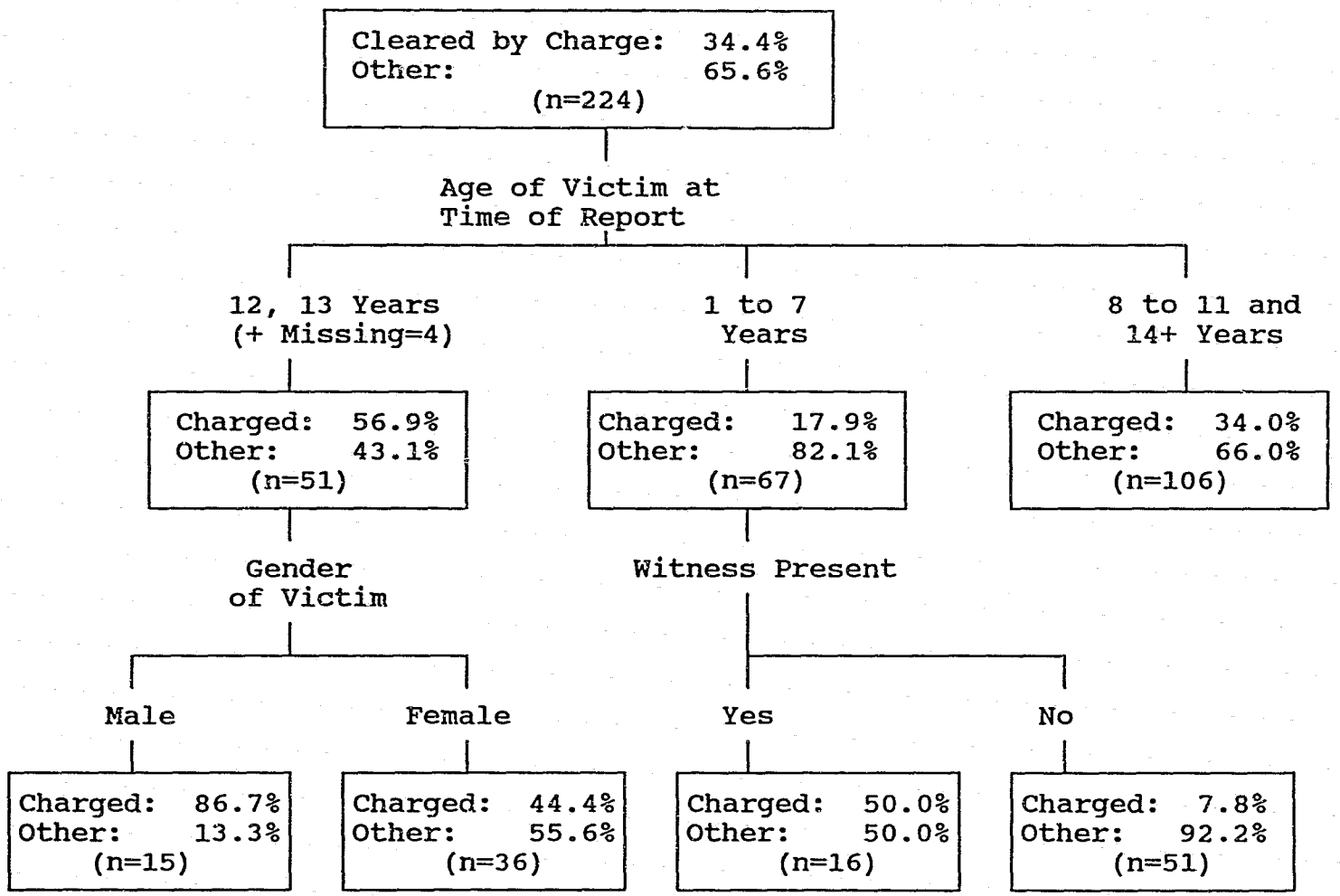
Figure 6 Decision Model for Substantiated and Unsubstantiated Cases for the HW Regional Police[1]



[1] Significance level = .01

Source: HWR Police Offence Reports

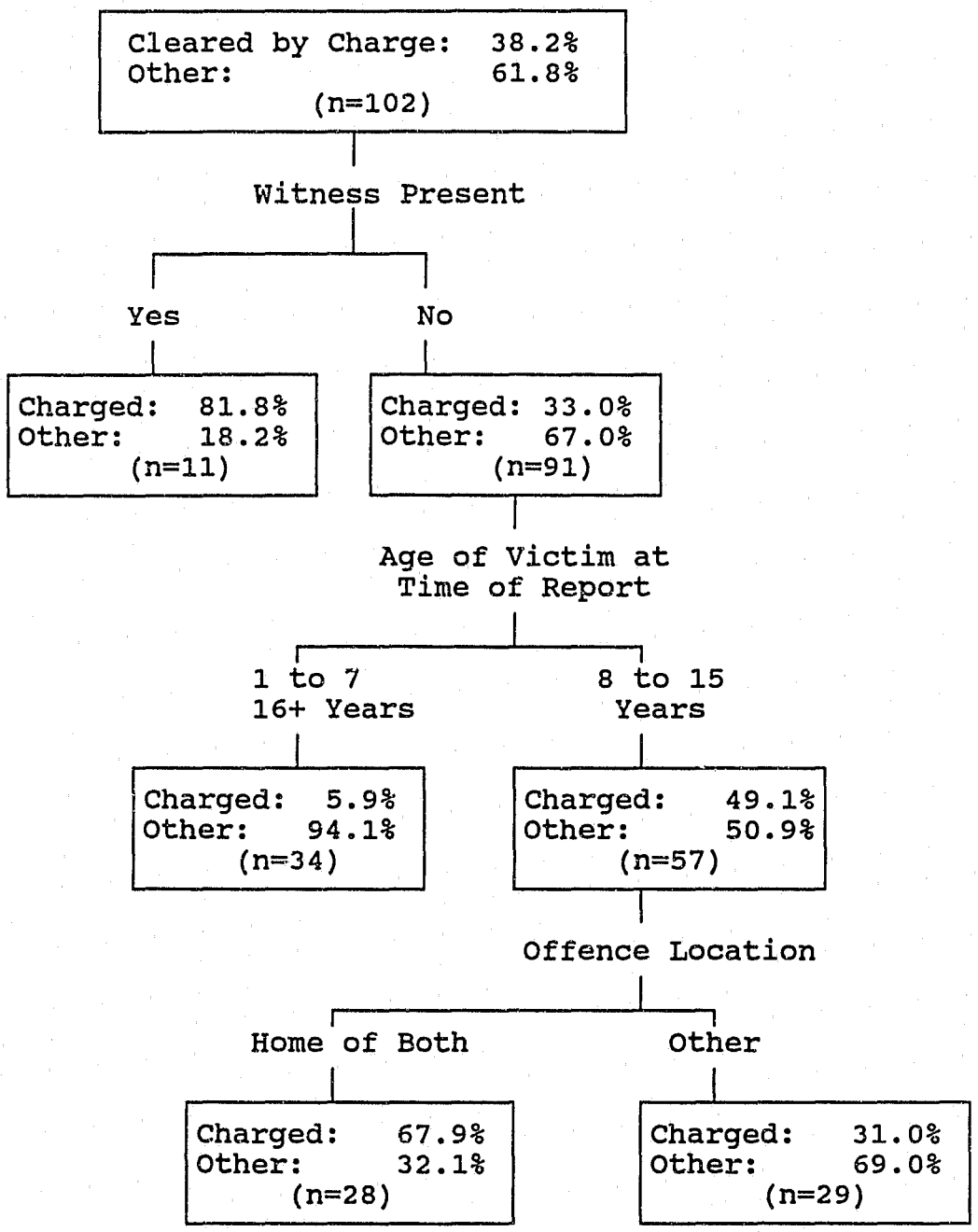
Figure 7 **Decision Model for "Cleared by Charge" and Other Cases for the HW Regional Police**[1]



[1] Signifiance level = .01

Source: HWR Police Offence Reports

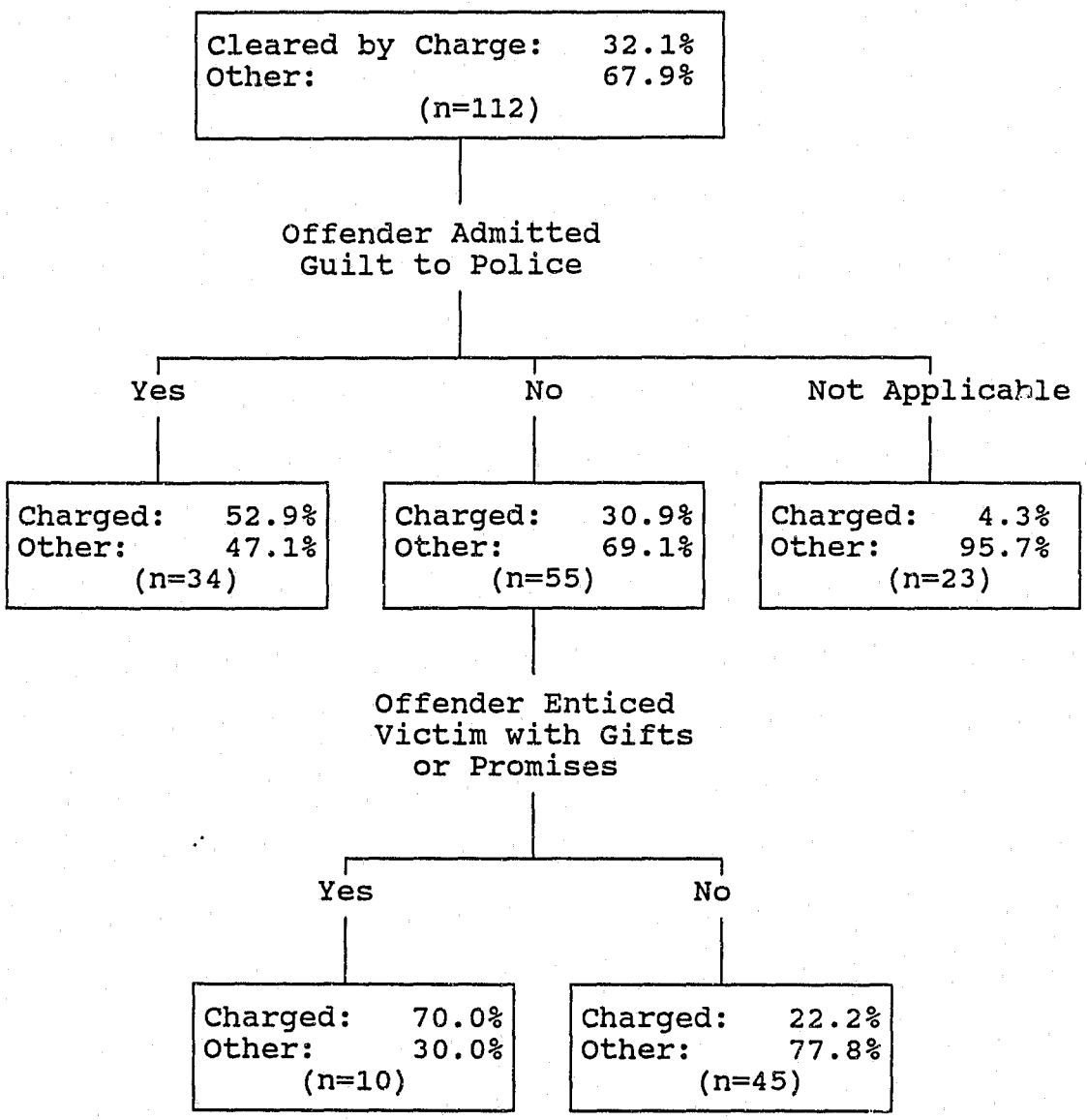
Figure 8 **Decision Model for Intrafamilial Cases Cleared by Charge, and Other**



[1] Significance level = .01

Source: HWR Police Offence Reports

Figure 9 Decision Model for Extrafamilial Cases Cleared by Charge, and Other[1]



[1] Significance level = .01

Source: HWR Police Offence Reports

The decision to charge is strongly influenced by victim's age (Figure 7). There was a higher rate of charging among cases in both of the older age categories than among those where the victim was less than eight years old. For the youngest children, however, the presence of a witness was very important to the decision to charge. It is interesting to note that the gender of the victim is related to charging in the case of 12- and 13-year olds. The unanticipated finding, though, is that in the cases reported during this 12-month period it is more likely that offences involving male victims of this age group resulted in charges. Given the relatively small number of cases in this category (n=15), however, it would not be appropriate to generalize from this finding.

For intrafamilial cases, the decision to charge is related to the presence of a witness (Figure 8). Where there was no witness, charges were more likely to be laid in cases involving older children. The age group of 16 years and over is similar to the youngest victims in that charges were not frequently filed. This is probably because these victims usually report incidents that occurred some time in the past. Even among older children where the abuse was within the family, the fact that the offender lived in the same residence as the victim is strongly associated with the decision to charge the accused; on the other hand, if the offence occurred elsewhere than their common home, charges were not as likely to be filed.

Extrafamilial cases are subject to different decision criteria than intrafamilial ones (Figure 9). An admission of guilt is very important, as is the fact that the offender enticed the child with gifts or promises. Although the numbers are quite small at this level of the analysis, this is a plausible path, since the use of enticements may indicate a deliberate act as opposed to someone's taking advantage of an unanticipated or spontaneous situation.

4.7 Decisionmaking in the Child Welfare System

Several variables were examined for their relationship to decisionmaking in the child welfare system. There were only a small number of cases on which complete and reliable information could be obtained regarding the entire range of circumstances associated with the reports. Because of this, only the first level of decision has been analyzed, i.e., how a report is determined to be substantiated.

4.7.1 Parameters for Analysis

All reported incidents of child sexual abuse over the 12-month period covered by this research were included in the analysis. Only seven variables both

provided information on the entire group of 384 cases and made logical sense for a potential relationship with the dependent variable of substantiation/ non-substantiation (Table 18).

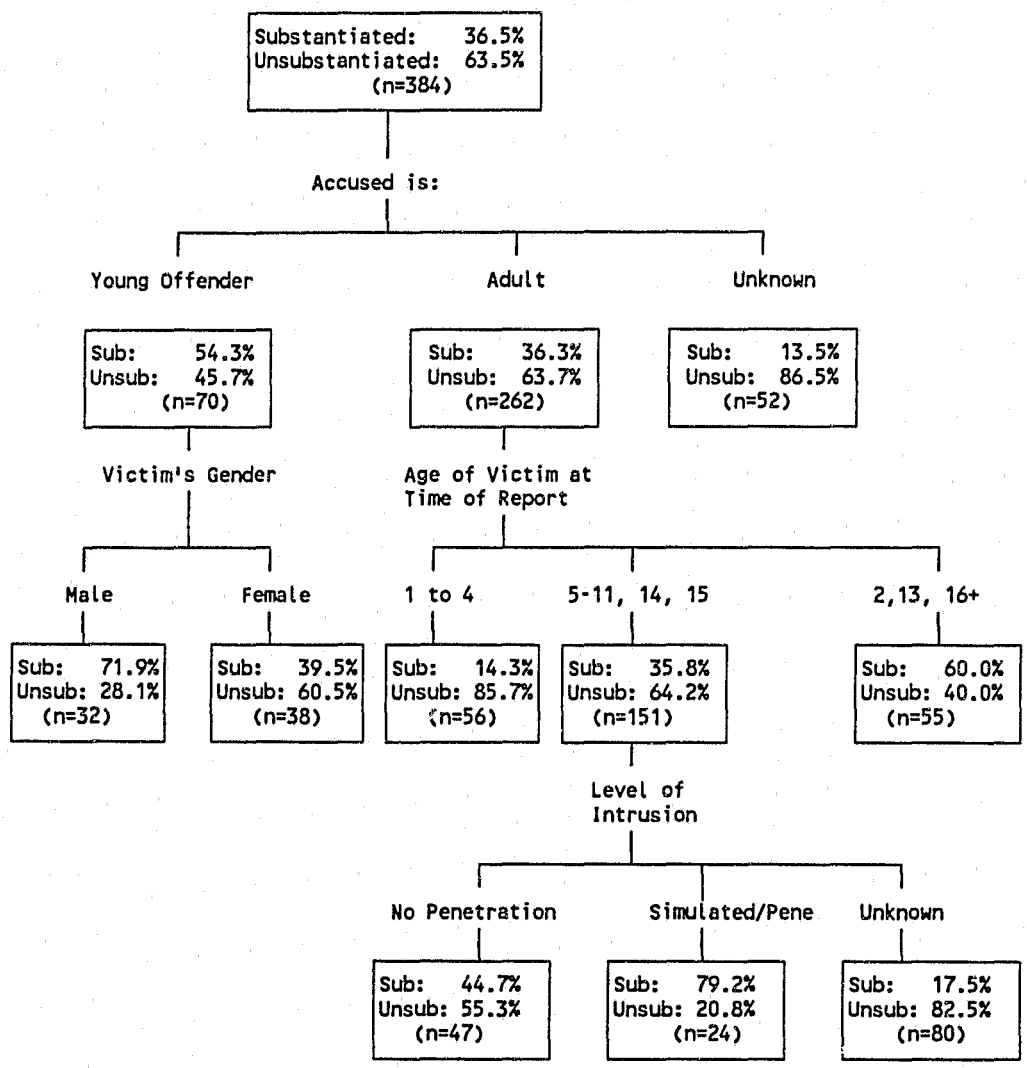
Table 18 **List of Variables for "Knowledge Seeker" Analysis for Figure 10**

		Variables	Range
Independent Variables for Figure 10	1.	Referral source	1 - 5
	2.	Year family first known to agency	1 - 2
	3.	Gender of victim	1 - 2
	4.	Age of victim when reported	1 - 7
	5.	Relationship of offender to victim	1 - 13
	6.	Level of intrusion	1 - 11
	7.	Offender is young offender or adult	1 - 3
Dependent Variable for Figure 10		Substantiated and Unsubstantiated Cases	

4.7.2 Decisionmaking Models

In the reports received by the two CASs, substantiation of the sexual abuse is related to the accused being a young offender who is male (Figure 10). Cases involving adult accused were increasingly likely to be substantiated as the age of the victim increased. Only one further variable is related to the probability of substantiating a case among one of the three age groups. The nature of the offence, as indicated by the level of intrusion, is associated with substantiation of reports involving five- to 11-year olds and 14- to 15-year olds. Simulated sex and acts of penetration were more likely to result in allegations among this age group being substantiated.

Figure 10 Decision Model for Substantiated and Unsubstantiated Cases for the Children's Aid Societies[1]



[1] Significance level = .01

Source: HWCAS and CCAS Records

4.8 Dispositions of Charges in Cases Proceeding through the Criminal Justice System

Outcomes of the cases charged under sections of the Criminal Code relevant to child sexual abuse are discussed here. Supporting data tables are included in Appendix C.

4.8.1 Case Profiles

The 120 charges filed in 66 cases of child sexual abuse include 13 different sections of the Criminal Code (see Tables in Appendix C).[16] The most common charge is section 271, or sexual assault, accounting for 44.2 percent (53 charges). This is followed by section 151 which defines sexual interference. Thirty-one or 25.8 percent of charges were filed under this section. The remaining 36 or 30 percent of the charges are dispersed among 11 categories of offences.

In terms of the number of charges in the 66 cases identified, only one charge was laid in 28 or 42.2 percent of the cases, two charges in another 28 cases or 42.2 percent, and three charges in eight or 6.7 percent. One case had five charges and one had seven.

At the conclusion of the research period, dispositions were completed for 111 charges with nine remaining outstanding. Over one-third (46 charges or 38.3 percent) of the original 120 charges had been withdrawn. One in seven (19 charges or 15.8 percent) were stayed, discharged or dismissed and two charges were acquitted. Convictions were entered for one-third of the 120 charges (44 charges or 36.7 percent), 26 as a result of a guilty plea. Of the 44 original charges ending in a conviction or guilty plea, sentences could be obtained for only 27 charges. No sentencing had yet taken place for the 17 remaining charges.

Conviction rates and dispositions for specific charges are discussed in detail in Section 5.1.

Sentences ranged from a $300 fine to four years' incarceration. Three-quarters (20 of 27) of the sentenced charges were given periods of incarceration. For eight of these the jail term was one month served with probationary periods following release. Eighteen charges were given two years or less and one received the four-year term. Probation orders were handed down for

[16] Of the 78 cases that were cleared by charge, four remained incomplete because of outstanding warrants and eight had either not entered the court system, not been completed, or had proceeded through UFC under the Young Offender's Act. In these 12 cases, no information could be obtained or located on the charges filed.

14 charges. These ranged from 12 to 36 months. Sentences for specific charges are shown in Section 5.4.

4.8.2 Appeals

The outcomes for two of the completed charges were appealed, one on the verdict and one on sentence. Only one appeal had been finalized by the end of the research. In this case, the verdict was upheld.

4.9 Case Duration

The number of court dates and adjournments were obtained for each of the 50 cases that had been completed. The number of court dates ranged from one to 13. Almost one-half of the cases (46.9 percent) had been completed, however, with three or fewer court dates set.

Where the information was available, the average number of days and months was calculated for the intervals between a number of points for all cases as they progressed from the initial incident to disposition in the court system (Table 19).

The intervals depicted in Table 19 are based on only a portion of the total cases at each point because of the unavailability of the required information. In most cases the standard deviations are quite large, larger than or close to the means in size. This suggests that there is a great deal of variability in the time intervals and the averages given are affected significantly by extreme values at both ends of the continuum.

Approximately five months elapsed from the first occurrence of an incident of sexual abuse to that of reporting it to police. One-half of this period (2.7 months on average) elapsed from the most recent occurrence to the time of police report.

For cases proceeding to a preliminary inquiry, the elapsed time was nine months from the report of the incident to the police to the date of the preliminary inquiry. For those proceeding to trial, the interval from police report to trial conclusion was 10.7 months on average. The time from the preliminary inquiry to the trial conclusion was 2.3 months.

Table 19 Average Elapsed Time Between Date of First Occurrence, Most Recent Occurrence, Report to Police, Preliminary Inquiry and Trial

Time Period	n	Standard Deviation	Average Days (Months)
First Occurrence to Report to Police	210	445.0	149.0 (5.0)
Most Recent Occurrence to Report to Police	245	328.2	80.3 (2.7)
Report to Police to Preliminary Inquiry	37	66.6	270.8 (9.0)
Report to Police to Trial[1]	33	109.7	320.5 (10.7)
Preliminary Inquiry to Trial[1]	19	87.1	69.7 (2.3)
First Occurrence to Trial[1]	17	568.9	691.7 (23.1)
Most Recent Occurrence to Trial[1]	26	323.3	417.6 (13.9)

[1] Trial date represents the date on which proceedings are concluded.

Sources: HWR Police Offence Reports; Ontario Court of Justice, Hamilton-Wentworth, Information and Court Records

Unit of Analysis: Case (victim/occurrence)

Altogether, the time from the first incident to the point at which proceedings were concluded, including sentencing, was almost two years (23.1 months). However, the duration from the most recent incident to the end of the trial process was just over one-half this long at 13.9 months.

4.10 The Child in the Process

Eleven children were observed in court. One child was observed twice, yielding a total of 12 observations. Eight of these took place at a preliminary inquiry, two at a trial in Provincial Division and two at a trial in General Division. One of the trials at the general level was by judge and jury. In addition to observations of children in court, the portions of transcripts pertaining to the child's oath and testimony were reviewed in seven cases. The purpose of these actual and documentary observations was to determine whether Bill C-15 was having an impact on the treatment of children in court. The specific reasons for lack of implementation, where this was in fact the case, were ascertained from the surveys of those involved in the justice system: police officers, crown attorneys, defence and judges. These survey results are reported in Section 6.0.

4.10.1 Children Observed in Court

The children observed in court ranged from nine to 16 years, with nine of the 11 being 13 to 16 years old. Nine of these children were female and two male.

4.10.1.1 Time on the Stand

The average time each child was on the stand was 2.6 hours, although this ranged from less than 30 minutes to 7.5 hours over two days.[17] The time typically taken for the oath was less than five minutes, with the longest one being 30 minutes. Examination in chief averaged 22.4 minutes and nine of the 11 children were on the stand less than 20 minutes for this part. The average length of time taken by defence for cross-examination was twice as long as for the crown attorney's initial questioning. This average, however, is affected by two instances where the cross-examination lasted 107 and 135 minutes. Seven of the 11 children who were observed spent 30 minutes or less on the stand being cross-examined. Only two children were re-examined by the crown attorney and then only very briefly (three minutes and ten minutes).

---

[17] Five were on the stand 60 minutes or less, five from one to two hours, two for five hours and one for 7.5 hours.

4.10.1.2 Supportive Measures Provided in Court

Some supportive measures were available to these children while testifying. On four of the 12 occasions on which these children testified, the public was excluded from the court. A support adult remained in the court in all cases except one. For nine children the maximum number of persons in the court, including all court personnel, was between 11 and 20. For the other three children the maximum audience while they testified was between 21 and 30 persons.

The only additional supportive measures provided by the court in these cases was to obstruct the child's view of the accused on five of the 12 occasions of testimony.

4.10.1.3 Oath-taking/Solemn Affirmation Process

During the oath-taking procedure, the judge directed questions to all six of the children under 14 years of age to determine their competency to give evidence. The crown attorney questioned three and the defence two at this point. The most common area of questioning was the child's knowledge of the difference between the truth and a lie (five of six occasions), the child's level of education (four of six), and the understanding of his or her moral obligation to tell the truth (four of six). Defence challenged the child's competency in one case. Ultimately, all six children were sworn.

4.10.1.4 The Court's Communication with the Child

The court observation rating scale was used 34 times in total, several for different aspects of each child's testimony: three for each of 10 children, one during the oath-taking, one during examination in chief and one for cross-examination. The oath-taking process for one child was missed but her examination in chief and cross-examination were rated. Two children were also rated during re-examination (there were only two occasions on which re-examination was conducted). This rating scale recorded the nature and adequacy of the court's communication with the child as well as the child's response to the court process.

From the court observation material, the overall impression is that the children were, in fact, very competent witnesses. The crown attorney's assessment of the child no doubt resulted in putting the more competent children on the stand. The judge asked the child to speak louder on only four occasions. The

principal questioner (at any given point) asked the child to speak louder or give a verbal response from one to four times in one-third of the observations (i.e., 12 of 34 points at which the rating was carried out for the 11 children). The judge questioned a child on one-third (i.e., 11) of the rating occasions, with the number of questions ranging from one (in four cases) to 12 (in one case). The purpose of the judge's questions was primarily to expand or clarify factual information being given by the child (eight of 11). This was followed in importance by questions aimed at assessing the child's competence (four of 11).

The principal questioner was judged to use both age-appropriate language and content in the 27 cases where the observer was able to make this rating. In the 12 of 28 cases the observer could assess, the principal questioner attempted to establish rapport with the child, primarily by being friendly, empathetic and considerate.

4.10.1.5 Descriptions of the Cases Observed

In addition to making the court observation ratings, the court observer also noted the responses of the children involved:[18]

Case 1

The girl was surprised about all the people in the room who were not there for the mother's testimony. The mother was concerned about confidentiality. When the defence asked the same and similar questions again and again, the girl became frustrated, impatient and angry. However, she was very persistent with her answers. This same girl had been in court regarding sexual molestation before but there was not enough evidence and the case was dismissed. The crown attorney re-examined her for only three minutes. The remaining seven minutes the judge was asking clarifying questions. The crown attorney had shown her the written statement that she had given to the police at investigation. The crown attorney asked her to read it out loud. She had difficulties doing that. Tears came to her eyes; she had difficulties breathing and reading. Although she was upset, she was in control of herself. After this re-examination, she went to her mother and cried.

[18] These descriptions are taken verbatim from notes recorded by Angelika Levitt while she observed the children in court.

Case 2

(This child was upset by) possibly the long waiting time. When he came in he was briefly put behind bars with adult prisoners (this abused boy was in a group home for young offenders). However, the crown attorney said that that was illegal. As the defence put more pressure on him (the boy), he got increasingly irritated and very angry. He became less confident, more rebellious and verbally aggressive. This escalated to total non-cooperation. He stepped down from the stand and an officer brought him back. He did not answer any more questions. The judge ordered a duty counsel for him. He agreed to continue the testimony the following morning. The behaviour pattern and course of testimony were the same. It ended with his non-cooperation. He wanted to see his lawyer but answered a few more questions before he, very frustrated and angry, decided not to talk any more.

Case 3

I observed this child only during oath/demonstration of ability to communicate. During the first stage of the proceedings, when the crown attorney talked to her, she was calm and spoke audibly, firmly, with moderate confidence. When the judge and defence talked to her she became anxious, less confident, hesitated with answers and was hardly audible. When counsel talked with each other she appeared a little withdrawn. Defence asked for the public to be cleared. The child did not mind my staying but the accused did. (The court observer was subsequently asked to leave along with others when the court was cleared.)

Case 4

After examination in chief she went to her seat between her mother and the social worker and cried. The mother showed no empathy for her. During recess the girl sat in the hall with the social worker and someone else. The mother sat alone somewhere else. She (the girl) controlled herself most of the time and only cried when she was questioned about details of the assault.

Case 5

When the crown attorney asked for more details of the sexual abuse the girl burst into tears. She could not talk any more. The judge offered her a chair and water. She was allowed to sit during the rest of her testimony. The crown attorney stopped asking his questions. The defence kept his examination short and did not go into details of the abuse.

Case 6

The girl was not questioned regarding her competency to give evidence. Neither was she sworn in. I am not sure why. When she went up to the stand she was smiling. Her social worker at the CAS told me she has a lot of problems to deal with right now, i.e., she is not living with her mother any more but has no permanent place either. Her mother is not emotionally supportive and she did not come to court. Her father and aunt did. The social worker did not see her for a long time and did not prepare her for court.

Case 7

The crown attorney asked if the boy could show where he had been touched. The boy had difficulty keeping his composure due to the prolonged pressure he was subjected to by the defence.

Case 8

It was affirmed that this child was able to testify. The judge, crown attorney, and defence were fluent in French and the charges were read in French. The accused did not have a translator.

4.10.2 Transcript Reviews[19]

As described above in Section 3.3.1.4, the transcripts of children's testimony were reviewed using a schedule to capture the pertinent information. The following paragraphs, however, provide brief synopses of some of the relevant aspects of these transcripts.

Case 1 - Trial (same as Case 3 above)

The crown attorney initially proceeds by indictment (charges under sections 271 and 151). Defence is surprised that the crown attorney is proceeding by indictment and then there is confusion. They appear to figure out that only the one charge of sexual assault (section 271) is indictable. The crown attorney changes his mind and then proceeds summarily. The accused is then re-arraigned and he pleads "not guilty" to both charges.

[19] The transcripts were reviewed by Jane Plaxton, law student at Dalhousie University, Halifax. The case descriptions are taken almost verbatim from her summaries of particularly notable points in the transcripts.

Case 2 - Guilty Plea Proceedings

There is a dispute as to the age of the victims (four girls). The accused says that they were approximately 19 years of age. The crown attorney had been informed that the girls were under 14. The accused does not seem to understand why he should not plead guilty to a charge when one of the major elements of the offence is in dispute. The accused has a long criminal record and is neither very bright nor articulate. The accused finally agrees to the age of the girls as proposed by the crown attorney and the judge then finds him guilty as charged under section 152. He was sentenced to a period of incarceration of six months. No children testified.

Case 3 - Preliminary Inquiry

This accused was charged under sections 271, 153(1)(a) x 2, 153(1)(b) x 2, 151, and 152 involving four victims altogether. The crown attorney proceeded by indictment on all counts and there was an election on behalf of the accused for a trial with a jury. Two boys testified and one is very upset by the defence's questioning (see Case 2 under Court Observations above). Part-way through, the crown attorney interrupts the preliminary to agree to a lesser charge. The accused was subsequently convicted of a lesser offence and sentenced. Presumably defence suggested that there was not enough evidence to convict on the original charge (this was obvious from the testimony of the boys) and that the crown attorney could settle for a lesser charge of the included offence of assault. The crown attorney apparently agreed and the accused pleaded not guilty to sexual assault but guilty to assault. On the facts presented, the judge finds him guilty and convicts him of the lesser offence, sentencing him to a fine of $200 and a surcharge of $30 with 60 days to pay.

Case 4 - Trial

This is a charge of sexual interference under which the accused allegedly touched and kissed his two daughters (under the age of 14) and their friend while intoxicated. Each of the three girls give testimony on the stand. The last witness doesn't recant her initial statement so much as the fact that she seems very nervous and forgets the key issue, i.e., that the accused touched her chest and made her feel very uncomfortable. Defence attempts to create doubt as to the nature of the touching, namely that it was "tickling" and sort of rough-house playing. Defence addresses the issue that it was not uncommon for dad to tickle and wrestle with his girls. Another issue that wasn't really addressed but was part of the situation was that the father had been intoxicated at the time.

Case 5 - Preliminary Inquiry and Trial

The charges include sections 152 (two counts), 159, 271, and 266 with the victim being the accused's stepdaughter under 14 years. The child goes into great detail in this proceeding. The alleged assaults took place over a four-year period and seem to have occurred on an almost routine or regular basis. The defence plays on the issue of the timing and the reasoning behind her disclosure. Her stepfather was about to be released from a two-month prison term and would have been returning to the home in a matter of days. Defence badgers her on this point but in the end defence is essentially beaten as it was not the child witness who first brought attention to her situation but a close friend of hers who knew what was going on. She finally couldn't stand the victim's silence and brought the issue to the attention of a school counsellor.

This accused elected to be tried by a District Court Judge following a preliminary inquiry. He was committed for trial on all five charges.

At the trial the testimony was virtually the same. The strategy of the defence was to show that the child did not get along very well with her stepdad and that she basically wanted him out of her life as well as out of the life of her mother. Defence basically attacked her credibility as a witness, thereby implying the need for corroborating evidence.

A victim impact statement was prepared by the child. The statement describes the child as now suffering from nightmares, prone to fits of anger and afraid to be alone.

The judge convicted the accused and later handed down a sentence of a four-year prison term.

Case 6 - Trial

The crown attorney proceeded summarily on charges under sections 151 and 271. The father came into his daughter's bedroom at night when the mother and sister were at work cleaning offices. He did not undress himself or her but touched her vagina and then held her down and rubbed against her to the point of orgasm. Apparently there was a semen stain on the track pants the accused wore to bed. The transcript does not specify whether this stain was entered as evidence against the accused. There is mention of the stain throughout her testimony but no reference to an exhibit.

Defence emphasized that the victim did not call out to other family members during the attack. Her younger brother was asleep or watching

television. The victim's testimony is also confusing as she wasn't sure whether her mother was at home at the time. By playing on these points the defence basically tries to make her out to be an unreliable witness, implying that corroborating evidence would be necessary for a conviction.

Case 7 - Trial

The accused was charged with sexual assault under section 271. The victim was touched on the buttocks while looking in a "bargain bin" at a store with her mother. The defence attempted to show that the touching could have been accidental and, at the least, was not of a sexual nature. The child was wearing a one-piece Girl Guide uniform which the defence showed could possibly have ridden pretty far up her leg if she was leaning over, possibly high enough to show her underwear. Defence tried to show that the accused maybe did not even lift up the dress and intentionally touch her but that the dress was already lifted due to her position at the bin. The accused merely passed by and, in so doing, touched her.

5.0 IMPLEMENTATION AND IMPACT OF BILL C-15

This chapter examines the extent to which the new and enhanced provisions in the Criminal Code of Canada and the Canada Evidence Act have been implemented in Hamilton-Wentworth over the period from September 1, 1989, to August 31, 1990. Implementation is one of the tests of the effectiveness of Bill C-15. The various participants in the criminal justice process must be convinced that changes brought about as a result of the Bill are improvements in order to put them into practice. Bringing about change in the justice system is not an instant process. Over time, those involved come to see benefits resulting from new means of dealing with issues or circumstances that they had formerly handled differently. The period under examination here extends anywhere from 20 to 32 months beyond the implementation date of Bill C-15 (January 1, 1988). Hence, a possible lack of familiarity with the changes or reluctance to proceed quickly with relatively untried provisions should have been minimized as factors that would impede implementation of the changes to the Code.

Another test of the Bill's effectiveness lies in examining the impacts of those aspects that are implemented. Here, "impacts" are defined as those results for children, accused or participants in the criminal justice system that can be clearly attributed to Bill C-15. The ability to make this link is constrained here by the absence of a pre- and post test situation with controls. Without this experimental design, researchers must confront the question of whether the observed changes would have been found in the same way or to the same extent if the Bill had not existed. There is no proof that can be offered to confirm that Bill C-15 provisions are in fact the cause of the impacts identified here. However, multiple lines of evidence, including the observations of persons involved daily with the criminal justice system, add weight to the conclusions suggested by this research.

The sections that follow look at the implementation and outcomes of Bill C-15 in terms of the broad goals which the framers of the Bill had intended it to serve. These goals and the specific aspects of Bill C-15 that relate to each were introduced in Section 2.0. The relevant points are reiterated here to provide a context for the presentation of the research results.

5.1 Implementation and Outcome Relevant to Goal 1

Goal 1: To Provide Better Protection to Child Sexual Abuse Victims

A very important aim of the provisions introduced by Bill C-15 is to afford better protection to children who have been sexually abused. Several features of the changes to the Criminal Code were designed to achieve this. One is the creation of new offences under which a broader range of sexually abusive acts can be charged. These offences are found in sections 151, 152, 153, 160(3), 173(2),

and 175 of the Criminal Code. Section 151 allows charges for acts that can be defined as sexual interference. Section 152 created the charge of invitation to sexual touching, and 153 refers to sexual exploitation. Section 160(3) makes committing bestiality in the presence of a child under 14 or inciting a child under 14 to commit bestiality an offence. Section 173(2) defines exposure to a child under 14 years and section 175 adds the new sexual offences to the existing vagrancy provisions of the Code. The various new offences and range of conduct captured by them are examined in 5.1.1.

Another way in which better protection may be provided to child victims of sexual abuse is through the explicit extension of specific sections to cover children under 14 years. Section 173(2), already described, is one of these as is section 150.1 which removed the defences of consent and mistaken age for the accused. The effects of these sections on the charges filed and cases heard in court are assessed in Section 5.1.2.

Improved protection to the child is also the goal of the relevant parts of C.C. sections 151, 152, and 153 from which references to the sex of either the victim or the offender have been removed. Now males and females who have been sexually abused are to be treated the same under the Criminal Code and males are no longer regarded as the only possible offenders. Section 5.1.3 looks at the extent to which these changes have been reflected in practice.

The last factor identified here as improving protection to children is the ability for charges to be filed under sections 151, 152, 153, 155, 159, 160(2) and (3), 170, 171, 172, 173, 271, 272, and 273 where the incident of sexual abuse has been reported to police some time after its occurrence (section 275). Delayed reporting may result for a number of reasons. The child may have been threatened or otherwise intimidated by the offender. The child may also attempt to hide or deny the activity because of the guilt and shame associated with the behaviour. The use of this provision of Bill C-15 and its results are described in Section 5.1.4.

5.1.1 Objective 1: To Broaden the Range of Conduct Captured by the Criminal Code

The possibility for charging sexual offences against children prior to January 1, 1988, was limited to a few offences, specifically:

- section 146(1) of the old Criminal Code which made sexual intercourse with a female under 14 years an indictable offence;
- section 146(2) which covered sexual intercourse with a female from 14 to 16 years;
- section 150 of the old Code which made incest an indictable offence;
- section 246(1) which referred to sexual assault;
- section 246(2) which was related to sexual assault with a weapon or causing/threatening to cause bodily harm; and
- section 246(3) which covered aggravated sexual assault.

The last three offences have a parallel now in sections 271, 272 and 273. Sections 146(1) and (2) and section 150 have essentially been replaced by the new offences which cover a broader range of behaviours against children. In examining conduct in cases where specific charges have been laid, the reader is reminded that some behaviour in individual cases has been covered by charges other than the particular one being discussed.

Are rates of charges under sections 151 and 152 C.C. increasing compared to former C.C. section 146(1)?

The baseline study examined offences charged over a two-year period prior to January 1, 1988. Of the total number of those offences charged, 77.3 percent were charged under section 246(1) or sexual assault level I. The remaining 22.7 percent (30 offences) were distributed among sections 146(1) (intercourse with a female under 13), 146(2) (intercourse with a female 14 to 16 years), 150 (incest), and 246(2) (sexual assault with a weapon). In the one-year period of tracking allegations of sexual abuse for this study, charges were much more widely distributed among the new offences and section 271 (sexual assault)(see Tables 20, 21 and 24). Of 120 charges, 44.2 percent have been filed under section 271, 25.8 percent under 151 and 3.3 percent under 152.

Table 20 Charges Under Sexual Assault Sections of the Old Criminal Code by Nature of Abuse - September 1, 1989, to August 31, 1990

Nature of Abuse[2]		Criminal Code Sections[1] 143	146
Exposure	n[3]	-	-
	%[4]	-	-
Invitation	n	-	-
	%	-	-
Show Pornography	n	-	-
	%	-	-
Undress	n	-	-
	%	-	-
Masturbation	n	-	-
	%	-	-
Inappropriate Kissing	n	-	-
	%	-	-
Chest Fondling	n	-	-
	%	-	-
Buttock Fondling	n	-	-
	%	-	-
Genital Fondling	n	-	-
	%	-	-
Victim Fondled Offender	n	-	-
	%	-	-
Vaginal Penetration with Finger	n	-	-
	%	-	-
Attempted Vaginal Penetration	n	-	-
	%	-	-
Anal Penetration with Finger	n	-	-
	%	-	-
Oral Sex on Offender	n	-	-
	%	-	-
Oral Sex on Victim	n	-	-
	%	-	-
Vaginal Penetration with Penis	n	1	1
	%	100.0	100.0
Forced Prostitution	n	-	-
	%	-	-
Total Number of Cases	n	1	1

[1] Criminal Code sections are described in Section 2.3.

[2] Behaviours included are described in Table 9.

[3] Behaviours add to more than the total number of charges because of more than one behaviour occurring for a single charge.

[4] Percentages are based on the number of cases.

Source: HWR Police Offence Reports; Ontario Court of Justice, Hamilton-Wentworth, Information and Court Records

Table 21 Charges Under Sections of New Criminal Code Related to Bill C-15 For Occurrences by Nature of Abuse - September 1, 1989, to August 31, 1990

Nature of Abuse[2]		Criminal Code Sections[1] 151	152	153	159	173
Exposure	n[3]	3	1	-	-	7
	%[4]	10.0	25.0	-	-	100.0
Invitation	n	3	3	1	-	1
	%	10.0	75.0	11.1	-	14.3
Show Pornography	n	-	-	-	-	-
	%	-	-	-	-	-
Undress	n	3	1	1	1	-
	%	10.0	100.0	11.1	50.0	-
Masturbation	n	-	-	-	-	-
	%	-	-	-	-	-
Inappropriate Kissing	n	4	-	1	-	-
	%	13.3	-	11.1	-	-
Chest Fondling	n	8	1	2	1	-
	%	26.7	25.0	22.2	50.0	-
Buttock Fondling	n	2	-	-	1	-
	%	6.7	-	-	50.0	-
Genital Fondling	n	14	2	8	1	-
	%	46.7	50.0	88.9	50.0	-
Victim Fondled Offender	n	10	-	2	-	7
	%	33.3	-	22.2	-	100.0
Simulated Intercourse	n	5	-	1	-	1
	%	16.7	-	11.1	-	14.3
Vaginal Penetration with Finger	n	4	-	-	-	-
	%	13.3	-	-	-	-
Attempted Vaginal Penetration	n	-	-	-	-	-
	%	-	-	-	-	-
Anal Penetration with Finger	n	-	-	-	-	-
	%	-	-	-	-	-
Oral Sex on Offender	n	1	1	-	1	-
	%	3.3	25.0	-	50.0	-
Oral Sex on Victim	n	5	1	-	1	-
	%	16.7	25.0	-	50.0	-
Vaginal Penetration with Penis	n	4	-	1	-	1
	%	13.3	-	11.1	-	14.3
Anal Penetration	n	2	1	-	2	-
	%	6.7	25.0	-	100.0	-
Forced Prostitution	n	-	-	-	-	-
	%	-	-	-	-	-
Total Number of Cases	n	30	4	9	2	7

[1] Criminal Code sections are described in Section 2.3.

[2] Behaviours included are described in Table 9.

[3] Behaviours add to more than the total number of charges because of more than one behaviour occurring for a single charge.

[4] Percentages are based on the number of cases.

Source: HWR Police Offence Reports; Ontario Court of Justice, Hamilton-Wentworth, Information and Court Records

Thus a total of approximately 30 percent of charges used the new offences in sections 151 (interference) and 152 (invitation to sexual touching) whereas, previously, almost 80 percent of charges were concentrated under a single Criminal Code section, i.e., 246(1) (sexual assault).

Are the new Code sections 151 and 152 covering a broader range of conduct, not just intercourse?

Charges were filed under sections 151 (sexual interference) in 45.5 percent of the 66 cases for which such information could be obtained and under 152 (invitation to sexual touching) in 6.1 percent. The range of conduct covered by these charges was determined by examining the nature of the abuse which had taken place in each of the cases with these charges (Table 21).

The most frequently occurring behaviour under section 151 was genital fondling, in 46.7 percent of the cases. This was followed by the victim being forced to fondle the offender (33.3 percent of cases), chest fondling (26.7 percent), oral sex performed on the victim (16.7 percent) and simulated intercourse (16.7 percent). Nine other forms of abuse occurred in these cases, including exposure, invitation to sexual touching undressing and inappropriate kissing.

The most serious abuses in cases charged under section 151 were anal penetration and vaginal penetration with penis or fingers, a total of ten cases out of the 30. Since more than one behaviour could have, and usually did, occur in the cases charged, the specific types of abuse found within this charge category are very likely to have been covered by another charge.

The four cases charged under section 152 cover behaviours ranging from exposure to invitation to sexual touching to fondling, oral sex and anal penetration.

The variety of behaviours identified as occurring under the new charges created by sections 151 and 152 stands in contrast to that found in the two cases charged under the old Criminal Code sections 143 and 146 (Table 20). In both these cases the only form of abuse that shows up is vaginal penetration with penis.

What is the rate of conviction for these offences?

The rates of conviction for charges of sexual interference (151) and invitation to sexual touching (152) are 80 percent and 100 percent respectively

(Tables 22 and 23).[1] Just under one-half of the conviction rate for section 151 is accounted for by guilty pleas by the accused. Clearly, both these sections, when implemented, lead to a significant number of successes in prosecution.

What factors are associated with (a) charges being laid (b) guilty pleas and (c) convictions?

Unfortunately the small number of cases involved and the large number not completed or unknown make further analysis of the factors associated with charging and convictions not only difficult but also highly likely to produce misleading results.

Are rates of charges under section 153 C.C. increasing compared to former C.C. sections 146(2), 151, 152, 153, 156, and 157?

Almost 11 percent of the total of 120 charges were filed under section 153, i.e., sexual exploitation (10.8 percent). Five percent of all charges came under other assault sections or sections unrelated to sexual offences. In comparing this charge rate to the period before Bill C-15, it is necessary to consider section 153 charges together with charges under section 272 (sexual assault with a weapon or causing bodily harm) because the baseline study grouped together all those charges it identified under several sections, including sections 146(1) (intercourse with a female under 14), 146(2) (intercourse with a female 14 to 16 years), 150 (incest), and 246(2) (sexual assault with a weapon). Therefore, the charge figures for the two study periods are not, strictly speaking, comparable. In the period after Bill C-15 was enacted no offences were in fact charged under section 272. As stated above, 10.8 percent of charges were filed under section 153. This compares with 22.7 percent laid under former sections 146(1), 146(2), 150, and 246(2) as a group.

---

[1] The conviction rates are based only on the cases that have proceeded through court to completion. This does not include charges that have been withdrawn, those with no trial outcome to date or those whose status is unknown. Thus, the conviction rate for section 151 charges is the proportion of charges in which guilty pleas or convictions are obtained relative to the total number proceeding. The total number proceeding therefore includes convictions as well as acquittals and dismissals. As discussed in Section 3.5, this is not the customary definition of "conviction rate" used in Ontario. The Ontario practice is to calculate the proportion of guilty pleas and convictions of all charges laid. Using this definition yields a conviction rate of 26.7 percent for section 151 and 50 percent for section 152.

Table 22 Trial Outcome for Cases Charged Under Section 151 of the New Criminal Code

	N	% STTL	% TTL
Trial Outcome:			
Acquittal	1	16.7	3.3
Conviction	5	83.3	16.7
Subtotal	6	100.0	
Otherwise Dealt With:			
Guilty Plea (at any stage of proceedings)	3	12.5	10.0
Charge Withdrawn	15	62.5	50.0
Dismissed	1	4.2	3.3
Stayed	3	12.5	10.0
Unknown	2	8.3	6.7
Subtotal	24	100.0	
Total cases with one or more charges under section 151	30		100.0
Conviction rate	80.0		

Note: In column one, N is the number of charges. Column two shows the percent of the subtotal. Column three shows the percent of total cases.

Source: Ontario Court of Justice, Hamilton-Wentworth, Information and Court Records

Unit of Analysis: Case (victim/occurrence)

Table 23 Trial Outcome for Cases Charged Under Section 152 of the New Criminal Code

	N	% STTL	% TTL
Trial Outcome:			
Acquittal	-	-	-
Conviction	1	100.0	25.0
Subtotal	1	100.0	
Otherwise Dealt With:			
Guilty Plea (at any stage of proceedings)	1	33.3	25.0
Charge Withdrawn	2	66.7	50.0
Subtotal	3	100.0	
Total cases with one or more charges under section 152	4		100.0
Conviction rate	100.0		

Note: In column one, N is the number of charges. Column two shows the percent of the subtotal. Column three shows the percent of total cases.

Source: Ontario Court of Justice, Hamilton-Wentworth, Information and Court Records

Unit of Analysis: Case (victim/occurrence)

Table 24 Cases Charged Under Sexual Assault Sections and Others for Occurrences by Nature of Abuse - September 1, 1989, to August 31, 1990

Nature of Abuse[2]		Criminal Code Sections[1] 271	279	Other Assault	Other Unrelated
Exposure	n[3]	3	-	-	-
	%[4]	5.8	-	-	-
Invitation	n	7	-	2	-
	%	13.5	-	50.0	-
Show Pornography	n	-	-	-	-
	%	-	-	-	-
Undress	n	8	1	1	-
	%	15.4	100.0	25.0	-
Masturbation	n	-	-	-	-
	%	-	-	-	-
Inappropriate Kissing	n	4	-	-	-
	%	7.7	-	-	-
Chest Fondling	n	7	-	1	1
	%	13.5	-	25.0	100.0
Buttock Fondling	n	3	1	1	-
	%	5.8	100.0	25.0	-
Genital Fondling	n	29	-	2	1
	%	55.8	-	50.0	100.0
Victim Fondled Offender	n	8	-	-	-
	%	15.4	-	-	-
Vaginal Penetration with Finger	n	4	-	-	-
	%	7.7	-	-	-
Attempted Vaginal Penetration	n	2	-	-	-
	%	3.8	-	-	-
Anal Penetration with Finger	n	2	-	-	-
	%	3.8	-	-	-
Oral Sex on Offender	n	-	-	1	1
	%	-	-	25.0	100.0
Oral Sex on Victim	n	2	-	1	1
	%	3.8	-	25.0	100.0
Vaginal Penetration with Penis	n	8	-	-	-
	%	15.4	-	-	-
Forced Prostitution	n	-	-	-	-
	%	-	-	-	-
Simulated Intercourse	n	7	-	-	-
	%	13.5	-	-	-
Anal Penetration	n	3	1	2	1
	%	5.8	100.0	50.0	100.0
Total Number of Cases	n	52	1	4	1

[1] Criminal Code sections are described in Section 2.3

[2] Behaviours included are described in Table 9.

[3] Behaviours add to more than the total number of charges because of more than one behaviour occurring for a single charge.

[4] Percentages are based on the number of cases.

Source: HWR Police Offence Reports; Ontario Court of Justice, Hamilton-Wentworth, Information and Court Records

Is section 153 covering a broader range of conduct than just intercourse?

The same questions arise for cases charged under section 153 as for offences defined by sections 151 and 152 with respect to the number of charges and the range of conduct included. Section 153 (sexual exploitation of a child 15 to 18 years) is a hybrid offence, i.e., can be prosecuted as either a summary or indictable offence. In Hamilton-Wentworth from September 1, 1989, to August 31, 1990, 13 charges were filed under this section in a total of nine cases reported to the police. This represents 10.8 percent of all charges and 13.6 percent of all cases (victim/occurrences). Section 153 charges constitute the third largest group after sexual interference and sexual assault.

Of the range of abusive behaviours included, the largest proportion of cases (88.9 percent) involved genital fondling (Table 21). Other behaviours included are chest fondling, the victim fondling the offender, undressing, invitation to sexual touching, inappropriate kissing, simulated intercourse and one instance of vaginal penetration.

What is the rate of conviction for section 153?

Although 13 charges of sexual exploitation were filed and 12 of these pleaded not guilty, none of these proceeded to court. These were either stayed (four) or withdrawn prior to trial (nine). In some cases, withdrawal of a charge may have been in exchange for a guilty plea to a lesser charge.

What factors are associated with (a) charges being laid, (b) guilty pleas, and (c) convictions?

Again, the small number of cases involved and the large number not completed or unknown preclude further analysis of the factors associated with charging and convictions.

Objective 1:

Clearly, the new offences are being used and cover a broader range of conduct than the former offence section 146 which referred to intercourse only. In the 34 cases charged under sections 151 (sexual interference) and 152 (invitation to sexual touching) vaginal intercourse occurred only in four. Section 153 (sexual exploitation) involved vaginal penetration in just one of the nine cases. The conviction rate (as calculated for this study) for 151 was 80 percent and for 152, 100 percent. This is persuasive evidence regarding the appropriateness of these Criminal Code sections for the kinds of child sexual abuse occurrences that are reported to police.

5.1.2 Objective 2: To Provide More Protection for Younger Victims

Are charges being laid under sections 212(2) and 212(4)?

Are convictions being obtained in charges under these sections?

Sections 212(2) and 212(4) make it an indictable offence to live off the avails of prostitution of a person under 18 years of age or to attempt to obtain the sexual services of a person under 18 years. For incidents reported between September 1, 1989, to August 31, 1990, no charges were filed under these provisions.

Are charges being laid under section 173(2)?

Section 173(2) describes the offence of exposure of genitals to a person under 14 years and assigns it summary conviction status. Of the 120 charges filed in the 66 child sexual abuse cases followed here, seven were laid under this section in seven cases. This represents 5.8 percent of all charges and 10.6 percent of cases (Table 21).

What conduct is associated with section 173(2)?

All seven cases involved exposure (Table 21). Three also involved either invitation to touching, fondling, or oral sex. Clearly exposure is being charged where this is a primary aspect of the incident. However, this behaviour appears to accompany other more serious offences and, where it does, charges are filed under those offences either solely or in addition to exposure.

What is the conviction rate for section 173(2)?

These charges resulted in two guilty pleas. Another four were dismissed and one was withdrawn. The conviction rate for section 173 (exposure) charges was, therefore, 33.3 percent (the proportion of guilty pleas of the six charges excluding the one withdrawn) (Table 25).

Has consent been accepted by the courts as a defence?

Sections 150.1(1), (4) and (5) provide protection for younger children by removing the defences of mistaken age and consent to the act. Data compiled from the transcript review do not indicate whether the court accepted the defence of consent. The only information available on this question is with respect to counsel for an accused having raised the issue of consent. Of the ten cases

reviewed (both preliminary inquiries and trials), consent by the victim was introduced only once.

Table 25 **Trial Outcome for Cases Charged Under Section 173(2) of the New Criminal Code**

	N	% STTL	% TTL
Trial Outcome:			
Acquittal	-	-	-
Conviction	-	-	-
Subtotal	-	-	
Otherwise Dealt With:			
Guilty Plea (at any stage of proceedings)	2	28.6	28.6
Charge Withdrawn	1	14.3	14.3
Dismissed	4	57.1	57.1
Subtotal	7	100.0	
Total cases with one or more charges under section 173(2)	7		100.0
Conviction rate	33.0		

Note: In column one, N is the number of charges. Column two shows the percent of the subtotal. Column three shows the percent of total cases.

Source: Ontario Court of Justice, Hamilton-Wentworth, Information and Court Records

Unit of Analysis: Case (victim/occurrence)

Has mistaken age been accepted by the courts as a defence?

As with the issue of consent, examination of the transcripts provides information only about the defence counsel's use of this defence. Mistaken age did not, however, appear explicitly in any of the transcripts reviewed. It was suggested, though, in one case where the accused said that the complainants were about 19 years of age. They were, in fact, under 14 years old. This accused pleaded guilty to the offence of sexual touching.

How does the age difference between the victim (ages 14 to 17 years) and the offender relate to sections 151, 152, 173(2) and 271?

According to section 150.1(2) the only circumstance in which the child can "consent" legally to sexual activity and which may be used as a defence occurs when the complainant is aged 12 or 13 years, the accused 12 to 15 years (inclusive) and the difference in their ages is two years or less and the accused is not in a position of trust or authority towards the complainant. This means that cases charged under sections 151 (sexual interference), 152 (invitation to sexual touching), 173(2) (exposure) and 271 (sexual assault) may use consent to the activity as a defence under these circumstances. It is interesting, therefore, to examine the charging practices and outcomes for cases having these characteristics.

There were no cases in which charges were filed where the alleged offender and victim were contemporary in age or within three years of one another.

Objective 2:

More protection is being extended to younger children in that charges are being filed for exposing to children under 14 and these charges are being successfully prosecuted. The finding that just as many of these charges were dismissed as resulted in guilty pleas suggests that this is a difficult offence to prosecute. Convictions were obtained more often through guilty pleas than through findings of guilt after trial. The testimony of younger children is also being accepted in that neither mistaken age nor consent have been advanced as defences in the cases reviewed here. This suggests that the new provisions of Criminal Code section 150.1 are being fully implemented.

5.1.3 Objective 3: To Eliminate Gender Bias Regarding Victims and Offenders

The importance of the new offences lies partially in the fact that the language of these sections prescribes a charge in all cases where "every person" who commits specific acts against "any person" under 14 years or (as in the case of section 153) from 14 to 17 years. Previous wording in the old Criminal Code sections 146, 151, and 153 referred to "male persons" and "female persons" in the respective roles of accused and complainant. It is of interest, therefore, whether charges have been filed involving male victims or female offenders.

Are charges being laid under sections 151, 152 and 153 in cases involving male victims?

Seventeen charges or 39.5 percent filed under the new sections 151 (sexual interference), 152 (invitation to sexual touching) and 153 (sexual exploitation) are offences against male children.

Are charges being laid under these sections involving female offenders?

No charges involving females resulted from the reported incidents. This is perhaps not surprising as the proportion of reports alleging female offenders is very small.

Are these charges resulting in guilty pleas/convictions?

Although there are not a lot of charges under any of these sections to serve as an adequate basis for comparison, it is nonetheless interesting to examine the outcomes for offences where the complainant is male as opposed to female.

Only one of eight charges under section 151 (sexual interference) in cases involving male victims resulted in a guilty plea, the remaining seven having been withdrawn or stayed. Seven of 22 charges in cases involving females ended with a conviction or guilty plea. Although the numbers being compared are very small, there is a tendency towards a greater proportion of convictions and a smaller proportion of withdrawals of charges against females than is true for cases where the victim is male. The conviction rates, however, are similar (one guilty plea out of one charge proceeding for males and seven convictions/guilty pleas out of eight charges proceeding for females). The dispositions for charges 152 (invitation to sexual touching) and 153 (sexual exploitation) differ very little for cases involving males and females (Table 26).

Objective 3:

The effectiveness of Bill C-15 changes to the Criminal Code in eliminating gender bias is evident in the rate of charging in cases involving male complainants. It is less clear that prosecution of these offences has yet been as successful as those involving females.

Table 26 Charges - Criminal Code Section Involving Male/Female Victims

Outcome	151		152		153	
	M	F	M	F	M	F
Acquittal	-	1	-	-	-	-
Conviction	-	5	1	-	-	-
Guilty Plea	1	2	-	1	-	-
Withdrawn	2	11	2	-	10	3
Stayed/Discharged	5	1	-	-	-	-
Unknown	-	2	-	-	-	-
Total Cases	8	22	3	1	6	3

5.1.4 Objective 4: To Provide Protection for Children in Cases Where Disclosure is Delayed

Are charges being laid under sections 151, 152, 153, 170, 171 and 172 in cases where reporting to the police is more than one year after the incident occurred (as permitted in section 275)?[2]

Some, but relatively few, charges are being filed where the offences reported are more than one year prior to the date of reporting. Two of the 30 cases charged under section 151 (sexual interference) are related to offences more than one year old and one of the four section 152 (invitation to sexual touching) charges occurred at least this long prior to police involvement. No offences charged under section 153 (sexual exploitation) were this old and no charges were filed at all under sections 170 (parent/guardian procuring), 171 (householder permitting sexual activity) or 172 (corrupting children).

[2] This provision was established in the Criminal Code in 1982 for complainants in sexual assault offences. Section 275 explicitly extends the provision to sexual offences involving children.

Are these charges resulting in convictions?

On the other hand, convictions or guilty pleas were obtained in all four charges where the incident was greater than one year prior to the report. Moreover, only one of the four was a guilty plea (Table 27). Despite the small number of charges in this category, this rate of conviction is compelling evidence for the effectiveness of the provisions related to disclosure of long-past incidents.

Objective 4:

Although the number of charges related to offences where disclosure was delayed is relatively small, convictions are being obtained in these cases. These precedents argue that the new offences are being successful in providing protection to children or adults who disclose a year or more after the event.

5.2 Implementation and Outcome Relevant to Goal 2

Goal 2: To Enhance Successful Prosecution of Cases Involving Child Sexual Abuse

This goal of Bill C-15 is related to the provisions that affect both the Criminal Code and the Canada Evidence Act. Minimizing the difficulties of accepting the evidence of a child is one of the objectives underlying specific clauses of the Bill that were framed to further this goal. Changes relevant here are the allowance of videotaped evidence (C.C. section 715.1) and admitting evidence of a sworn or unsworn child under 14 years of age [CEA 16(1)].

Table 27 Trial Outcomes for Charges Specified Under Section 275 of the New Criminal Code, According to Amount of Elapsed Time Between the Incident and Report to Police - September 1, 1989, to August 31, 1990

	n	%
Section 275[1]		
Reported within one year of incident	56	87.5
Reported more than one year after incident	6	9.4
Amount of elapsed time unknown	2	3.1
Total Cases[2]	64	100.0

Trial Outcome	≤ 1 year n	≤ 1 year %	> 1 year n	> 1 year %
Acquittal/Discharge	2	15.4	-	-
Convicted	11	84.6	5	100.0
Subtotal[3]	13	100.0	5	100.0

Otherwise dealt with	≤ 1 year n	≤ 1 year %	> 1 year n	> 1 year %
Guilty plea	18	29.0	4	80.0
Charge withdrawn	33	53.2	1	20.0
Other[4]	11	17.7		-
Subtotal[2]	62	100.0	5	100.0
Unknown	5		-	
Total number of cases with one or more charges under section 275	52		6	
Conviction Rate	93.6		100.0	

[1] Section 275 states that "the rules of evidence of recent complaint are hereby abrogated with respect to offences under sections 151, 152, 153, 155 and 159, subsections 160(2) and (3), and sections 170, 171, 172, 173, 271, 272 and 273, R.S. 1985, c. 19 (3rd Supp.) s.11."

[2] "Date Reported to Police" is the same for all charges pertaining to a given case. Therefore, the totals in this section of the table refer the cases.

[3] Trial outcomes are summarized by charge code. For example, if a case involves two charges of section 151, the trial outcome is based on only one of the section 151 charges. (N.B. This method of dealing with multiple occurrences of the same charge code in a case results in a minimal loss of outcome detail.)

However, outcome is not summarized across charge types. For example, if the trial has been completed for a case consisting of two charges under section 151 and one charge under section 153, two separate trial outcomes appear in this table. This explains why a total of 64 cases appears in the top section and 90 charges in the bottom section: the unit of analysis is case in the top section and charge in the rest of the table.

[4] "Other" includes stays, warrants and incomplete.

Source: HWR Police Offence Reports; Ontario Court of Justice, Hamilton-Wentworth, Information and Court Records

Unit of Analysis: Case (victim/occurrence) or charge (see notes 2 and 3)

A second objective of Bill C-15 to enhance the successful prosecution of cases of child sexual abuse is to eliminate previous impediments to the credibility of the child in court. This is achieved through removal of the necessity for corroboration in order to convict on the evidence of a child (section 274)[3], the prohibition against the use of reputation evidence (section 277) and evidence regarding sexual activity of the child [section 276(1)][4], and the testimony of experts with respect to whether the observed injuries and behaviour of the child are consistent with sexual abuse.

Sections 5.2.1 and 5.2.2 address these objectives of the Bill and the extent to which the related clauses are meeting these objectives.

5.2.1 Objective 5: To Minimize the Problem of Child Sexual Abuse Victims Giving Evidence

Are videotapes being used in evidence?

The videotaping provisions of Bill C-15 are not now being used in Hamilton-Wentworth. Following judgements at the Queen's Bench level in Alberta and in an Ontario case at the District Court level[5] that this provision violates sections 7 and 11(d) of the Charter of Rights and Freedoms, many police forces and crown attorneys have been extremely reluctant to rush into videotaping the child's evidence without a specific protocol to safeguard the procedure. Subsequent court decisions have convicted on the basis of a videotape and the issue regarding its acceptability therefore remains alive. As was mentioned previously, a videotaping protocol has been developed in Hamilton-Wentworth but put on hold following the CAS strike in 1989. Currently, the decision to videotape is left with the investigation team, i.e., child protection worker and police officer. Investigators are audiotaping interviews and videotaping some. When the decision is made to videotape a child's statement, it will not necessarily be on the first interview. At this point there is discussion about the use of

---

[3] This provision, too, previously existed in the Criminal Code but has now been extended to cover evidence given by a child.

[4] These provisions were already in the Criminal Code with respect to offences charged under the previously numbered section 246 which defined levels of sexual assault. Bill C-15 applied the same provisions to sexual offences involving children. Since the completion of this review of Bill C-15, however, section 276(1), related to evidence of sexual activity, has been ruled unconstitutional.

[5] R. v. Thompson (1989), 68 C.R. (3d) 328, 39 C.R.R.1, 97 A.R. 157 (Alta. Q.B.); R. v. Christensen (1989), 8 W.C.B. (2d) 13 (Ont. Dist. Ct.).

videotapes but this will not likely be fully implemented until the results of the Supreme Court ruling are concluded.

Are child victim/witnesses under the age of 14 years being sworn?

Other ways in which this objective of Bill C-15 can be achieved include the implementation of provisions to accept the sworn testimony of children under 14 years of age. Five of the ten children observed in court were under 14 years of age. Of these, four were sworn after questioning.

Are younger child victim/witnesses giving testimony under the "promise to tell the truth" provision of 16(3) CEA?

This new provision of the Canada Evidence Act was not used in the cases examined for this research. Four of the five children to whom it might have applied (i.e., under 14 years of age) were sworn. The basis for testimony of the other child is not known.

What type of questions were asked by the judge?

In the review of transcripts, where all six children under 14 were examined for the oath-taking, the questions were found to range widely. The subjects in order of their frequency were:

- Age 6
- Grade 6
- Moral obligation to tell the truth 6
- Added responsibility to tell the truth 6
- Promise to tell the truth 6
- Religious training 6
- Meaning of the oath 6
- Belief in God/religious belief 6
- Seriousness of the occasion 6
- Consequences of not being truthful with teachers and with mother 6

Table 28 presents the issues raised based on the data collected during the court observations. This essentially confirms the priority given by judges to questions about the meaning of the truth.

What factors are associated with the use/nonuse of the provisions under 16(1)?

Given the small number of cases available here, it is difficult to determine specific factors associated with the use or nonuse of these provisions. Only one of the children who testified was under the age of ten but all of those under 14 years were questioned by the judge to determine their competence to give evidence before being sworn.

Table 28 **Factors Considered by Judge in Deciding Whether to Swear Child - September 1, 1989, to August 31, 1990**

Factors Considered	Yes		No	
	n	%	n	%
General questions (age, grade)	4	80.0	1	20.0
Child understands where (s)he is and why	2	40.0	3	60.0
Child goes to Sunday school	-	-	5	100.0
Belief in God/religious belief	2	40.0	3	60.0
Child understands the meaning of oath	3	60.0	2	40.0
Child's knowledge of truth or lie	5	100.0	-	-
Instructing child how to answer	-	-	-	-
Crown asks questions for judge	3	60.0	2	40.0

Total n of cases: 5 observed; 1 unknown

Source: Court Observation Schedule

Unit of Analysis: Victim/Proceeding Type

Is unsworn testimony weighed differently by the courts?

The research cannot address this question since none of the children about whom we have information testified without being sworn.

Objective 5:

It is not clear to what extent the evidence here permits the conclusion that the new provisions "minimize the problem" of child sexual abuse victims giving evidence. All who appeared were deemed able to be sworn after questioning (except for one case where the outcome is unknown although the child did proceed to testify). While videotapes are not currently in use, the impact of their use on the introduction of a child's testimony is difficult to ascertain. It is highly probable that the police decision to charge and the crown attorney's decisions in prosecuting the case screen out at an early stage children who are not seen to be potentially capable of testifying under oath.

5.2.2 Objective 6: To Protect the Credibility of the Child Victim/Witness in Cases of Child Sexual Abuse

Is corroboration still important in the decision to commit to trial and/or convict at trial?

None of the transcripts of testimony given on ten occasions indicates that corroboration was important for conviction. In two cases, the defence argued that the child was not a credible witness or was unreliable because of being uncertain and confused. In one of these cases, the judge at a preliminary hearing had no reservations about committing the case to trial. At trial by judge a conviction was obtained and the offender sentenced to four years incarceration.

Are there areas of alleged behaviour and/or types of cases where corroboration is important (e.g., status/occupation of offender)?

This study could not answer this question because of the small number of cases available for examination.

Are expert witnesses used? What type of evidence are they giving?

No expert witnesses were used in the cases tracked for this study.

Is "sexual activity" and/or "reputation" evidence being raised at preliminary inquiry and/or trial?

In the transcripts reviewed (some of which were preliminary inquiries and others trials), there was no indication of defence introducing either evidence or questions about the past sexual conduct of the victim, the reputation of the victim, or provocative behaviour on the part of the victim (Table 29).

Table 29 Issues Raised as Defence in Cross-Examination - September 1, 1989 to August 31, 1990

Issues Raised	Yes		No	
	n	%	n	%
Identity of accused	-	-	10	100
Nature of contact	7	70	3	30
Consent to acts	1	10	9	90
No threats or force	1	10	9	90
No relationship of authority	-	-	10	100
Honest belief re: age	1	10	9	90
Use of drugs/alcohol - Accused	2	20	8	80
Use of drugs/alcohol - Victim	2	20	8	80
Provocation by victim	-	-	10	100
Past sexual conduct of victim	-	-	10	100
Reputation of victim	-	-	10	100
Fabrication of allegation	9	90	1	10
Inconsistent with prior testimony	8	80	2	20
Circumstances of disclosure	8	80	2	20
Reasons for disclosure	8	80	2	20

Total n of cases: 10

Source: Transcript Review

Unit of Analysis: Case (victim/occurrence)

Objective 6:

On the evidence here, it can be concluded that the credibility of the child witness is being protected in cases of sexual abuse. While suggestions for the need for corroboration have been alluded to by the defence, there is no indication that this is being required. In addition, convictions are being successfully obtained on the child's sworn evidence. It appears that defence counsel are generally cognizant, as well, of the need to protect the child from damaging allegations of

sexual behaviour on the part of the child. At the same time, it is difficult to attribute this directly to the provisions of Bill C-15.

5.3 Implementation and Outcome Relevant to Goal 3

Goal 3: To Improve the Experience of the Child Victim/Witness

Not the least of the goals of Bill C-15 is the intent to improve the experience of children who come into contact with the criminal justice system. A number of changes introduced by the Bill were premised on realizing specific objectives to accomplish this. One objective in the service of improving the experience of child victim/witnesses was to minimize the number of interviews children must endure from the point of first disclosure to the conclusion of the court process. The ability now to videotape these interviews has been made possible by Bill C-15. Use of this provision is examined in Section 5.3.1.

Providing support and assistance to children who testify was a second aim of the Bill's provisions to improve the justice system process experienced by the child. Allowing videotaped interviews to be submitted and adopted by the child is now included in the Criminal Code. The use of screens or closed-circuit television so that a child does not have to confront the accused [section 486(2.1)] has been added to the previous section 442 (exclusion of the public) in order to facilitate the child's testimony. The use of orders excluding the public from the courtroom (section 486.1) and banning publication of the identity of the child witness are additional means of affording protection to and improving the child's experience in court.

Other changes, which have been encouraged by policy at both the federal and provincial levels, permit supporting adults to remain with the child throughout court as well as the use of other assists to the child. In addition, victim/witness support programs have been created and educational materials have been designed specifically for children. Specialized training programs for people involved in the justice system, and policies addressing crown attorney and judicial practices have also been developed (see Sections 5.3.2 and 5.3.3.)

5.3.1 Objective 7: To Avoid Repetitious Interviews With the Child Victim/Witness

Are videotapes being made at the initial investigation stage?

Who is present at the videotaped interview?

How many times are victims/witnesses made to repeat their disclosures?

Does use of the videotape reduce the number of times a child must tell his or her story?

Both the Hamilton-Wentworth Regional Police and the child welfare agencies have renovated special rooms for videotaping the child's interview but are waiting for the Supreme Court's decision before fully implementing this practice. Since videotapes of the child's initial interview, statement, or other evidence are not being produced at this time, a reduction in the number of interviews of child victim/witnesses is probably not yet being achieved to the degree intended by the legislation. There is no evidence to adduce here regarding any changes in the number of interviews that children are put through during the criminal justice process.

The only information about the number of times that children are interviewed has been captured from the police files. This indicates that just over one-half (55.1 percent) of the alleged victims were not interviewed between the point at which they initially disclosed and the report to police. One-third (31.1 percent) had experienced one interview in that interval and almost one in eight had had two or three interviews by the time of entry to the criminal justice system. These interviews most often were carried out by a school official or a CAS worker.

Following the report to police, the child victim/witness will have at least one interview with a police officer and one with the crown attorney. Two interviews of the child victim/witness is therefore the minimum to be expected, with the norm probably being four.

Objective 7:

Whether repetitious interviews with the child victim/witness are being avoided cannot be determined on the basis of the information available to this study. There is a presumption, however, that the use of videotapes at the initial investigation stage will accomplish this aim. Since neither the child's disclosures

nor statements are currently being taped, it may be concluded that this objective is not now being met.

5.3.2 Objective 8: To Provide Support and Assistance to the Child Victim/Witness Precourt and In Court so that They Can Give Their Testimony

Have any innovative programs or procedures been implemented such as victim assistance programs, crown attorney preparing witness, or others?

In the Hamilton-Wentworth court jurisdiction, the Ministry of the Attorney General funds a Victim/Witness Assistance Program (VWAP). A VWA coordinator and support worker are located in the Provincial Court building. Once charges have been filed, the Child Abuse Branch of the HWR Police notifies the VWAP of the names of potential child witnesses. It then sends a letter to the parent/guardian or to the victim if he or she is 14 years old or more. The letter provides information about the program and offers its services. The initiative is left to the victim to contact the VWA coordinator or worker for assistance. According to the VWA staff, victims rarely do so at this stage.

The VWAP keeps informed of upcoming court dates and, if the child victim is on the list for a possible appearance, a second letter is sent closer to the date. Once the crown attorney has been assigned to the case (in theory, from one to two months prior but, in practice, often within the same month as the anticipated appearance), the VWAP sends a third letter to the family and/or victim. However, this last letter may be too close to the court appearance for the child to be given assistance.

The VWAP workers report that many victims they have met do not see any representative of the justice system until immediately before court. Interviews carried out with five child witnesses (one of these was interviewed twice - on each occasion after two widely separated court appearances), indicated that in five of the six appearances the victims met the crown attorney a few days prior to court. Only one said she met the crown attorney the day of the trial.

Referrals to the VWAP come primarily from the police and CAS workers. Crown attorneys tend to prepare the victims themselves or tell the victim/witness about the program instead of telling the program to contact the child. The rate of referrals over the past couple of years is estimated to be two per month. With

approximately 60 to 70 accused proceeding to court within a year, this referral number appears low in terms of the number of victims.[6]

The VWAP staff usually take the child at the end of the court day to an empty courtroom to explain the process. They sometimes accompany a child to court as well. One of the most-used aids in their task is the activity book What's My Job in Court? produced by the Ministry of the Attorney General. This publication has been widely distributed among VWAP coordinators and crown attorneys.

All the crown attorneys surveyed for this study (six respondents) meet with a child victim/witness prior to court (Table 30). The most common ways in which they prepare children are: by explaining the court process, by explaining the types of questions the child can expect to be asked by both the defence counsel and the crown attorney, and by explaining the oath-taking procedure. Five of the six said that they role-play the court appearance with the victim, but only three show the child an actual courtroom. The least common preparations undertaken by crown attorneys are introducing the child to the individuals who work in the court and providing the child with reading materials.

Has the videotape been used to refresh the victim/witness's memory?

Since videotapes have not been made, there have been no opportunities to use them for this purpose.

Have screens or closed-circuit television been used in the court?

Screens to block the child's view of the accused were used in five of the 12 cases observed in court where the child testified (Table 31). According to knowledgeable informants, this represents a significant improvement over previous practice. Closed-circuit televising of the child's testimony has been used but not within the time frame of this review. One of the judges surveyed, however, reported a request for closed-circuit television so that the child could testify without confronting the accused. Defence objected but the judge allowed the request. In this case, the accused testified outside the courtroom.

---

[6] Although most cases result in a guilty plea, this usually does not occur early enough prior to a court appearance to decisively eliminate the need for the child to testify.

Table 30 **Proportion of Crown Attorneys Who Meet With Child Sexual Abuse Victim/Witnesses and What They Do**

Usually Meet with child Victim/ Witness	Yes n	Yes %	No n	No %	Total n	Total %
What they do:						
Show child a courtroom	3	50.0	3	50.0	6	100.0
Explain the court process	6	100.0	-	-	6	100.0
Explain type of questions asked by crown attorney	6	100.0	-	-	6	100.0
Explain type of questions asked by defence counsel	6	100.0	-	-	6	100.0
Tell child to inform you if accused or spectators are intimidating	4	66.7	2	33.3	6	100.0
Provide reading material	2	33.3	4	66.7	6	100.0
Role-play with victim	5	83.3	1	16.7	6	100.0
Introduce court personnel	2	33.3	4	66.7	6	100.0
Go over questions before court	6	100.0	-	-	6	100.0
Refer to appropriate agency	3	50.0	3	50.0	6	100.0
Explain the oath	6	100.0	-	-	6	100.0
Explain other factors[1]	3	50.0	3	50.0	6	100.0

[1] This category includes unsolicited items mentioned in an open-ended question.

Source: Survey of Crown Attorneys

Unit of Analysis: Respondent (N=6)

Have supporting adults accompanied the child witness to court? (a) Who are these adults? (b) Do supporting adults accompany the child to the stand?

In 11 of the 12 observed cases, the child was accompanied by a support adult (Table 31). This was most often the mother and sometimes a CAS worker. The support adults did not, however, accompany the child to the stand. It must be remembered, though, that most of these child victim/witnesses were adolescents or teenagers and not very young children.

Two crown attorneys who responded to the survey reported that they had requested permission for the support adult to accompany a child to the stand. Objections were heard in both cases and the practice was subsequently allowed in one.

Are other innovative supports used?

None of other innovative supports mentioned on the court observer's coding form were used (Table 31). These could have included booster seats, toys or a blanket, or an adult holding the child on his or her knee. The absence of these supports is probably also related to the older age of these child victim/witnesses.

Both judges and crown attorneys who were surveyed reported the use of supportive measures in other cases, however. This is discussed further in Section 6.2.[7]

What is the effect of these procedural and evidentiary changes on the child?

The task of assessing the effects of these changes on child witnesses faces three difficulties here. First, relatively few of the new assists and procedures have been used in the cases examined. Secondly, the number of cases is too small either to detect significant effects or to generalize about these. Thirdly, in measuring the effects (primarily on the basis of the accounts given by the children and parents who were interviewed), there is no way to be certain that a change related to Bill C-15 produced the outcome described. The following discussion relies on descriptions of the process and its effects given by the child victim/witnesses after the court experience.

Five of the six children visited the courtroom prior to their appearance. All of these victim/witnesses said that the visit helped, two "quite a bit" and one "a lot." In five court appearances, people remained in the courtroom while the child testified. For three children, this made their task harder.

[7] Key informants involved in the criminal justice process have reported, however, that very recently (i.e., following completion of this study) supports - such as a teddy-bear, and a social worker's sitting on the stand with the child - have been allowed.

Table 31 Courtroom Environment During the Child's Testimony - September 1, 1989 to August 31, 1990

Items Observed	Yes		No	
	n	%	n	%
Child testifies behind screen	-	-	12	100.0
Child testifies via closed-circuit television	-	-	12	100.0
Child given booster seat	-	-	12	100.0
Adult holds child on knee	-	-	12	100.0
Adult accompanies child to stand	-	-	12	100.0
Support adult stays in courtroom	11	91.7	1	8.3
Witnesses cleared during child's testimony	7	70.0	3*	30.0
Accused cleared from court	-	-	12	100.0
Spectators cleared from court	4	33.3	8	66.7
Child's view of accused obstructed	5	41.7	7	58.3
Expert testifies re: child's testimony	-	-	12	100.0
Child allowed to bring blanket, toy, etc.	-	-	12	100.0
Child allowed to testify with props	-	-	11*	100.0
Other innovative procedures used	-	-	11*	100.0

Total number of cases: 12

* Remaining cases are unknown as observer was also asked to leave courtroom.

Source: Court Observation Schedule

Unit of Analysis: Victim/Proceeding Type

When asked how they felt now about going to court, two children described their feelings under the category of "mostly happy," three felt "in between," and one "mostly sad."

What helped each of the children most in court, in the child's own words, was:

- "that the police officer stood beside the accused."
- "my mom, the crown attorney, and the judge."
- "my mom."
- "that my parents were there and the lawyers."
- "that the accused was in handcuffs and watched by police officers."

What advice would these children give others facing the same ordeal?

- "...they have to get up on the stand (and) try to keep yourself together; stay calm; tell them what kind of questions will be asked by crown and the defence."
- "...don't be scared and tell the truth."
- "...don't be afraid; don't look at the person that did it; tell the truth; don't chew gum."
- "If you don't want to you don't have to look at the accused. Before the court date you can get prepared for it. Bring a friend with you to make you feel comfortable."
- "To remember as much as possible. If he's not convicted it's OK. You did the best you could and at least came forward."
- "Tell them to relax as much as possible. It is easier to look at the crown attorney than at the defence lawyer or judge because in courtroom five you also look at the accused. Give your testimony in the courtroom that they showed you. To get books and read about abuse. Have the CAS worker explain all procedures to you."

Only one of these victims had not been referred to the VWAP. The others met with one of the VWA coordinators and, according to the parents, this was very helpful. Three visited the courtroom ahead of time.

Some of the children were given the book <u>What's My Job in Court?</u> They found it very useful as well as fun:

- "The fun things in there were all about court. I did most of them before court. On the last page there is room for the crown attorney's phone number."
- "It dealt with court, had punch-outs and things in it to do with court."

. "It had fill-outs, crossword puzzles, punch-out figures from cardboard that you put in the right place in the picture of a courtroom."

Several assists to the child in court were described by the parents/guardians of these children:

. Having the support person stay in the courtroom - 4
. Testifying turned away from the accused - 3
. Waiting in a special room - 3
. Having the witnesses cleared from the court - 2
. Having the public cleared from the court - 1
. Asking for water; the judge offered the child a chair and the child was permitted to testify sitting down - 1
. Using a voice-amplifying microphone - 1

The parents interviewed were asked what, in their opinion, particularly helped their child to get through the experience:

. "support by the CAS worker and the crown."
. "that CAS, police supported her so much; she did not expect that and was surprised; (police) officer, courts, lawyers explained clearly what to expect."
. "support they got from the crown; the VWA worker and police in the court tried to help them feel more relaxed."
. "that the accused was found guilty; the CAS social worker, the crown and police; victim was commended by the judge and the crown for being an excellent, outstanding witness."

Most felt that very little more could have been done:

. "In spite of all the support it was very difficult and painful. I do not know what would have helped to make it better."

Only one parent could suggest an improvement in her particular case. She felt she should have been able to see the crown attorney earlier, and should have been shown the courtroom she would be testifying in.

<u>Has section 486(1), "exclusion of the public", been used</u>?

Section 486(1), under which the public can be excluded from the courtroom, was requested by the crown attorney in one of the transcripts reviewed and in four of the 12 court appearances observed.

Objective 8:

It is clear that having a support adult, using the screen, and clearing the public are helpful to the child victim/witness. The most frequently used device reported here was to have the support adult stay in the courtroom. Screens were used to some extent but, more often, the child was permitted to testify turned away from the accused. This appears to be a useful strategy for children that enables them to relax somewhat. Based on interviews done with children and parents, adequate preparation of child victim/witnesses ahead of time is the most important kind of assistance. One critical element of this preparation is a visit to the actual courtroom in which the child will testify.

5.3.3 Objective 9: To Provide Protection for the Child Victim/Witness Regarding Identity and the Circumstances of the Occurrence

Has section 486(3) been used to ban the publication of information?

This section of the Criminal Code (available since 1982 to complainants in cases of sexual assault) was used to ban the publication of information that would identify the child in nine of the ten child witness appearances whose transcripts were reviewed, three of these being preliminary inquiries.

According to the survey of crown attorneys, defence counsel and judges, this is the most commonly requested provision for child witnesses.

In what types of cases has this section been used?

In five of the nine child testimonies, the section was used because the child was under 14 years of age at the time the offence was committed (although not necessarily at the point of testifying). The section was used in another case where the victim and offender were related and therefore the name of the accused was the same as that of the victim. In this case, the judge initiated the ban in the best interests of the child. No reason for banning publication of identifying information was advanced in the remaining cases.

Objective 9:

Overall, the provisions of Bill C-15 for protecting the identity of the child are widely used. The necessity for shielding the child from public inspection, stigma or possible ostracism by peers is accepted by everyone involved in the criminal justice process.

5.4 Implementation and Outcome Relevant to Goal 4

Goal 4: To Bring Sentencing in Line with the Severity of the Incident

The range of conduct under which charges may be filed provided by changes to the Criminal Code as a result of Bill C-15 is much broader than that formerly included under the charges specified in the old Criminal Code. It can be anticipated, therefore, that sentencing should reflect the more varied types of behaviour captured by the new provisions. This means that the variety and severity of sentence would be wide-ranging and, at least, broader than was previously the case. The lack of data regarding previous sentencing practices is a constraint here. Instead, descriptions of current sentencing practices are the only kinds of evidence that can be provided.

5.4.1 Objective 10: To Provide For a Range of Sentence Responses to a Broad Range of Severity of Abuse

Sentences were handed down for convictions under sections 151 (sexual interference), 173 (exposure), and 271 (sexual assault). Conviction rates for sections 151 and 271 respectively were 80 percent and 89.3 percent (Tables 22 and 32) whereas the conviction rate for section 173 charges was much lower at 33.3 percent (Table 25). This last charge category received sentences of probation only and fine only. This charge can be prosecuted only as a summary conviction subject to a maximum fine of $2000 and/or imprisonment up to six months (Table 33).

Although the numbers are too small to provide valid comparisons, there is some indication of a tendency to sentence sexual interference of a child under 14 years of age (section 151) more heavily than sexual assault (section 271). Four of five charges under the former section received periods of incarceration, while 12 of 16 charges under 271 were given this, with the remaining four receiving probation and/or fines.

Since many of these sentences were concurrent, the proportionate number of sentences based on the number of charges may be misleading when one contrasts the range of sentences for the various charges. The ranges themselves are more indicative of the differences. In this respect, the range of sentences given for sexual interference (section 151) is more restricted than the range apparent for sexual assault charges (section 271) in the cases examined here. The same is true for the length of incarceration associated with the sentences even though both of these charges provide for the same specified maximum of ten years' imprisonment when prosecuted as indictable offences (Table 33).

Table 32 Trial Outcome for Cases Charged Under Section 271 of the New Criminal Code - September 1, 1989, to August 31, 1990

	N	% STTL	% TTL
Trial Outcome:			
Acquittal	1	11.1	1.9
Conviction	8	88.9	15.4
Subtotal	9	100.0	
Otherwise Dealt With:			
Guilty Plea (at any stage of proceedings)	17	42.5	32.7
Charge Withdrawn	17	42.5	32.7
Dismissed	1	2.5	1.9
Discharged	1	2.5	1.9
Stayed	4	10.0	7.7
Subtotal	40	100.0	
Unknown/missing	3		5.8
Total number of cases with one or more charges under section 271	52		100.0
Conviction Rate	89.3		

Note: In column one, N is the number of charges. Column two shows the percent of the subtotal. Column three shows the percent of total cases.

Source: Ontario Court of Justice, Hamilton-Wentworth, Information and Court Records

Unit of Analysis: Case (victim/occurrence)

Table 33 Sentences For Charges Under Sections 151, 173, and 271

Sentence	151	173	271
Probation Only	-	1	2
Suspended Sentence + Probation	1	-	-
Fine Only	-	1	1
Fine + Probation	-	-	1
Incarceration Only	1	-	6
Incarceration + Probation	3	-	6
Charges Sentenced	5	2	16
Periods of Incarceration			
. 2 weeks	-	-	2
. 1 month	-	-	4
. 3 months	2	-	1
. 4 months	1	-	1
. 6 months	-	-	1
. 24 months	1	-	2
. 48 months	-	-	1

Sources: Ontario Court of Justice, Hamilton-Wentworth, Information and Court Records

Unit of Analysis: Charge

Does the type of sentence relate to characteristics of the offence, victim and/or offender?

Because of the small number of cases available here it is not possible to be conclusive about the relationship between the sentences and the characteristics of the offence, victim or offender. In most cases sentencing under section 271 (sexual assault) was for charges involving older children. The heaviest sentence (48 months) was handed down in a case where the abuse had been ongoing, the offender was the stepfather, and the victim was a female child under 14 years. In this case several charges had been filed (including assault under section 266 making this a hybrid offence) and the accused was convicted on all counts except

for obstruction of justice (see Section 4.10.2 for a description of this case under "Case 5").

Objective 10:

It is difficult to assess the attainment of this objective on the basis of the information available here because of the limited number of cases. The range of sentence responses appears wider for the offence of sexual assault, which is not a product of Bill C-15, than for that of sexual interference, an offence created by the adoption of this Bill. Both of these offences have the same maximum punishment. Because sentencing is closely related to many of the particular circumstances of the specific case, there is no basis for valid comparability with such a small number of cases as could be defined here. Identifying the relationship between the characteristics of the cases and the sentences has not been possible for the same reason.

6.0 PERCEPTIONS OF PROFESSIONALS REGARDING BILL C-15

This section summarizes the results of the self-administered surveys of workers at Children's Aid Societies, crown prosecutors, police officers, and defence counsel as well as of the interviews with judges in the Hamilton-Wentworth Judicial District. The numbers of respondents in each category are not large[1] and the reader is cautioned that these results may not be representative of each of their populations. Instead, the views and experiences discussed in the following sections should be regarded as pointing to areas that deserve further consideration.

6.1 Perceived Problems with Substantive Sections of Bill C-15

Police officers, defence counsel and crown attorneys were asked to identify any problems they perceived with sections of the Criminal Code enacted as a result of Bill C-15. Only a handful of respondents cited problems with the substantive sections:

1. A defence lawyer noted a lack of clarity in the language used to distinguish section 151 (invitation to sexual touching) from section 153 (sexual exploitation of a child 15 to 18 years) and further commented on the likelihood of crown attorneys and police trying both of the above charges plus that of sexual assault.

   This individual also suggested that section 170 (parent/guardian procuring sexual activity of child) and section 171 (householder permitting child to engage in sexual acts) would unlikely be used since "normally if this bad, would likely have sexual assault incidents anyway."

2. A crown attorney commented that section 151 seemed only to require additional proof of age and suggested that if one could convict on this charge then one could likely convict on sexual assault.

3. A judge also noted the difficulty of determining whether the charge should be sexual assault or sexual touching.

[1] See Section 3.2.2.4 for a description of the response rates to the surveys.

6.2 Reported Experience with Procedural Sections of Bill C-15

The justice system respondents described their actual experience with the procedural sections of the Bill in terms of whether a request had been made for an item or support (such as a booster seat for the child in court, or a support adult in court), whether objections had been heard, and whether the item had been subsequently allowed (Table 34).

Ban on Publication

A ban had been requested by all crown attorney respondents and defence counsel at some time. In their experiences no objections had been raised and the ban was granted in all but one case reported by a crown attorney. Three-quarters of the judges reported this request with 17 percent saying that objections had been made. Five of the six judges had permitted a ban on publication of information that could identify the child.

Support Adult to Remain in Court

Most crown attorneys (83 percent) and defence counsel (100 percent) had requested permission for the support adult to remain in the courtroom for the child's testimony. Objections were relatively low in number and, in the case of crown attorneys, the request was usually granted (80 percent). Three defence counsel[2] surveyed said that on at least one occasion a request for a support adult to stay had been granted. While judges reported the request less frequently (38 percent), they had all granted it.

Clearing the Court of Spectators

Requests to clear the court of spectators occurred less frequently than those for the publication ban. However, both crown attorneys and judges reported that these requests seldom received objections and were most often allowed.

[2] It is not clear, despite their responses to the survey, whether defence counsel had initiated a request for this (although this would be unusual) or whether they were simply reporting occasions on which they had seen this occur.

Table 34 Experience with Procedural Component of Bill C-15, by Professionals

Item Requested[1]	Crown (N=6)						Defence (N=3)						Judges (N=8)					
	Requested		Objecting		Allowed		Requested		Objecting		Allowed		Requested		Objecting		Allowed	
	n	%[2]	n	%[3]	n	%[3]	n	%[2]	n	%[3]	n	%[3]	n	%[2]	n	%[3]	n	%[3]
Videotape	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Screens	2	33	1	50	1	50	-	-	-	-	-	-	3	38	1	33	1	33
Booster Seat	1	17	1	100	1	100	1	33	-	-	1	100	2	25	2	25	1	50
Child Bring Toy	1	17	-	-	1	100	-	-	-	-	-	-	-	-	-	-	-	-
Child Sit on Knee	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Adult Accompanied to Stand	2	33	2	100	1	50	1	33	1	100	-	-	1	13	-	-	1	100
Support Adult in Court	5	83	2	40	4	80	3	100	1	33	1	33	3	38	1	33	3	100
Witnesses Cleared	4	67	1	25	4	100	1	33	-	-	-	-	5	63	1	20	4	80
Spectators Cleared	4	67	1	25	4	100	1	33	1	100	1	100	5	63	1	20	2	40
Ban on Publication	6	100	-	-	5	83	3	100	-	-	3	100	6	75	1	17	5	83
Child Testifies Turned Away	-	-	-	-	-	-	-	-	-	-	-	-	1	13	-	-	-	-
Expert as Interpreter	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Expert Testified re Child's Testimony	1	17	-	-	1	100	-	-	-	-	-	-	-	-	-	-	-	-

[1] Please note that the information obtained here measures whether an item was ever requested in a respondent's experiences; therefore the number of experiences that a respondent has had with an individual item is not accounted for.

[2] Percentages are based on the total number of respondents.

[3] These percentages are based on the total number of requests.

[4] One judge did have a request for closed-circuit television testimony. Although there were objections, the accused was allowed to testify outside the courtroom. Two judges allowed children to testify using props.

Source: Key Informant Survey

Unit of Analysis: Respondent

Screens, Booster Seats, Toys

These items were not often requested. Indeed, only two of six crown attorneys requested screens, and just three of the eight judges had received such a request. Screens been allowed in less than one-half of these cases. As previously mentioned, key informants report that the use of screens and other props has been increasing and such items have certainly been used in the most recent past to a much greater extent than in the earlier period just after the implementation of Bill C-15.

An Adult to Accompany a Child to the Stand

Two crown attorneys and one defence lawyer had requested this. One judge had a request for a support adult to accompany a child at the stand. Only one crown attorney and judge had seen this done.

Using an Expert Witness

This had occurred for only one crown attorney surveyed and had been permitted without objection (although not during this study).

Videotapes, Closed-Circuit Television, and Child Testifying Turned Away from the Accused

One judge had experienced a request for the child to be permitted to testify turned away from the accused. This was not permitted although no objection was lodged. Another judge reported a request for testimony via closed-circuit television. This was arranged so that the accused watched from an adjacent room. No request for, or use was made of, the other items in the experience of the respondents to these surveys.

6.3 Perceived Changes Due to Bill C-15

Participants in the criminal justice system who were surveyed were asked whether they had noted changes in various areas pertaining to the new provisions resulting from Bill C-15 and, if so, whether they attributed these changes to the Bill itself. Few could point to any specific changes (Table 35). Some of those who did see a change either did not specify the nature of that change or else did not see it as being caused by Bill C-15.

Table 35 Perceived Changes Due to Bill C-15, by Professionals

Changes	Social Workers		Police		Crown		Defence		Judges	
	n[1]	%[2]	n[1]	%[2]	n[1]	%[2]	n[1]	%[2]	n[1]	%[2]
Number of Cases:	(3)	(25)	(4)	(67)	(3)	(50)	(2)	(67)	(1)	(13)
Increased	1	8	3	50	2	33	1	33	1	13
Other	2	17	-	-	-	-	-	-	-	-
Number of Children:	(2)	(17)	(3)	(50)	(1)	(17)	(2)	(67)	(2)	(25)
Increase in giving evidence	-	-	2	33	1	17	1	33	2	25
Evidence based on promise to	-	-	-	-	-	-	-	-	-	-
tell the truth	2	17	-	-	-	-	-	-	-	-
Other										
Children's Ages - Testifying:	(4)	(33)	(3)	(50)	(2)	(33)	-	-	(2)	(25)
Younger	1	8	-	-	-	-	-	-	2	25
Conviction with statement	-	-	-	-	-	-	-	-	-	-
Older	-	-	-	-	-	-	-	-	-	-
Not indicated[3]	3	25	3	33	-	-	-	-	-	-
Other	-	-	-	-	1	17	-	-	-	-
Use of Oath:	(2)	(17)	(2)	(33)	(4)	(67)	-	-	(2)	(25)
Younger children's oath	-	-	-	-	-	-	-	-	2	25
Promise to tell the truth	-	-	-	-	-	-	-	-	-	-
acceptable										
Not indicated[3]	-	-	2	33	-	-	-	-	-	-
Other	2	17	-	-	4	67	-	-	-	-
Children's Ages Who were sworn:	(3)	(25)	(2)	(33)	(1)	(17)	-	-	(3)	(38)
Younger	1	8	-	-	-	-	-	-	3	38
Older	-	-	-	-	-	-	-	-	-	-
Not indicated[3]	-	-	2	33	-	-	-	-	-	-
Other	1	8	-	-	1	17	-	-	-	-
Weighting Sworn v. Unsworn										
Evidence:	-	-	(1)	(17)	(2)	(33)	(2)	(67)	-	-
More weight to unsworn	-	-	-	-	-	-	-	-	-	-
More credibility - child	-	-	-	-	-	-	-	-	-	-
Not indicated[3]	-	-	1	17	-	-	-	-	-	-
Other	-	-	-	-	2	33	2	67	-	-
Rules on Hearsay Use:	-	-	-	-	(2)	(33)	(2)	(67)	-	-
More hearsay allowed	-	-	-	-	-	-	-	-	-	-
Relax who can give evidence	-	-	-	-	-	-	-	-	-	-
Less hearsay	-	-	-	-	-	-	-	-	-	-
Other	-	-	-	-	-	-	1	33	-	-
Out-of-Court Statements Used:	(1)	(18)	-	-	(2)	(33)	(2)	(67)	-	-
Use of videotapes	-	-	-	-	-	-	-	-	-	-
More allowed	-	-	-	-	-	-	-	-	-	-
Not indicated[3]	-	-	-	-	-	-	1	33	-	-
Other	-	-	-	-	1	17	-	-	-	-

Table 35 (cont'd)

Changes	Social Workers n	%	Police n	%	Crown n	%	Defence n	%	Judges n	%
Corroboration Requirements:	(4)	(33)	(3)	(50)	(3)	(50)	(1)	(33)	(1)	(13)
None required	1	8	-	-	-	-	-	-	1	13
More required	-	-	-	-	-	-	-	-	-	-
Not indicated[3]	-	-	2	33	-	-	1	33	-	-
Other	2	17	-	-	3	50	-	-	-	-
Expert Witnesses Used:	(2)	(17)	(1)	(17)	(3)	(50)	(2)	(67)	(1)	(13)
More often	1	8	-	-	-	-	-	-	-	-
Not indicated[3]	-	-	1	17	-	-	1	33	1	13
Other	-	-	-	-	-	-	-	-	-	-
Guilty Plea Proportion - Prior Preliminary:	(2)	(17)	-	-	-	-	(1)	(33)	-	-
Increased	-	-	-	-	-	-	-	-	-	-
Other	-	-	-	-	-	-	-	-	-	-
Guilty Plea Proportion - After Preliminary:	(2)	(17)	-	-	-	-	-	-	(1)	(13)
Increased	-	8	-	-	-	-	-	-	1	13
Other	-	-	-	-	-	-	-	-	-	-
Conviction Proportion:	(1)	(8)	(2)	(33)	(1)	(17)	(1)	(33)	(2)	(25)
Increased	-	-	2	33	1	17	1	33	2	25
Decreased	-	-	-	-	-	-	-	-	-	-
Other	1	8	-	-	-	-	-	-	-	-
Sentencing:	(2)	(17)	-	-	(2)	(33)	(2)	(67)	-	-
Lesser sentences	-	-	-	-	-	-	-	-	-	-
Harsher sentences	-	-	-	-	-	-	-	-	-	-
Other	1	8	-	-	-	-	2	67	-	-
Judges Dealing With Child:	(2)	(17)	(2)	(33)	(2)	(33)	(1)	(33)	(1)	(13)
Witnesses	-	-	-	-	-	-	-	-	-	-
Better understanding	1	8	-	-	-	-	-	-	-	-
Sceptical/poor understanding	-	-	-	-	-	-	-	-	-	-
Not indicated[3]	-	-	2	22	-	-	1	33	1	13
Other	-	-	-	-	-	-	-	-	-	-
Appeals:	-	-	-	-	-	-	-	-	-	-
Decreased	-	-	-	-	-	-	-	-	-	-
Increased	-	-	-	-	-	-	-	-	-	-
Other	-	-	-	-	-	-	-	-	-	-
Total Possible Respondents	12	100	6	100	6	100	3	100	8	100

[1] Numbers in brackets () indicate respondents who have noticed a change. Not all who have noticed a change attribute this change to Bill C-15.

[2] Percentages are based on the total number of respondents.

[3] Change is attributed to Bill C-15 but nature of change has not been indicated.

Source: Key Informant Survey

Unit of Analysis: Respondent

The most notable changes are the increase in the number of cases and the number of children giving evidence. Police officers particularly pointed this out. Judges indicated that younger children are testifying. CAS workers and police respondents also reported a change in the ages of children testifying although the nature of this change was not specified.

Crown attorneys and social workers suggested that Bill C-15 provisions are affecting the use of the oath for child victim/witnesses but failed to say how. Judges, however, did say that younger children are being sworn. A number of police, crown attorneys, defence counsel and judges all reported that, in their view, the proportion of convictions is increasing following the Criminal Code and Canada Evidence Act amendments.

6.4 Impact of Testifying on the Child

This account of the impact of testifying on the child witness relies on those effects noticed and reported by the criminal justice system participants and CAS workers surveyed (Table 36). A police officer, crown attorney and defence lawyer each said they felt that testifying has a positive effect on the child. More crown attorneys and police describe the impact as being negative, however, and 11 of the 12 CAS respondents (92 percent) maintain that testifying affects the child negatively. Three of eight judges were either unsure of its effects or felt that it varies depending on the child.

Table 36 Impact of Testifying on Child Witness, by Professionals

Impact	Social Workers n	Social Workers %[1]	Police n	Police %	Crown n	Crown %	Defence n	Defence %	Judges n	Judges %
Worse Than Sexual Abuse	-	-	-	-	-	-	-	-	-	-
Positive Effect	-	-	1	17	1	17	1	33	-	-
Does Not Understand Technicalities Re: Acquittal	-	-	-	-	-	-	-	-	-	-
Depends On The Child	-	-	-	-	-	-	-	-	1	13
Minimal Impact	-	-	-	-	-	-	1	33	-	-
Negative Impact	11	92	2	33	2	33	-	-	1	13
Unsure of Impact	1	8	-	-	2	33	-	-	2	25
Total Possible Respondents	12	100	6	100	6	100	3	100	8	100

[1] Percentages are based on the total number of respondents.

Source: Key Informant Survey

Unit of Analysis: Respondent

6.5 Effect of Bill C-15 on Professionals

6.5.1 Effect on Their Jobs

One of the important questions with respect to the Bill C-15 changes is the extent to which it affects the nature and amount of work required by professionals involved with child sexual abuse cases. According to this survey, very few see it as having increased their work load (Table 37). The biggest, and probably most significant, change here was reported by police officers. Four of six police respondents said that it is now easier to prosecute cases in which younger children are implicated. CAS workers are less sure of the impact of the Bill on their job.

Table 37 Perceived Effects on Job, by Professionals

Effect	Social Workers N	Social Workers %[1]	Police n	Police %	Crown n	Crown %	Defence n	Defence %	Judges n	Judges %
Increased Work Load	1	8	-	-	1	17	-	-	1	13
More Cases Going to Court	1	8	-	-	-	-	1	33	-	-
No Difference	1	8	-	-	-	-	-	-	2	25
More Cases, Less Corroboration	-	-	-	-	1	17	1	33	-	-
Easier to Prosecute Cases With Younger Children	1	8	4	67	-	-	-	-	1	13
Trials Longer/More Complicated	2	17	-	-	-	-	-	-	-	-
Easier/Charges More General	-	-	-	-	1	17	-	-	-	-
Easier For Child To Testify	-	-	-	-	1	17	-	-	-	-
More Intensive Inquiry re: Child's Ability to Testify	-	-	-	-	-	-	-	-	-	-
More Expensive/Cost of Video	1	8	-	-	-	-	-	-	-	-
Better Treatment of Child In Court	-	-	-	-	-	-	-	-	-	-
Easier To Work With Other Agencies	-	-	-	-	-	-	-	-	-	-
Respondent Unaware of Bill C-15	-	-	-	-	-	-	-	-	-	-
Investigate Differently For Court Purposes	-	-	-	-	-	-	-	-	-	-
Increase Public Awareness of Sexual Assault	-	-	-	-	-	-	-	-	1	13
Unsure	4	33	-	-	-	-	-	-	-	-
Total Possible Respondents	12	100	6	100	6	100	3	100	8	100

[1] Percentages are based on the total number of respondents.

Source: Key Informant Survey

Unit of Analysis: Respondent

6.5.2 Development of Policies and Protocols

Most of the police officers surveyed (five out of six) are aware of the special policies and procedures, e.g., the child sexual abuse investigation protocol, developed by their force for handling cases of child sexual abuse under Bill C-15 amendments (Table 38). Two-thirds of CAS workers reported that their organization has special policies for these cases. Only one crown attorney, however, was able to respond that their office has adopted any special policies specific to Bill C-15.

Table 38 **Special Policies and Protocols Specific to Bill C-15 Have Been Developed at the Workplace, by Professionals**

Policy	Social Workers		Police		Crown Attorneys	
	n	%	n	%	n	%
Yes	8	67	5	83	1	17
No	4	33	1	17	2	33
Total Possible Respondents	12	100	6	100	6	100

Source: Key Informant Survey

Unit of Analysis: Respondent

6.5.3 Availability of Special Training

Almost all CAS workers know that training is available to them and have, in fact, received it (Table 39). Most police officers responding have also had special training in handling child sexual abuse cases under Bill C-15. Since the implementation of the child sexual abuse investigation protocol, police officers and child welfare workers have received special training together. This has apparently led not only to greater familiarity by both parties with investigation methods and procedures but also to a significantly increased level of understanding of one another's work. One-half of the crown attorneys are aware of training opportunities but only one reported having received training. The

majority of judges indicated that they are not aware of any special training related to Bill C-15.

Table 39 Special Training Specific to Bill C-15 Available and Received for Dealing With Child Sexual Abuse Cases, by Professionals

	Social Workers		Police		Crown		Defence		Judges	
	n	%	n	%	n	%	n	%	n	%
Bill C-15 Training Available										
Yes	11	92	5	83	3	50	-	-	1	13
No	1	8	1	17	3	50	3	100	5	63
Bill C-15 Training Received										
Yes	10	83	4	67	1	17	-	-	-	-
No	1	8	1	17	2	33	-	-	-	-
Total Possible Respondents	12	100	6	100	6	100	3	100	8	100

Source: Key Informant Survey

Unit of Analysis: Respondent

6.6 Summary

According to the CAS workers, police officers, defence counsel, crown attorneys and judges who responded to the survey regarding Bill C-15, the amendments are having some impacts and most are positive. Provisions being implemented most frequently in court are the ban on publication of information that would identify the child, and clearing spectators from the court. An additional measure being used in Hamilton-Wentworth is to permit the support adult to remain in the courtroom.

A minority of the justice system professionals who were surveyed pointed to some changes they have experienced since the adoption of Bill C-15. These include greater ease in being able to prosecute cases of child sexual abuse involving younger children, increases in the number of child sexual abuse cases being prosecuted, more and younger children giving sworn testimony, and more convictions. At the same time, most of the CAS workers and some of the other participants in the criminal justice system also describe the effects of testifying as being negative for the children involved.

7.0 CONCLUSIONS

This section brings together the results of the review of Bill C-15 in Hamilton-Wentworth as they relate to the initial research objectives outlined in Section 2.3 and summarizes the observations made by the justice system participants who responded to our survey.

7.1 Implementation and Impact of Bill C-15

The findings of the several different research activities undertaken for this review have been reported in Section 5.0. In that section, too, we have outlined the implications of these findings for the handling of cases of child sexual abuse by the criminal justice system from the point of initial report to the conclusion of the prosecution. The discussion in the next few pages consolidates these findings and their implications.

Implementation and Outcome Relevant to Goal 1

Goal 1: To Provide Better Protection to Child Sexual Abuse Victims

Objective 1: To broaden the range of conduct captured by the Criminal Code

Clearly, the new offences are being used and cover a broader range of conduct than the former offence section 146 which referred to intercourse only. In the 34 cases charged under sections 151 (sexual interference) and 152 (invitation to sexual touching) vaginal intercourse occurred only in four. Section 153 (sexual exploitation of children 15 to 18 years) involved vaginal penetration in just one of the nine cases. As calculated for this study, the conviction rate for offences of sexual interference was 80 percent and for invitation to touching, 100 percent. This is persuasive evidence regarding the appropriateness of these Criminal Code sections for the kinds of child sexual abuse reported to police. If the conviction rates are calculated according to the customary method used in Ontario, they fall well below those of the study, at 26.7 and 50 percent respectively of all charges filed under these sections. The extent to which these offences are being successfully prosecuted is a matter of how these rates compare with those for other types of offences.

Objective 2: To provide more protection for younger victims

Protection is being extended to younger children in that charges are being filed for exposing to children under 14, and these charges are being successfully prosecuted. The finding that the as many of these charges were dismissed as

resulted in guilty pleas suggests that this is a difficult offence to prosecute. Convictions were obtained more often through guilty pleas than through findings of guilt after trial. The testimony of younger children is also being accepted in that neither mistaken age nor consent have been advanced as defences in the cases reviewed here. This suggests that the new provisions of Criminal Code section 150.1 are being fully implemented.

Objective 3: To eliminate gender bias regarding victims and offenders

The effectiveness of Bill C-15 changes to the Criminal Code in eliminating gender bias is evident in the rate of charging in cases involving male complainants. It is less clear that prosecution of these offences has yet been as successful as those involving females.

Objective 4: To provide protection for children in cases where disclosure is delayed

Although the number of charges related to offences where disclosure was delayed is relatively small, convictions are being obtained in these cases. These precedents argue that the new offences are being successful in providing protection to children or adults who make a disclosure a year or more after the event.

Implementation and Outcome Relevant to Goal 2

Goal 2: To Enhance Successful Prosecution of Cases Involving Child Sexual Abuse

Objective 5: To minimize the problem of child sexual abuse victims giving evidence

It is not clear to what extent the evidence here permits the conclusion that the new provisions "minimize the problem" of child sexual abuse victims giving evidence. All who appeared were deemed able to be sworn after questioning (except for one case where the outcome is unknown although the child did testify). Since videotapes are not currently used, their impact on the introduction of the child's testimony is difficult to ascertain. It is highly probable that the police decision to charge and the crown attorney's decisions in prosecuting the case screen out at an early stage children who are not seen to be potentially capable of testifying under oath.

Objective 6: To protect the credibility of the child victim/witness in cases of child sexual abuse

On the evidence here, it can be concluded that the credibility of the child witness is being protected in cases of sexual abuse. While suggestions for the need for corroboration have been alluded to by the defence, there is no indication that this is being required. In addition, convictions are being successfully obtained on the child's sworn evidence. It appears that defence counsel generally realize, as well, the need to protect the child from damaging allegations of sexual behaviour on the part of the child. At the same time, it is difficult to attribute this directly to the provisions of Bill C-15, as these provisions have been available for some time to adult complainants in cases involving sexual offences.

Implementation and Outcome Relevant to Goal 3

Goal 3: To Improve the Experience of the Child Victim/Witness

Objective 7: To avoid repetitious interviews with the child victim/witness

Whether repetitious interviews with the child victim/witness are being avoided cannot be determined on the basis of the information available to this study. There is a presumption, however, that the use of videotapes at the initial investigation stage will accomplish this aim. Both the Hamilton-Wentworth Regional Police and the child welfare agencies are prepared to implement videotaping, as shown by their having a protocol in place as well as the necessary equipment and renovated interview rooms. However, until the Supreme Court makes a definitive ruling on the constitutionality of videotaping, the practice of videotaping interviews has been left to the discretion of the investigators. Since the child's disclosures or statements are not being taped, it may be concluded that this objective is not now being met.

Objective 8: To provide support and assistance to the child victim/witness precourt and in court so that they can give their testimony

It is clear that devices, such as having a support adult and using the screen, and Criminal Code provisions, such as clearing the public, are helpful to the child victim/witness where they are used. The most frequently used measure reported here was having the support adult stay in the courtroom. Key informants have reported, since the completion of this review, that supports - such as a teddy-bear, and having a social worker on the stand with the child - have been permitted. Screens were used to some extent for the cases examined here but, more often, the child was permitted to testify turned away from the accused. This appears to be a useful strategy that enables children to relax somewhat. Based on interviews

carried out with children and parents, adequate preparation of child victim/witnesses ahead of time is the most important kind of assistance. One critical element of this preparation is a visit to the actual courtroom in which he or she will testify.

Objective 9: To provide protection for the child victim/witness regarding identity and the circumstances of the occurrence

Overall, the provisions of Bill C-15 that extend this protection to children are being widely used. The necessity for shielding the child from public inspection, stigma or possible ostracism by peers is accepted by everyone involved in the criminal justice process.

Implementation and Outcome Relevant to Goal 4

Goal 4: To Bring Sentencing in Line with the Severity of the Incident

Objective 10: To provide for a range of sentence responses to a broad range of severity of abuse

It is difficult to assess the attainment of this objective on the basis of the information available here because of the limited number of cases. The range of sentence responses appears wider for the offence of sexual assault, which is not a product of Bill C-15, than for that of sexual interference, an offence created by the adoption of this Bill. Both of these offences have the same maximum punishment. Because sentencing is closely related to many of the particular circumstances of the specific case, there is no basis for true comparability with such a small number of cases as could be defined here. Identifying the relationship between the characteristics of the cases and their sentences has not been possible for the same reason.

7.2 Summary of Survey of Professionals

According to the CAS workers, police officers, defence counsel, crown attorneys and judges who responded to the survey regarding Bill C-15, the amendments are having some impacts and most are positive. The provisions requested and implemented most frequently in the court are the ban on publication of information that would identify the child and the clearing of spectators from the court. An additional measure used in Hamilton-Wentworth is to permit the support adult to remain in the courtroom.

A minority of the justice system professionals who were surveyed pointed to some changes that they have experienced since the adoption of Bill C-15. These include greater ease in being able to prosecute cases of child sexual abuse involving younger children, increases in the number of child sexual abuse cases being prosecuted, more and younger children giving sworn testimony, and more convictions. At the same time, most of the CAS workers and some of the other participants in the criminal justice system also describe the effects of testifying as being negative for the children involved.

7.3 Assessment of the Extent of Change in the Criminal Justice System's Handling of Cases Since the Implementation of Bill C-15

A review of this report by key participants in the criminal justice system in Hamilton-Wentworth produced some important observations. This subsection offers these observations as one additional, and important, perspective on the impact of Bill C-15.

One of the most impressive results of implementing Bill C-15 in Hamilton-Wentworth (as this research seems to indicate) is a change in attitudes. Police and child welfare agencies have a tremendously improved relationship over the last few years, a situation this review verifies. This attitudinal change has also affected other types of cases, such as physical abuse and gross neglect, which have been brought to criminal court. One case in particular, which demonstrates the new attitudes and acceptance of children's testimony, related to Munchausen's syndrome;[1] the witness was only three years old. The judge was prepared to hear the child's evidence. Upon hearing this, the defence counsel entered a guilty plea. In the past, child witnesses in Hamilton-Wentworth courts were seldom heard and those under seven years of age were simply not permitted to testify. The change in this practice is very encouraging for people working with cases of child sexual abuse.

Judges also appear to be more sensitive to the dynamics related to swearing child witnesses, as borne out in the report by the fact that all six children gave sworn evidence. Previously, even 12-year-old witnesses were forced to give unsworn testimony, partly as a result of confusing questioning.

---

[1] Munchausen's syndrome is a psychiatric disorder characterized by repeated fabrication of illness, usually acute, dramatic, and convincing, by a person who wanders from medical facility to medical facility for treatment. In one variant of the syndrome, called "Munchausen by proxy," a child may be used as a surrogate patient. The parent falsifies history and may injure the child with drugs, add blood or bacterial contaminants to urine specimens, etc., to simulate disease.

Although the use of expert witnesses was not identified in the cases reviewed for this research, crown attorneys are now calling more expert witnesses and judges appear to be allowing such evidence, either regarding the case directly, about the potential impact on the child, or related to victim/witness impact statements.

Another recent development deserves mention; it is that defence counsel appear to be allowing support witnesses to remain in the court, either by allowing them to testify earlier or by not requesting their removal. In the past, defence counsel would often subpoena every person who came to court accompanying the child, whether or not they had anything substantial to add.

The above observations reinforce several of the conclusions of this research. They also go beyond the specific framework of this review to document further changes in the handling of child abuse cases and to provide a context within which to grasp the magnitude of these changes. Most importantly, these conclusions themselves, offered by participants working within the criminal justice and child welfare systems, provide evidence of the results possible in a community where deliberate efforts have been made to establish mechanisms for cooperation and collaboration between organizations and systems. This is a challenge which quite clearly can be met by police, child welfare agencies, crown attorneys and courts when the ultimate objectives are given high priority by all those involved.

BIBLIOGRAPHY

Achenbach, T. M., & Edelbrock, C. (1983). Manual for the Child Behavior Checklist and Revised Behavior Profile. Burlington, Vermont: Queen City Printers, Inc.

Bagley, C. & Young, L. (1987). Juvenile Prostitution and Child Sexual Abuse: A Controlled Study. Canadian Journal of Community Mental Health, 6, 5-26.

Dube, R. & Herbert, M. (1988). Sexual Abuse of Children Under 12 Years of Age: A Review of 511 Cases. Child Abuse and Neglect, 11, 201-211.

Finkelhor, D. (1979). Sexually Victimized Children. New York: Free Press.

Fritz, G. S., Stoll, K. & Wagner, N. N. (1981). A Comparison of Males and Females Who Were Sexually Molested as Children. Journal of Sex and Marital Therapy, 7, 54-59.

Goodman, G. (1988). The Competency of Child Witnesses. Paper presented at Focus on Child Abuse: New Knowledge, New Directions, Toronto.

Kendall-Tackett, K. A., & Simon, A. F. (1987). Perpetrators and Their Acts: Data from 365 Adults Molested as Children. Child Abuse and Neglect: The International Journal, 11, 237-246.

Kercher, G. and McShane, M. (1984). Characterizing Child Sexual Abuse on the Basis of a Multi-agency Sample. Victimology: An International Journal, 9, 364-382.

Margolin, L., & Craft, J. L. (1990). Child Abuse by Adolescent Caregivers. Child Abuse and Neglect, 14, 365-373.

Pierce, R., & Pierce, L. H. (1985). The Sexually Abused Child: A Comparison of Male and Female Victims. Child Abuse and Neglect, 9, 191-199.

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

Russell, D. E. H. (1983). The Incidence and Prevalence of Intrafamilial and Extrafamilial Sexual Abuse of Female Children. Child Abuse and Neglect, 7, 133-136.

Russell, D. E. H. (1984). Sexual Exploitation: Rape, Child Sexual Abuse and Workplace Harassment. Beverly Hills, CA: Sage.

Russell, D. E. H. (1986). The Secret Trauma: Incest in the Lives of Girls and Women. New York: Basic Books.

Sorrenti-Little, L., Bagley, C. and Robertson, S. (1984). Operational Definition of Longterm Harmfulness of Sexual Relations with Peers and Adults by Young Children. Canadian Children, 9, 46-57.

Tufts New England Medical Centre. (1984). Sexually Exploited Children: Services and Research Project. Boston: Author.