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WORKING DOCUMENT

REVIEW AND MONITORING OF CHILD SEXUAL ABUSE CASES IN SELECTED SITES IN ALBERTA

Studies on the Sexual Abuse of Children in Canada

Joseph P. Hornick, Ph.D., Executive Director,
Barbara A. Burrows, M.A., and
Debra Perry, M.SC., Research Associates
Canadian Research Institute for Law and the Family
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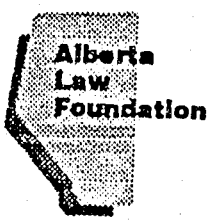

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October 1991

EXECUTIVE SUMMARY

Introduction and Purpose of the Study

As part of the review process of Bill C-15, An Act to Amend the Criminal Code and the Canada Evidence Act, the Department of Justice Canada launched a series of research initiatives to determine whether the goals and objectives of Bill C-15 have been realized. In August 1989, the study described in this report was funded under contract as a shared project between the Department of Justice Canada and Health and Welfare Canada. In keeping with the need to assess the impact of Bill C-15, the intent of the current study was also to collect information relevant to the broader response to child sexual abuse by examining the interaction between the child welfare and criminal justice systems in Calgary and Edmonton, Alberta. Thus, this study included three distinct purposes:

(1) To describe the nature of the interrelationship between the child welfare system and the criminal justice system regarding child sexual abuse.

(2) To examine the nature of the child victim/witness experience in the criminal justice system since the proclamation of Bill C-15.

(3) To identify the degree to which the goals and objectives of Bill C-15 have been achieved.

Bill C-15, An Act to Amend the Criminal Code and the Canada Evidence Act

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 52 recommendations for dealing with the problems identified. 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).

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 the use of 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 entitled "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.

The design of amendments to the Criminal Code outlined in Bill C-15 were driven by four broad goals which were identified in the debates in the House of Commons. The official position stated as 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.

Research Design

The scope of this study was broad. The first and second purposes of the study, i.e., describing the nature of the interrelationship between the child welfare and criminal justice systems, and describing the nature of the child victim/witness experience with the criminal justice system required an exploratory/observational study approach. The third purpose, i.e., identifying the degree to which the goals and objectives of Bill C-15 have been achieved, required an impact study led by the specific research questions.

The study began 19 months after Bill C-15 was proclaimed, thus a posttest/ longitudinal tracking study was implemented. The exploratory nature of the study, and the lack of an existing study model for assessing legislation, led to the development of a

complex multi-component study. This design involved collecting data from numerous sources, utilizing a variety of data collection strategies, including the following:

(1) Analysis of police, social services, and court information systems;

(2) Review of police and social services agency files;

(3) Direct observation of child victim/witnesses in court;

(4) Review of court transcripts;

(5) Survey of key informants, including social workers, police, crown prosecutors, defence lawyers and judges;

(6) Analysis of articles in newspapers; and

(7) Post-court interviews with victims and/or guardians of victims.

Summary of Findings and Conclusions

The Interrelationship Between the Child Welfare System and the Criminal Justice System

Because of the principle of "least intrusiveness" expressed in the Alberta Child Welfare Act (1985), complete investigations of allegations of child sexual abuse are required by Alberta Family and Social Services only when the alleged offender is a family member. When the alleged perpetrator is not known by the family (i.e., extrafamilial abuse), and protective services are not determined to be necessary, the case may be referred directly to a community resource. As expected, there is evidence of considerable inter-agency cooperation between the police and Alberta Family and Social Services for Calgary child sexual abuse cases when the offender lived with the child. Further, child welfare workers were the major source of referral of child sexual abuse cases to the police. A considerable amount of case conferencing occurred, involving social workers and police.

In Edmonton, there was even more inter-agency involvement between the police and Alberta Family and Social Services than in Calgary. The nature of the cases that were involved was also different. Calgary Social Services focussed more on intrafamilial abuse cases, whereas the data suggest that Edmonton Social Services included a

considerable proportion of extrafamilial abuse cases. This seems to reflect a broader interpretation of the Alberta Family and Social Services mandate in Edmonton.

In both Calgary and Edmonton, inter-agency committees with representatives from child welfare, police, and other relevant agencies have developed protocols to guide investigations of both physical and sexual abuse. Further, both Calgary Police Service and Edmonton Police Service have specialized sex crimes/child abuse units. In Edmonton all cases of child sexual abuse are referred directly to this unit; in contrast, complaints received by division offices in Calgary are often concluded by the police officer who answered the call and are never referred to the special child abuse unit which is located at police headquarters.

The Nature of the Child Victim/Witness Experience in the Criminal Justice System

Number of Cases

The overall reporting rates in both Calgary (90 per 100,000 in 1990) and Edmonton (114 per 100,000 in 1990) are relatively high compared to other provincial and national rates. For example, the reporting rate for all sexual assaults in Alberta in 1988 was approximately 145 per 100,000 (Roberts, 1990b). Unfounded rates, in contrast, are lower (i.e., eight percent for Calgary and seven percent for Edmonton) compared to the 1988 national average rate of 15 percent for sexual assault (Roberts, 1990b). However, it should be pointed out that the case screening process that operates as cases progress through the criminal justice system results in only a portion of the cases reported leading to charges being laid (44 percent for Calgary and 25 percent for Edmonton), the child giving testimony in court, and subsequent convictions.

Case Profile

The demographic profiles of victims who come into contact with the Calgary and Edmonton special sex crimes investigation units are significantly different. The Calgary unit investigated more cases involving younger victims (over 15 percent under four years old in Calgary compared to only five percent for Edmonton) and intrafamilial offenders reported by social workers. The Calgary cases were also characterized by a large time span from most recent occurrence to report to police (8.1 months compared to 5.1 months for Edmonton). To some extent, differences could be explained by the fact that immediate reports involving teenagers tend to be handled by division officers in Calgary and are not referred to the special investigation unit. In contrast, all

Edmonton cases are referred to the sex crimes unit. Thus, the Edmonton file review sample had a high proportion of the cases involving teenage victims who immediately reported incidents involving extrafamilial offenders.

There seems to be more to the differences, however, than the sample selection that occurred because of the Calgary police protocol. For instance, the court observations were arranged directly from the dockets of all cases with victims under 18 years old. Despite the fact that the same procedure was followed in Calgary and Edmonton, and was totally independent of the police file review and police information systems, significant differences were still apparent. Edmonton had a higher proportion of cases involving relatively older children who were victimized by non-related offenders.

Duration

The time frame for cases which proceed to court is considerable (i.e., average time for report to police to trial was nine months for Calgary and 8.2 months for Edmonton). This would be especially problematic for young children. In the R. v. Beauchamp and Beauchamp case, for example, the child witness was victimized at the age of four years and her disclosure was videotaped when she was five years old. By the time the trial took place she was seven years old. By this time she could not recall the actual incidents but did remember doing the videotape and testified that she knew what she said was true.

Performance as a Witness

There is little question that testifying about a sexual violation is traumatic for an adult or a child. Overall, however, the court observers were impressed with how well the children actually handled the situation. The multivariate analysis, however, suggests a number of things that affected the child on the stand.

- Children who were physically harmed during the incident had more difficulty presenting evidence.
- Children had difficulty "telling the story" if a long period of time had passed.
- The fewer strangers in the courtroom and the more supportive adults, the easier it was for the child to give evidence.

- Cross-examination by defence counsel was significantly the most stressful part of the court process.

- Child victim/witnesses' feelings about the court process (from post-court interviews) seemed to be directly affected by the outcome of the proceedings, i.e., victim/witnesses were more upset if the proceedings did not result in conviction.

Impact of Bill C-15

The conclusions below are presented as they pertain to the impact of specific sections of Bill C-15.

Section 150.1: Consent No Defence

Consent as a defence continued to be raised by defence in Calgary (48 percent of the cases) and Edmonton (18 percent). Although consent was raised, there was no evidence regarding whether or not it was accepted by the courts. Mistaken age was hardly ever raised as a defence.

Subsection 150.1(2): Consent and Age Difference

This section was relevant in a small number of cases (n=6). The conviction rate for these cases was 50 percent, which compares favourably with overall conviction rates.

Section 151: Sexual Interference

After section 271 (Sexual assault), section 151 was the section under which charges were most frequently laid. Charges under this section have tended to increase in both Calgary and Edmonton from 1988 to 1990.

Section 151 was used to cover a broad range of conduct with intercourse occurring in only approximately 16 percent of the cases. The most frequently reported behaviour was fondling. While Calgary police have tended, particularly in 1988 and 1989, to lay more charges under section 151 than Edmonton police, a significant number of these charges were withdrawn by crown prosecutors in Calgary. This could be an indication of plea negotiation or, alternatively, the Calgary crown prosecutors may have preferred to proceed under the more tested section 271, which was most frequently laid in conjunction with section 151.

However, the crown prosecutors did not tend to withdraw charges under section 271.[1]

Aside from the high proportion of charges withdrawn in Calgary, the conviction rates for section 151 (Calgary = 52 percent and Edmonton = 62 percent) were quite high and compare favourably to conviction rates reported in studies of adult sexual assault. Loh (1980), for example, reports conviction rates of 57 percent for sexual assault and 59 percent for rape. It should be pointed out, however, that these high conviction rates were due to a significant degree to guilty pleas. This could in fact be considered desirable since the victim then does not necessarily have to testify.

Section 152: Sexual Invitation

Section 152 was also used to cover a broad range of conduct, including invitation to touch and exposure, as well as fondling of the offender by the victim. This would be expected given that this section focusses on rather specific offences compared to section 151 or section 271. Conviction rates for section 152 were even higher than for section 151, however, one must be cautious in interpreting this given the low frequencies of charges under this section. Guilty pleas were also a probable outcome for section 152.

Section 153: Sexual Exploitation

Charges under section 153 were not laid very often. Further, in Calgary when charges were laid, the crown prosecutor tended to withdraw the charges.

Section 155: Incest; Section 159: Anal Intercourse; Section 160: Bestiality; Section 170: Parent/Guardian Procuring; Section 171: Householder Permitting Sexual Activity; Section 172: Corrupting Children

The frequency of these offences was too low for any meaningful analysis.

[1] During the duration of the study, 92 cases (29 percent of the total charges) in Calgary involved one or more charges under both sections 151 and 271 compared to 31 cases (seven percent of the total charges) in Edmonton. Calgary police had also laid 49 single charges of section 151 compared to 41 charges in Edmonton.

Subsection 173(2): Exposure to Children Under 14 Years of Age

It appears that Edmonton police used this section more than the Calgary police, however, the data are limited by the way in which charges were coded by the two police agencies. In Edmonton, charges were laid under this section when exposure was the only behaviour that occurred. When exposure occurred with other behaviour, which it often did, Edmonton police laid charges under the more serious hybrid and indictable offences. Thus, although the frequency of usage seems low, subsection 173(2) does seem to be useful for the "exposure only" summary offences.

Subsections 212(2) and (4): Living Off The Avails and Obtaining for Sexual Purpose Persons Under 18 Years Old

During 1989, nine charges were laid under section 212 in Calgary. In 1990, the number decreased to five charges (see Table 5.1). In Edmonton, ten charges were laid under section 212 in 1989 and five in 1990 (see Table 5.2).

The number of charges under section 212 do not seem to reflect the real level of the problem of juvenile prostitution. The Calgary Police Commission Prostitution Report (1991) provides a probable explanation. This report documents that in 1988, 52 charges were laid under section 195.1 (Soliciting), against female prostitutes under 18 years old. In 1989, there were 57 charges under section 195.1 and this rose to 79 charges in 1990. The age of the female prostitute charged under this section was as low as 13 years old.

Unfortunately, comparable data were not available for the Edmonton Police Service when this report was written, however, it is reasonable to assume that the trend of using section 195.1 to deal with female prostitution under 18 years of age would also hold.

The lack of use of subsections 212(2) and (4) and the continued use of section 195.1 is not consistent with the spirit of Bill C-15, i.e., the protection of the young. However, the objective of the use of section 195.1, according to the Calgary Police report, was to prevent the young person continuing to work as a prostitute (Calgary Police Commission Prostitution Report, 1991). With the help of the Justice of the Peace and the youth court judges, the youth have often been barred from the "stroll" areas of Calgary as a condition of release. Thus, the police seem to be applying the solicitation legislation simply because it is enforceable.

In contrast, anecdotal information obtained during the study suggests that subsection 212(2) (Living off the avails) is only enforceable when a prostitute "turns" against a pimp. Likewise, charges under subsection 212(4) (Obtaining a person under 18 years of age for sexual purposes) could only be enforced if the "John" was caught in the act. Thus, traditional policing methods do not seem to be appropriate for enforcement of subsections 212(2) and (4).

Section 271: Sexual Assault

As indicated in the discussion of section 151, section 271 is most often used in combination with section 151. The impact of the use of section 271 in this study was impressive, and thus was included in the analysis even though it was not part of Bill C-15. The conviction rate was very high at 81 percent for Calgary and 60 percent for Edmonton. Further, rates of charges withdrawn were relatively low (14 percent for Calgary and less than two percent for Edmonton). The incarceration rates were also high (62 percent for Calgary and 50 percent for Edmonton). Overall, the results of this study indicated that section 271 is being used quite effectively to deal with child sexual assault in the criminal justice system.

Section 272: Sexual Assault, Level II, Sexual Assault, Level III

The low frequency of these charges prohibit analysis.

Section 274: Corroboration Not Required

Corroboration, as indicated by the presence of more than one victim, is an important predictor in the decision by police to lay charges. Interestingly, in cases which go to trial, multiple victims is also associated with acquittal.[2] One explanation for this could be that having several victims giving "similar fact" evidence raises the probability that at least one witness will give poor and/or contradictory evidence which then affects the credibility of the entire case.

[2] For the most part we are referring here to cases of multiple victims in a "series" as opposed to simultaneous multiple victims. Multiple series victims have a common offender but not a common incident. Multiple simultaneous victims have a common offender and incident. Thus, technically, evidence given by multiple series victims is "similar fact" evidence rather than corroboration. Here, however, we are interpreting it in the broadest sense.

The presence of witnesses in Calgary was also an important predictor of clearance by charge.[3] However, it was not an important predictor of conviction as a trial outcome in Calgary or Edmonton. This finding seems to support the interpretation that the courts are considering section 274 seriously since a considerable number of cases that did not involve a witness resulted in conviction.

Section 275: Recent Complaint Abrogated

In the past, courts were permitted to allow into evidence statements made to a third party by the victim of a sexual assault. Section 275 abrogating this rule of recent complaint in sexual offences, which was first enacted in 1982 (Bill C-127), was extended to the new Bill C-15 sexual offences. No data were directly relevant to the abrogation of recent complaint.

Section 276(1): Sexual Activities

Past sexual activities was very seldom raised as a defence in either Calgary or Edmonton. Thus, it would seem the section has been effective.

Section 277: Reputation Evidence

Reputation as a defence was never raised in the Calgary cases studied. However, it was raised in Edmonton for a number of cases (18 percent). Possibly the older age of the victim in Edmonton may account for this difference.

Subsection 486(2.1): Testimony Outside The Courtroom

Screens were used in less than ten percent of the cases in Calgary and less than four percent of cases in Edmonton. Closed-circuit television was not used. The infrequency of use of the screen prohibits any detailed analysis. However, anecdotal information from the court observations and the post-court interviews with victims does suggest that it is a useful mechanism for cases where the child witness is highly anxious and easily intimidated. Far more common than the screens was the use of support people in the courtroom, which has a direct positive effect on the child victim/witness.

[3] "Witness" does not imply someone who directly observed the alleged incident.

Subsection 486(3): Order Restricting Publication

Requests for ban on publication were made in over 50 percent of the cases, and were almost always ordered. This new section seems to have been readily adopted.

Section 715.1: Videotaped Evidence

During the time period of the study, videotapes of the victim were made for 119 (18 percent) of the cases investigated. However, very few were used in evidence and these are briefly discussed below.

The first case considering the use of videotaped evidence was R. v. Meddoui.[4] The trial judge was required to address two major issues: (1) what constituted "a reasonable time after the offence" for the making of the videotape and (2) what was required before the child could be said to have "adopted" the contents of the videotape. The trial judge held that the tape had been made within a reasonable time (two days after the offence date) and that the child had adopted its contents. This opinion was upheld on appeal.[5]

The constitutional validity of section 715.1 was challenged in Alberta, as it was in other provinces. On February 27, 1989, in R. v. Thompson[6] McKenzie, J., ruled that the section violated the accused's rights under the Charter of Rights and Freedoms. While only binding on the Provincial Court of Alberta, this decision appears to have effectively halted further attempts to use the videotape provisions at the Queen's Bench level until R. v. Beauchamp and Beauchamp.[7] In that case, the defence raised the same Charter issues as had been raised in Thompson. The argument was unsuccessful, the videotape was admitted and the accused were convicted on June 28, 1990. As neither of these cases were appealed, there are now conflicting opinions in the Alberta Court of Queen's Bench about the constitution validity of the videotaped evidence section.

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[4] R. v. Meddoui (unreported), Edmonton Registry, Nov. 1, 1988, Sinclair, J. (Alta.Q.B.).

[5] R. v. Meddoui (1991) 61 C.C.C. (3d) 345, 2 C.R. (4th) 316, 111 A.R. 295 (C.A.), Kerans, Harradence and Girgulis, JJ.A. A new trial was ordered for different reasons.

[6] R. v. Thompson (1989), 68 C.R. (3d) 328, 97 A.R. 157 (Alta, Q.B.).

[7] R. v. Beauchamp (unreported), Calgary No. 8901-0707-CO, June 28, 1990, Power, J. (Alta. Q.B.).

The only case to reach the Alberta Court of Appeal was the appeal from conviction in Meddoui.[8] The Court of Appeal did not discuss the constitutional validity of the section and made only passing reference to the concerns raised by McKenzie, J., in Thompson. It is not clear whether the Court rejected the ruling in Thompson or whether, because the trial decision in Meddoui was rendered prior to Thompson, when validity of the section had not yet been challenged, the Court saw no reason to consider the issue.

Subsection 16(3) Canada Evidence Act: Oath

The majority of the children who gave evidence at court proceedings were sworn, usually after questioning. To our knowledge, all children not sworn were permitted to give evidence under promise to tell the truth. When questioning the child most judges asked questions regarding the child's knowledge of truth and lies, however, some judges also asked questions regarding Sunday school and church.

Additional Issue: Time Limitation

Prior to Bill C-15, section 141 provided that certain ennumerated sexual offences could not be prosecuted if more than one year elapsed from the time the alleged offence had occurred. This limitation was repealed by Bill C-15.

This clause was meant to protect children in situations where disclosure was delayed. For a small number of cases in this study, (i.e., six percent of the relevant cases in Calgary and two percent in Edmonton), the section was applied and resulted in a 60 percent conviction rate in Calgary. A very high number of relevant charges (77 percent) were also withdrawn in Calgary. However, problems prosecuting such cases could be due to difficulties the child might have had in remembering details of the offence.

Additional Issue: Gender of the Offender

The small number of cases involving female offenders which went to disposition was somewhat unexpected since five percent of the cases investigated by police in Calgary and two percent of the cases investigated in Edmonton involved female suspects. However, most of these cases seem to be screened out

[8] Supra, n.23.

prior to laying charges. If we consider only cases where the police have cleared by charge this proportion drops to less than two percent (n=6) in Calgary and (n=9) in Edmonton.

Overview of Impact

Perhaps an overview of the impact of Bill C-15 is well summarized by the perception of the professionals. First, in terms of the substantive components of Bill C-15, there was a lack of consensus and a low frequency of professional respondents who identified specific problems with the various sections, indicating, perhaps, a general acceptance of these components. Second, the experiences of the professionals indicated an openness of the key players to court innovations with the exception of defence lawyers objecting to close contact between the child and a support adult during testimony, and the use of videotape. Third, in the perceptions of the professionals, the number of child victims giving testimony increased, younger child victim/witnesses were being sworn, and corroboration was no longer important.

1.0 INTRODUCTION

Public awareness and concern about the problem of child sexual abuse have rapidly increased since the mid-1970s (Finkelhor, 1986). The number of cases reported to agencies, the number of professionals involved, and the literature on the subject have also grown throughout this period. In Canada, both the child welfare system and the criminal justice system are mandated to respond to reports of child sexual abuse. The circumstances of a particular occurrence determine whether one or both systems become involved. The criminal justice system is empowered to investigate and resolve all cases of sexual assault regardless of the relationship of the offender to the victim. In contrast, the child welfare system becomes involved primarily in cases where either a child is considered to be at substantial risk of being sexually abused by a guardian or the guardian cannot or is unwilling to protect the child from sexual abuse.

Both systems have recently attempted to respond to the growing problem of child sexual abuse. Child welfare legislation in Alberta, for example, was revised in July 1985 to support and encourage families to deal with their problems and, at the same time, provide a safety net for children who are being exploited or may be at risk of exploitation by family members. However, the most comprehensive response to the problem of child sexual abuse has been the proclamation of Bill C-15, An Act to Amend the Criminal Code and the Canada Evidence Act. This Act contained a number of major revisions to substantive and procedural laws governing the sexual abuse of children. This Act was proclaimed January 1, 1988.

Given the importance of Bill C-15 and the intent by legislators that the proposed changes be implemented effectively, the Bill contained a "review clause" (see Bill C-15, section 19), requiring that the Bill be reviewed after four years.

1.1 Purpose of the Study

As part of the review process, the Department of Justice Canada launched a series of research initiatives to determine whether the goals and objectives of Bill C-15 have been realized. In August 1989, the study described in this report was funded under contract as a shared project between the Department of Justice Canada and Health and Welfare Canada. In keeping with the need to assess the impact of Bill C-15, the intent of the current study was also to collect information relevant to the broader response to child sexual abuse by examining the

interaction between the child welfare and criminal justice systems in Calgary and Edmonton, Alberta.[1] Thus, this study included three distinct purposes:

(1) To describe the nature of the interrelationship between the child welfare system and the criminal justice system regarding child sexual abuse.

(2) To examine the nature of the child victim/witness experience in the criminal justice system since the proclamation of Bill C-15.

(3) To identify the degree to which the goals and objectives of Bill C-15 have been achieved.

1.2 Focus and Organization of the Report

This study focussed on all child sexual abuse/assault cases processed by the child welfare system and/or the criminal justice system between January 1, 1988 and July 31, 1990 in Calgary and Edmonton. For the purpose of this project, "child sexual abuse" includes sexual intercourse, sexual touching, sexual molestation, sexual exploitation, indecent exposure, and any other forms of sexual assault involving a child that could be in violation of the Criminal Code or render the child in need of protection under the Child Welfare Act. Both intrafamilial and extrafamilial child sexual abuse cases were included.

This study can be categorized as both an impact assessment of Bill C-15, as well as exploratory research. The first and second purposes listed in Section 1.1 call for an exploratory approach to the research problem since no specific goals and related objectives have been identified regarding the interrelationship of systems and the child's experience with those systems. In contrast, the goals and objectives of Bill C-15 as discussed in Chapter 2.0 of this report are quite specific and thus can be tested directly by relating specific data to specific research questions.

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[1] Three rural locations were also the subject of this study. The findings from these areas are presented in the report entitled "Review and Monitoring of Child Sexual Abuse Cases in Selected Sites in Rural Alberta".

The report is organized as follows: Chapter 2.0 outlines the specific goals and objectives of Bill C-15; Chapter 3.0 briefly outlines the methodology of the study; Chapter 4.0 presents the findings relevant to the processing of child sexual abuse cases through the child welfare and criminal justice systems (relevant to the first study purpose in Section 1.1) and presents information about child victim/witness behaviour in the court process (relevant to the second study purpose in Section 1.1); Chapter 5.0 presents findings relevant to the specific objectives of Bill C-15 as identified in Chapter 2.0; Chapter 6.0 presents findings on the perceptions of police, crown prosecutors, defence lawyers, judges, and social workers on their role in the processing of cases, as well as perceived problems with both the substantive and procedural aspects of Bill C-15; and Chapter 7.0 presents the conclusions.

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 and thus are especially relevant to the third major purpose of this study (listed in Section 1.1). Identification of these questions will require at least a brief review of the changes enacted by Bill C-15. However, it should be noted that 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).

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[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.

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 the use of 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 entitled "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 which were relevant to child sexual abuse. Table 2.1 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 that have been identified 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 step-fathers and foster fathers committed a crime if they had sexual intercourse with their step-daughters or foster daughters, the same prohibition did not apply to step-mothers with step-sons 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

  Some 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 by the child on the offender 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 be in need of 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 was 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 2.1 Criminal Code Number Transformations Relevant to the Assessment of Bill C-15[1]

Old Criminal Code Prior to January 1, 1988		New Criminal Code as of January 1, 1988		
XCC	Section Description	Interim 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
s. 169	Indecent act	s. 169(1)	s. 173(1)	Indecent Act
		s. 169(2)	s. 173(2)	Exposure to child under 14 years

Table 2.1 (continued)

Old Criminal Code Prior to January 1, 1988		New Criminal Code as of January 1, 1988		
XCC	Section Description	Interim[2] Code (C-15)	CC	Section Description
s. 195(1)	Procuring	s. 195(1)	s. 212(1)	Procuring
s. 195(2)	Living off avails (repealed 1987)	s. 195(2)	s. 212(2)	Living off avails of a prostitute under 18 years
		s. 195(4)	s. 212(4)	Obtaining person under 18 years for sexual purpose
s. 195.1	Soliciting	s. 195.1	s. 213	Soliciting
s. 246.1	Sexual assault	s. 246.1	s. 271	Sexual assault
s. 246.2	Sexual assault with a weapon/threats/bodily harm	s. 246.2	s. 272	Sexual assault with a weapon/threats/bodily harm
s. 246.3	Aggravated sexual assault	s. 246.3	s. 273	Aggravated sexual assault
s. 246.4	Corroboration not required	s. 246.4	s. 274[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]	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 to 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 section were enacted by Bill C-127 (August 1982), however, they were extended to the sexual offences enacted by Bill C-15.

- 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 which were identified in the debates in the House of Commons. The official position stated as 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 2.1). Some provisions were repealed completely (sections 141, 146, 151, 152, 153, 154 and 157 and 167 XCC). Other sections were rewritten to extend their protection to young males (sections 166 and 167 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 which 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; and
(10) Householder permitting sexual activity.

Changes regarding procedure and evidence included (see Table 2.1): repealing the requirement for corroboration (section 274 CC); abrogating the doctrine of recent complaint (section 275 CC); extending the provisions excluding evidence concerning past sexual conduct and sexual reputation (subsection 276(1) and section 277 CC) to Bill C-15 offences; restricting publication of the identity of the complainant or a witness (subsection 486(3) CC); permitting testimony outside the courtroom (subsection 486(2.1) 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."

[3] A number of these provisions (specifically sections 274, 275, 276(1), 277, and 486(3) CC) were enacted by Bill C-127 proclaimed August 4, 1982; however, they have been extended in provisions established by Bill C-15.

One of the first tasks of the research team was to make explicit the linkages between the general goals and expected outcomes. Thus, below, 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 which 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 amendments relating 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), are presumed to have at least two intended outcomes: (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) are presumed to be aimed at providing more protection for young victims.

Third, the repeal of section 141, which provided a one-year limitation period for certain sexual offences, and the abrogation of the doctrine of recent complaint with respect to all sexual offences (section 275 CC), was aimed at protecting children in cases where disclosure was 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 related to Goal 2 fall into two areas. First, section 715.1 CC, permitting admission in evidence of a videotape of the victim's description of events, 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, facilitate the giving of evidence by children. Second, 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 are presumed 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.[4] 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.

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[4] Section 486(1) predates Bill C-15 but as this provision is particularly applicable to sexual offences the extent of its use was also analyzed in this report.

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 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, ensuring that 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.

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

Given the expected outcomes of Bill C-15, expressed as Objectives one to ten above, it is possible to identify specific research questions related to each objective. These research questions provide the framework for the data analysis presented in Chapter 5.0 of this report. The specific questions, as listed in Table 2.2, can be summarized as two generic questions: (a) Are the sections being used? and (b) When used, are the desired outcomes being achieved?

Table 2.2 Bill C-15, Goals, Objectives and Research Questions

Goal 1: To provide better protection to child sexual abuse victims.		
	Objective 1: To broaden the range of conduct captured by the Criminal Code.	Research Questions:
		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?
		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?

Table 2.2 (continued)

		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?
		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? (Repeal of time limitation s. 141 XCC.)
		4.2 Are these charges resulting in convictions?

Table 2.2 (continued)

Goal 2: To enhance successful prosecution of child sexual abuse victims.

Objective 5: To minimize the problem of 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 videotapes?

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\nonuse 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?

Table 2.2 (continued)

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? **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? (a) Victim Assistance Program (b) Crown preparing witness (c) Other (e.g., court workbooks etc.) 8.2 Videotape used to refresh memory?

Table 2.2 (continued)

		8.3 Have screen and/or closed-circuit televisions been used in the court (s. 486(2.1), (testimony outside courtroom))?
		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 to exclude the public?
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?

3.0 METHODOLOGY

3.1 Research Design

The scope of this study is broad: In addition to being an impact assessment, it is also exploratory. The first and second purposes of the study, i.e., describing the nature of the interrelationship between the child welfare and criminal justice systems, and describing the nature of the child victim/witness experience with the criminal justice system, are rather general. This necessitates employing an exploratory/observational approach. The third purpose, i.e., identifying the degree to which the goals and objectives of Bill C-15 have been achieved, is much more focussed, enabling the investigation to be led by the specific research questions listed in Table 2.2.

The study began 19 months after Bill C-15 was proclaimed, making it impossible to implement a pretest/post test design. Instead, a post test/longitudinal tracking study was implemented on August 1, 1989. The exploratory nature of the study, and the lack of an existing study model for assessing legislation, led to the development of a complex multi-component study. This design involved collecting data from numerous sources, utilizing a variety of data collection strategies. Initially seven components were proposed. They included:

(1) Analysis of existing information systems;
(2) Review of agency files;
(3) Direct observation of children in court;
(4) Review of court transcripts;
(5) Survey of key informants;
(6) Analysis of articles in newspapers; and
(7) Post court interviews with victims and/or guardians of victims.

Most of the design components were implemented, but it soon became apparent that the post court interviews were difficult to obtain, especially if consent from the family had not been obtained prior to court. Thus it was determined that the completion of post court family interviews on a large scale was not feasible, and only a limited amount of information was obtained through this component and is presented in Chapter 6.0. Comprehensive results from the

remaining study components are presented in the body of this report, with the exception of the analysis of newspaper articles, which is contained in Appendix B.[1]

3.2 Study Components

3.2.1 Information Systems

Table 3.1 lists the information systems used in this study. Data contained in these information systems were particularly useful for examining trends in the case flow (as presented in Section 4.4.1) since they represent the total official record for the total population of cases.

Instruments and Procedures

Formal instruments were not used to collect information from these systems. Each agency has its own collection of data and we used whatever was available.

Alberta Family and Social Services (AFSS) provided a computer listing from their Child Welfare Information System (CWIS). The listing contained all the investigations completed between January 1, 1988 and July 31, 1990 where the investigation outcome was designated as a form of child sexual abuse. The cases consisted of both intrafamilial and extrafamilial situations where a parent or guardian was unwilling or unable to protect a child from sexual abuse and/or exploitation.

The Calgary and Edmonton municipal police departments provided computer data regarding police reports involving child sexual abuse allegations. In Calgary data were obtained from the Police Information Management System (PIMS), and in Edmonton the Records and Criminal Intelligence Analysis System (CIA) were used.

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[1] Media articles were reviewed from the Calgary Herald, the Edmonton Journal, Toronto Globe and Mail, Macleans Magazine, and the Lawyer's Weekly, from August 1, 1988 to July 31, 1990. Categories of "general information" and "specific cases" were utilized to examine the form of media coverage of child sexual abuse (Appendix B).

Table 3.1 Information Systems Population of Cases, January 1, 1988 - July 31, 1990

Population by Unit of Analysis	Alberta Family and Social Services Child Welfare Information System (CWIS)[1]		Police Information Systems[2]		Criminal Justice Information System (CJIS)[3]	
	Calgary (N)	Edmonton (N)	Calgary Police Information System (PIMS)(N)	Edmonton Police Records System plus CIA (N)	Calgary (N)	Edmonton (N)
Child/victim	801	1148				
Family	513	760				
Occurrence report			1556	1736		
Cases cleared by charge			626	400		
Charges			997	674	997	674

[1] Includes all cases that were active at any time during this period and had a "sexual abuse" investigation outcome code.

[2] Includes all cases having an occurrence category which could or did lead to sexual assault charges (see all charges on Table 2.1).

[3] Includes all cases matched to the Police Information System.

In cases where criminal charges were laid, the names of the alleged perpetrators were searched in the Attorney General's information system (Criminal Justice Information System (CJIS)) by viewing records on terminal screens at the two police departments. This was done to determine outcomes or dispositions for cases that were processed through the court system. The number of police reports, the number of cases in which criminal charges were laid, and the final disposition data, provide an overview or tracking of child sexual assault cases in the criminal justice system.

Study Populations

Between January 1, 1988 and July 31, 1990, the CWIS system reported 801 active cases involving child sexual abuse in Calgary and 1148 cases in Edmonton.[2] The police data indicate 1556 cases were investigated in Calgary and 1736 cases were investigated in Edmonton.[3] Police investigations resulted in 997 specific charges being laid in Calgary and 674 charges being laid in Edmonton. Disposition data were available from CJIS for 89 percent of the charges in Calgary and 83 percent of the charges in Edmonton (see Appendix D, Table D3.1).

3.2.2 File Reviews

Tables 3.2 and 3.3 contain a breakdown of the type and number of paper files that were reviewed for this study.

Instruments and Procedures

Given the need to collect comparable, parsimonious information from the various agencies, file review forms were developed to gather specific information from the various files.

The AFSS File Review Form (Appendix C) permitted the collection of general case information, information regarding the case profile and history, an assessment of the child victim, a description of the victim's family and, if possible, information regarding the alleged offender. File reviews were conducted for child welfare cases investigated between January 1, 1988 and July 31, 1989. These file

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[2] In Calgary, 801 child victims were from 513 families; in Edmonton, 1148 child victims were from 760 families.

[3] Unit of Analysis: Occurrences report.

reviews were conducted on site by the research team, in the various social service district offices where files are stored, from August 1, 1989 to July 31, 1990.

The Police File Review Form (Appendix C) was developed to collect general case information for each incident involving a child victim and an alleged perpetrator of sexual assault. Information regarding the report to the police, the subsequent investigation, the police decision to lay charges, and the use of specialized investigative procedures such as videotaping, was also collected by the researchers from August 1, 1989 to July 31, 1990.

Table 3.2 Description of Child Welfare File Review Sample, by Time Period[1]

Sample Type by Date Active	Calgary (n)	Edmonton (n)
January 1, 1988 to July 31, 1989		
- Total number of files that cross referenced to police files cleared by charge	105	112
August 1, 1989 to July 31, 1990		
- Total number of files that cross referenced to police files cleared by charge	87	219
- Random sample (20%) of files cross referenced to police cleared otherwise or not cleared	52	65
Total Cases Reviewed	244	396

[1] Unit of Analysis: Child/Victim

Table 3.3 Description of Police File Review Sample by Type of Clearance and Time Period[1]

Sample by Clearance and Time Period	Calgary (n)	Edmonton (n)
Cleared by Charge		
- January 1, 1988 to July 31, 1990	404	498
Cleared Otherwise		
- January 1, 1988 to July 31, 1989	0	0
- August 1, 1989 to July 31, 1990	309	157 (20% random sample)
Total	713	655

[1] Unit of Analysis: Child/Victim

Child welfare file reviews were completed for the total population of cases where criminal charges were laid in the total period of the study. A 20 percent random sample of child welfare files was also reviewed where a police investigation was completed but criminal charges were not laid. This was done to determine whether there were any differences between cases where police charges were, or were not, laid.

Police file reviews consisted of cases where criminal charges were laid, as well as cases where a police investigation was conducted and documented, and charges were not laid. In Edmonton, police files were identified through a computer listing of cases of reported sexual abuse. In Calgary, police files were identified by examining the log books of the specialized child abuse and sex crimes units. For the entire study period, both types of police files (i.e., cases where charges were laid versus cases cleared otherwise) were reviewed to determine whether there was a significant difference between these types of cases at the termination of a police investigation. The Calgary sample included all the cases identified in the log books where charges were laid from January 1, 1988 to July 31, 1990, and all cases cleared otherwise or not cleared from August 1, 1989

to July 31, 1990. Due to the large volume of cases and time restrictions, the Edmonton data consist of all charged cases for the entire study period and a 20 percent random sample of cases between August 1, 1989 and July 31, 1990 where charges were not laid. The sample was identified using the Edmonton police computerized information system. All file reviews were conducted by the research team at police headquarters in Calgary and Edmonton.

Sample

As indicated by Table 3.2, data were obtained on 244 child welfare cases from Calgary and 396 cases from Edmonton. In terms of police file information, 731 files were reviewed in Calgary and 655 files were reviewed in Edmonton.

3.2.3 Court Observations

Table 3.4 contains a cross tabulation of the number of child victim/witnesses observed in court by proceeding type and stage.

Instruments and Procedures

Court observations were conducted in both Calgary and Edmonton to collect first-hand information on the nature and quality of a child's testimony, as well as the overall effect of the court experience on the child. A general observation form was used to describe the type of court proceedings and components of the process, such as the use of screens, videotaped evidence, etc. Individual rating scales developed from the work of Achenbach and Edelbrock (1983) and Goodman (1988) were also utilized to describe the child's behaviour and verbal abilities at each of the three stages of testimony: (a) determining the child's ability to take an oath or (when necessary); (b) the examination in chief; and (c) cross-examination. The time and place of court cases were usually determined using the court docket system and through the indispensable cooperation of police and crown prosecutors (see Appendix C for the Court Observation Forms). Unfortunately this system did not allow the identification of the young offender cases processed by the Provincial Family and Youth Court. Thus, there were only a few observations of proceedings coming under the purview of the Young Offenders Act.

Sample

As Table 3.4 indicates, a total of 74 child witnesses were observed at preliminary inquiry and 80 were observed at trial. Victim/witnesses were often observed during a number of proceeding stages.

Table 3.4 **Number of Victims Observed in Court, Using the Court Observation Rating Scale, by Proceeding Type and Stage for the Period August 1, 1989 to July 31, 1990**

Proceeding Stage	Proceeding Type			
	Preliminary Inquiry		Trial	
	Observations (n)	Victims (n)	Observations (n)	Victims (n)
1. Oath/Ability to Communicate	44	44	38	37
2. Examination-in-Chief	75	74[1]	79	78[2]
3. Cross-Examination	69	68[1]	82	81[2]
4. Re-Examination	8	8	29	28[2]
5. Re-Cross-Examination	1	1	6	6
6. Presentation of Videotaped Evidence	-	-	1	1
Overall[3]	197	74[4]	235	80[5]

[1] One victim testified against two offenders, generating two observations at both the examination-in-chief and cross-examination stages of the preliminary inquiry.

[2] One victim (not the same one noted in footnote nine) testified against two offender, generating two observations at the examination-in-chief, cross-examination and recross-examination stages of the trail.

[3] 73 individual children were observed in Calgary and 54 in Edmonton.

[4] Fifty-four of the 74 victims were observed at preliminary inquiry only.

[5] Fifty-nine of the 80 victims were observed at trial only.

3.2.4 Transcript Review

Instrument and Procedure

The Court Proceedings Review Forms (see Appendix C) were used to collect information from transcripts of preliminary inquiries and trials for cases within the criminal justice system. Transcripts were reviewed in the offices of Official Court Reporters in both Calgary and Edmonton. The review provided information regarding the types of charges, how children were treated as witnesses, the procedures utilized, the legislation followed, and other specific details of the court process. The number of proceedings reviewed in this manner was limited by the fact that preliminary inquiry transcripts are prepared if the case goes to court, and trial transcripts are prepared only if the case is appealed or they are specifically requested, due to the substantial cost of producing transcripts.

Sample

During the study, 23 preliminary inquiry transcripts were reviewed in Calgary and 49 in Edmonton. In addition, eight trial transcripts were reviewed.

3.2.5 Key Informants Survey

A survey format was utilized to obtain perceptions and information from key informants. Key informants consisted of the professionals involved in processing cases in the child welfare and criminal justice systems, such as child welfare workers, police, defence lawyers, crown prosecutors, and judges.

Instruments and Procedures

The survey forms were developed specifically for the professionals working with victims of alleged child sexual abuse (see Appendix C). Information was collected regarding the processing of cases and opinions concerning Bill C-15.

A complete list of professionals from each department involved in the study was obtained. Surveys were mailed out by the research team. Each package contained a postage-stamped return envelope to minimize the respondents efforts in returning the survey. If specific individuals had not been involved directly in a child sexual abuse case, they were still asked to return the uncompleted survey form. First and second mail-outs were conducted in March and April 1991 in an attempt to obtain as many completed survey questionnaires as possible. Survey responses were anonymous and confidential, as no identifying information was retained for any of the data collected.

Sample

Table 3.5 presents the return rates and final sample sizes obtained for the key informant component of the study.

Table 3.5 Return Rate of Child Sexual Abuse Questionnaires By Profession

	Judges	Crown Attorneys	Defence Counsel	Police	Child Welfare
Completed	18 (15%)	35 (37%)	24 (24%)	45 (56%)	82 (29%)
Uncompleted (Returns not applicable)	22	17	22	18	53
Total Returned	40	52	46	63	135
Return Rate	(34%)	(55%)	(46%)	(78%)	(48%)
Total Sent	118	95	100	81	283

3.3 Measures and Operational Definitions

Analysis of the data of this study required the development of several scales, and the operationalization of various outcome measures. The development of these scales and measures are discussed below.

3.3.1 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 due to the different methodological procedures utilized 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 primarily discussed in the context of emotional trauma and treatment. Analysis of the possible contributing factors to severity have generally only employed bivariate methods. Thus, the combinations of factors that may reflect the complexity of abusive behaviours more accurately are difficult to find when attempting to understand the types of abuse and perceived severity of these actions.

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). The range of behaviours generally identify exhibitionism by the perpetrator 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 (see Appendix D, Table D3.2 for a list of the behaviours used in this study).

Russell (1983, 1984, 1986) seems to have most clearly defined categories of child abuse that relate to reported emotional trauma in adults. Russell's severity scale is conceptualized as follows:

(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 child sexual abuse severity scale. 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 utilized mostly for therapy purposes. Research 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, is not readily available. How this information relates to decision making 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 manifested. When conceptualizing sexual abuse as a combination of behaviourial events, the 20 categorical variables listed in Appendix D, Table D3.2 were used. When it was necessary to conceptualize the abuse behaviour as a continuous concept, the Intrusion Scale shown in Table 3.6 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 3.6 Child Sexual Abuse Intrusion Scale

Code	Intrusion	Categories from File Review Form[1]
1	Exposure	25, 31, 38, 43
2	Invitation	5, 22, 24, 32, 35, 41
3	Masturbation	21
4	Inappropriate Kissing	4, 39, 46
5	Nongenital Fondling	1, 3
6	Genital Fondling	2
7	Mutual Genital Fondling	7, 8, 19, 29, 30, 37, 42, 44
8	Simulated Intercourse	6, 28, 33
9	Digital Penetration	11, 13, 14, 16, 17, 27
10	Oral Sex	9, 10, 36, 40
11	Vaginal Penetration with Penis	12, 18
12	Anal Penetration with Penis	15, 23
13	Forced Prostitution	34

[1] See Appendix C - Police File Review Form

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 (see Court Observation Rating Scale - Appendix C) required the development of summated variables.

The first step in the development of the scale involved a factor analysis of all 29 child behaviour related items. This analysis yielded three distinct subscales: anxious/withdrawn, sad/cries, and able to communicate. As indicated by Table 3.7, 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 (see Appendix D, Table D3.3). 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 0 and one with higher numbers indicating greater degrees of internal consistency.

Table 3.7 Reliability of Subscales Developed for the Court Observation Rating Scale[1]

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

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

[2] Cronback's Alpha.

3.3.2 Outcome Measures

A number of outcome/performance measures are relevant to this study and will be referred to when discussing the findings of this report. These concepts are briefly detailed below.

Reporting Rate

Reporting rate is the total number of occurrences (both unfounded or substantiated, see below) reported to police per 100,000 population.

Unfounded Rate

Unfounded incidents are the reports that are identified as false, or unable to prove, by the police during their preliminary investigation. The proportion of unfounded cases to cases where the incident is believed to have happened (i.e., substantiated) is the unfounded rate.

Clearance Rates

The clearance rate is the proportion of substantiated occurrences that are cleared by the police laying charges. Cases not "cleared by charge" are either "cleared otherwise" (e.g., not enough evidence to proceed, offender cannot be identified) or they are classified as "not cleared." Cases not cleared consist mainly of cases where the investigation is continuing.

Conviction Rate

Conviction rate is computed by dividing the number of charges that result in a guilty plea or conviction in court by the total number of guilty pleas, convictions, acquittals and charges discharged. Since this rate is considered the performance indicator for the crown prosecutor, only charges which are pursued by the crown are included. Cases for which charges are withdrawn, pending, stayed, or for which a warrant has been issued are not considered when determining the conviction rate. As Loh (1980) points out, there is no inherently correct baseline for comparison of conviction rates. However, the use of complaint and arrest rates can be misleading since a high proportion of cases are screened out before they are presented for charging.

3.4 Data Analysis

Much of the data analysis contained in this report involved creating "second generation" data sets by linking files from various agencies by research numbers or police file numbers. This strategy was necessary to facilitate both descriptive and correlative analysis.

SPSS 4.0 was used to create the files and conduct descriptive analysis. The Knowledge Seeker software program was used to identify predictor variables of various outcomes. As applied to the current analysis problem, this program was used to perform multivariate analysis on nominal scale dependent variables using both nominal and ordinal scale independent variables. The final analysis, presented in the form of "trees," identified subsets of predictors which construct an explanation model of a particular dependent variable.

3.5 Limitations

The nature of the study itself, and the available data, impose certain inherent limitations on the study. These limitations which are briefly described below.

Defining Success

The strategies and measurements for identifying whether legislation reform has been implemented and is "successful" are difficult to identify and are not defined in the literature. Often reporting rates, unfounded rates, clearance rates, and conviction rates are used to infer whether the criminal justice system is functioning properly. However, one must be cautious using such measures since variation can often be explained by differences in agency policy or protocol as opposed to any real differences.

In general evaluation research, a common approach to measuring program success is to address the problem from several angles. This strategy of using multiple measures and multiple sources of data has also been adopted in this study to decrease the probability of error in drawing conclusions from a single, and in some ways flawed, approach or measure of success. Integrating the findings from the numerous study components enables the researcher to formulate an overall picture of impact.

Different Units of Analysis

As indicated above, this study uses data from a number of agencies. The reader must be cautioned that each agency's information system and file system is set up to reflect the mandate of that agency. The focus and unit of analysis for the child welfare system, for example, is the "individual child." The police, in contrast, set up "occurrence reports," which could focus on one victim, one offender and one incident or, alternatively, could focus on many victims, offenders and incidents. Once charges are laid, the focus becomes the accused and the specific charge. Disposition data in turn are categorized by specific charge.

Because of this situation, our strategy has been to use the most basic unit of analysis when possible, i.e., the victim/occurrence. However, because it was not always possible or advisable to proceed in this way, each table in the report includes a footnote indicating what the unit(s) of analysis was for that table.

Comparability of Agency Data

Associated with the problem of different units of analysis, is the comparability of data from various agencies. Comparability is made difficult, though not impossible, by the different units of analysis used by the agencies. However, this problem is compounded by the fact that different agencies employ various protocols and procedures for screening and referring cases to specialized units.

In this study we have identified one such problem with the comparability of police file review information from Calgary and Edmonton. In Calgary, some systematic "screening" of sexual assault cases takes place at the district office level. Although there are specialized sex crimes and child abuse units located at headquarters, cases investigated and concluded immediately may never be referred to the specialized units from the district offices. In Edmonton, all cases are referred to the special units. Thus, the file review information from Calgary Police Service (which was collected at the sex crimes and child abuse units located at headquarters) is not completely representative of the total population of "cleared by charge" cases as was intended. The sample appears to under represent cases involving teenaged victims when the incident was reported immediately and cleared at initial investigation.

A second problem exists which is related to the difference in the "cleared by charge" rates between the two departments. In Edmonton, a response to a call for service automatically generates a record in the computer information system. In the Calgary system, a record for a call for service may not be generated if the investigating officer believes that there is not enough information to proceed.

This issue has also been raised in a recent study by the Canadian Centre for Justice Statistics (1990).[5]

Concurrent v. Consecutive Sentences

While we were very fortunate in being able to obtain detailed disposition data from the Criminal Justice Information System (CJIS), the information on whether sentences for multiple charges run concurrently or consecutively was not always available. In most cases specific forms of sentences were associated with specific charges.

Comparison of Rates

In an attempt to identify areas for comparison, various rates, e.g., clearance rates, conviction rates, etc. (defined in Section 3.3.2 of this report), are calculated. Caution must be used in arriving at conclusions based on these rates. Many national studies, for example, indicate substantial interprovincial differences, whether the variable is the rate of reporting, unfounded rate, or clearance rate. However, as Roberts (1990a) points out, the reason for the degree of variation remains obscure. The variation in this study on clearance by charge rates between Calgary and Edmonton police is probably more a function of record keeping procedures discussed above than of any other real difference between the two cities.

[5] The Development of Data Quality Assessment Procedures for Uniform Crime Reporting Survey: A Case Study of Calgary/Edmonton. Ottawa: Statistics Canada.

4.0 PROCESSING OF CHILD SEXUAL ABUSE CASES

This chapter focusses on the processing of child sexual abuse cases through the child welfare and criminal justice systems. Most of the data analysis in this chapter is exploratory and descriptive. The information obtained is most relevant to the first two purposes of this study, specifically:

(1) to describe the nature of the interrelationship between the child welfare and criminal justice systems regarding child sexual abuse; and

(2) to examine the nature of the child victim/witness experience with the criminal justice system since the proclamation of Bill C-15.

Because of the exploratory nature of this chapter, findings are not linked to specific research questions.

4.1 Processing of Cases Through Parallel Systems

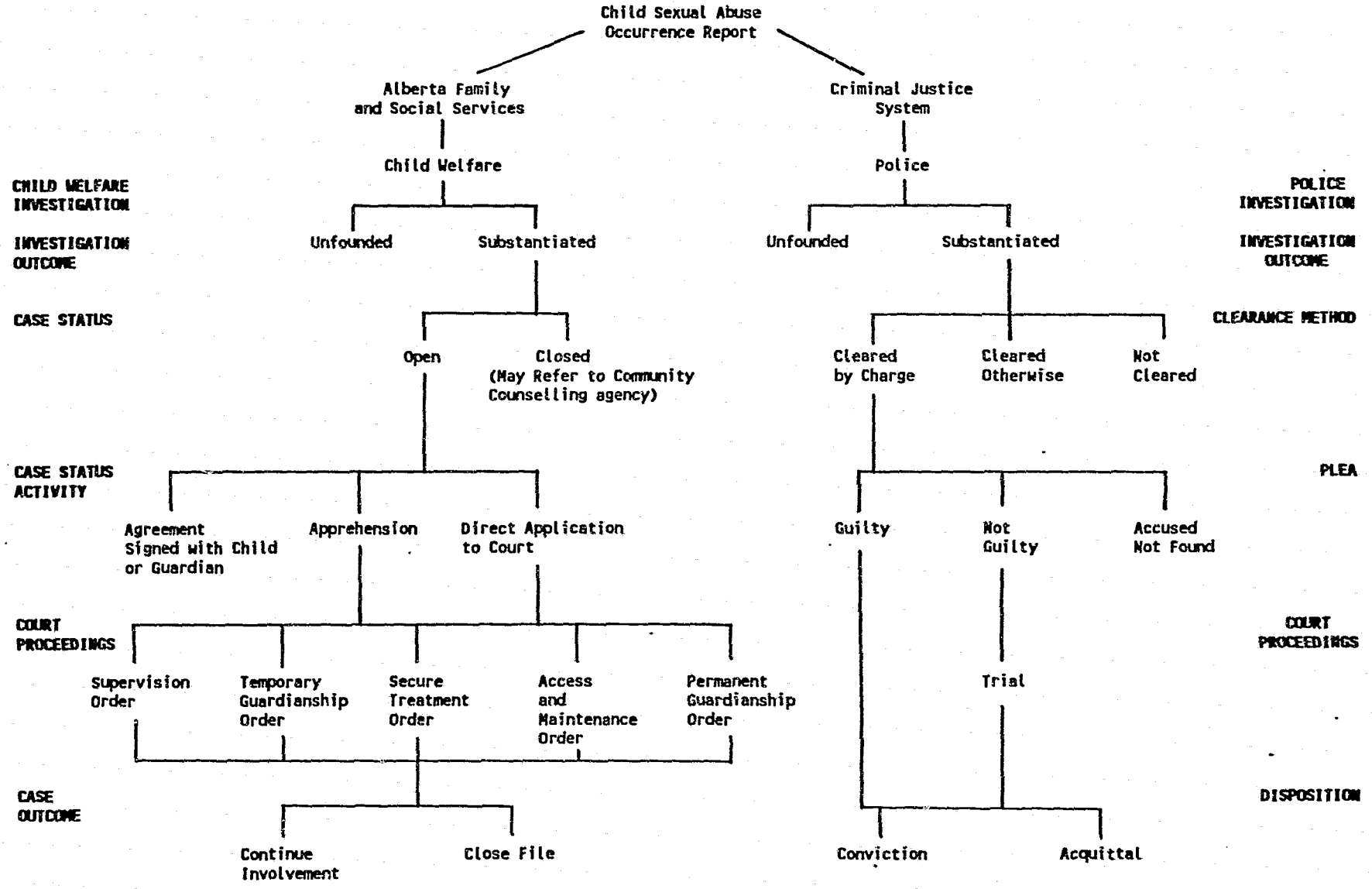
The case flow model shown in Figure 4.1 has been developed to organize the issues to be examined in this study. This model includes the key events, major decisions and processes that may occur as child sexual abuse cases are dealt with by the child welfare or criminal justice system.

The model is organized according to the specific stages of the process for each system. For the child welfare system, the process proceeds through the following specific stages: (1) report; (2) investigation; (3) investigation outcome; (4) case status decision; (5) court proceedings; and (6) proceedings outcome. In comparison, the criminal justice system and stages generally consist of: (1) report; (2) investigation; (3) investigation outcome; (4) clearance; (5) plea by offender; (6) court proceedings; and (7) disposition.

Obviously not all cases proceed through either entire system. A screening process results in only a proportion of the cases proceeding through each stage. This screening process is affected by the policies and protocols of each system; these are briefly outlined below to set the framework for the findings presented in this chapter.

In examining the policies and protocols that affect screening and the rest of the decision-making process, the specific stages shown in Figure 4.1 are combined into two broad categories: Investigation and Proceedings.

Figure 4.1 Child Sexual Abuse System Case Flow Model



4.1.1 Protocols of the Child Welfare System

Investigation

The Alberta Child Welfare Act was revised effective July 1, 1985, to reflect the provincial government's belief in autonomy of the family unit. Subsection 1(2) states a child is in need of protective services ". . . if there are reasonable and probable grounds to believe that the survival, security or development of the child is endangered . . . ." This statement is further defined to avoid unnecessary intrusions into family life. Two circumstances pertaining to child sexual abuse are specified:

> 1(2)(d) the child has been or there is substantial risk that the child will be physically injured or sexually abused by the guardian of the child;
>
> (e) the guardian of the child is unable or unwilling to protect the child from physical injury or sexual abuse. (p. 5)

The child is considered to be sexually abused if he or she ". . . is inappropriately exposed or subjected to sexual contact, activity or behaviour . . ." (para.1(3)(c)).

When a report of child sexual abuse is made to the child welfare system, an investigation is conducted to determine whether the allegation is founded, and whether the child is in need of protective services. If the investigation provides evidence suggesting that the child may have been sexually abused, the case must be referred to the police in order to determine whether the incident warrants investigation for criminal charges. If only limited evidence is available such that the case may not withstand the more stringent rules of evidence in criminal court, protective rather than prosecutive measures may be taken by the child welfare system. Also, evidence may be available but the victim and/or family members may decide not to cooperate with the criminal justice system. In either situation, if the child is believed to be at risk and in need of protective services, measures can be taken to protect the child under the provisions of the Child Welfare Act.

Another change in the revised Act (1985) emphasises that any intervention takes into account that the family ". . . has the right to least invasion of its privacy and interference with its freedom . . ." (subsection 2(c)). Child welfare workers can investigate and, where appropriate, refer families to community counselling services. According to the Child Welfare Handbook and Program Manual (Alberta Family and Social Services, 1989), when the alleged sexual abuse perpetrator is a family member or is known by the family, a complete investigation must be done. In the case of extrafamilial abuse (defined as the

alleged perpetrator being a person not known by the family (p. 03A-18)) basic information can be gathered to determine whether protective services are necessary, e.g., the child was not properly supervised. If protective services are not necessary, the family may be referred to a community resource. The case can then be closed in keeping with the policy of least intrusive measures.

One other major change in Alberta's child welfare legislation allows child welfare workers to apply to the Court of Queen's Bench for a restraining order to prohibit a person from having contact with, or residing with a child under the care of protective services. This can be done

> If a child is the subject of a supervision order, or a temporary or permanent guardianship order, and a director has reasonable and probable grounds to believe that a person has physically or emotionally injured or sexually abused the child, or is likely to physically or emotionally injure or sexually abuse the child . . . ." (Child Welfare Act, subs. 28(1))

This addition to the Child Welfare Act enables the worker to ensure that the alleged perpetrator does not have access to a child. Sexual abuse cases were identified as the most likely cases in which a restraining order would be appropriate (Alberta Family and Social Services, 1989).

The Child Welfare Handbook and Program Manual (Alberta Family and Social Services, 1989) includes guidelines for police involvement in child welfare investigations. Situations where a child has probably been sexually abused or exploited must be reported to the police. Once a report is made, the manner in which a joint investigation is conducted is determined by the professionals involved.

In the Calgary region, specific investigation protocols have been developed by an inter-agency committee consisting of representatives from the municipal police department, child welfare and treatment services in the community. The protocols incorporate both physical and sexual abuse investigations. The responsibilities of each department and the case management and investigative procedures are outlined in the document (Alberta Family and Social Services, 1987).

A Residential/Foster Care Child Sexual Abuse Protocols Handbook (Wellings, 1989) has also been developed and utilized in Calgary. This handbook was developed by a committee composed of professionals representing child welfare, foster care and residential services. The handbook is intended for foster parents and residential care staff to help them care for sexually abused children

and understand their professional and legal obligations. Procedures that are to be followed in situations of suspected and/or confirmed sexual abuse in a foster home or residential placement are outlined. These procedures are based on, and in agreement with, the child welfare-police protocols developed for physical and sexual abuse investigations.

In the Edmonton region, an inter-agency committee has developed a protocol to guide investigations of both physical and sexual abuse. Also, the Edmonton Committee for Child Abuse and Neglect, made up of professionals from child welfare, treatment services and other relevant agencies, identifies and addresses child welfare issues including child sexual abuse. In both Calgary and Edmonton regions, Alberta Family and Social Services social workers and psychologists are available as clinical consultants and counsellors for difficult cases, many of which involve sexual abuse.

Proceedings

Once it has been determined that the provincial child welfare system must act to protect a child, the child's guardian may enter into an agreement or be subject to a court order. There are numerous types of agreements including: support agreements, custody agreements, permanent guardianship agreements, and access and maintenance agreements. The available types of court orders include: supervision orders, apprehension orders, joint custody orders, temporary and permanent guardianship orders, and restraining orders.

Court orders are made in family court, where trials are subject to the standards of civil proceedings. In such cases, the burden of proof is based on the balance of probabilities rather than on the criminal court's standard of evidence beyond a reasonable doubt. In only a small minority of cases, the child victim is involved as a witness in family court proceedings. Since the primary goal of the child welfare system is to protect the child, alternate forms of evidence (i.e., other witnesses or expert testimony) are preferred over the child providing testimony in court.

Protective services for abused children provided through the provincial child welfare system include counselling services for children and families (including the perpetrator), as well as residential programs for children. Family therapy and sexual abuse counselling programs can be utilized by all child welfare clients. Residential services such as foster homes, group homes, treatment centres and independent living arrangements can be utilized according to each child's needs. This system is flexible in that an agreement or court order can change as a family's situation changes. The goal is to provide the least intrusive measures needed to protect a child. A residential placement is necessary only when parents

or the nonoffending parent is unable or unwilling to protect a child from inappropriate sexual behaviour or exploitation. As a result, it is typically in situations where the perpetrator is part of the family (intrafamilial) that extensive child welfare involvement is needed.

4.1.2 Protocols of the Criminal Justice System

Investigation

When a case of suspected child sexual abuse is reported to the police from any source, the investigative process is initiated. According to the Child Welfare Act (1984) "Any person who has reasonable and probable grounds to believe . . . that a child is in need of protective services . . ." (subsection 3(1)) must report the situation to a child welfare officer. In the Calgary and Edmonton regions cases that are reported to the police first are often, but not always, then reported to child welfare. The specifics of the situation are discussed to determine whether a child or young person is in need of protective services. In cases of extrafamilial sexual abuse (i.e., cases involving an alleged perpetrator who is a stranger, employer, day care worker, etc.), only the police may deal with the investigation. The child welfare system focusses on intrafamilial abuse and usually does not become involved with other situations unless the parents or guardian appear to be unable to protect a child from sexual exploitation.

If it is decided that a joint investigation of a complaint should be conducted, a social worker and police officer may interview the child as a team. If the police are handling the complaint alone, only they will interview the victim. The Edmonton Police Service and Calgary Police Service both have specialized sex crimes/child abuse units and detectives that investigate reported occurrences of sexual abuse of children. The sex crimes/child abuse unit of the Edmonton Police Service is responsible for investigating all cases of child sexual abuse in their jurisdiction and is located at police headquarters. In contrast, Calgary Police Service has two units, the child abuse unit and the sex crimes unit, which handle most investigations of child sexual abuse. However, complaints received at the district offices are often investigated and concluded locally -- thus, neither the cases nor file information on these cases are processed through one of the special units which are located at police headquarters.

One additional difference between the two police departments is that the Edmonton Police Service sex crimes/child abuse unit has a special room available to videotape child victim disclosures at the central police station. The Calgary child abuse and sex crimes units do not use videotaping at this time.

Criteria employed by the police for deciding how an investigation will be concluded are complex and sometimes involve consultation with the crown prosecutors. The first decision is whether the incident should be categorized as substantiated or unfounded. However, even when cases are substantiated, the alleged perpetrator may not always be charged. Police may believe the offence occurred but other factors may make it impossible to lay charges. Such cases are "cleared otherwise" or "not cleared." Many factors could lead to a case being "cleared otherwise": (a) the child victim may be too young or have insufficient verbal skills to testify; (b) the child and/or parents may be unwilling to proceed through the court process; (c) there may be a lack of physical and/or corroborating evidence when the child's testimony is weak; (d) there may be a lack of detail concerning the offence(s); (e) the credibility or reliability of a child may be poor; (f) the identity of the suspect may be unknown or questionable; or (g) the suspect cannot be located.

Proceedings

If the investigation results in charges being laid, the accused has the opportunity to plead guilty or not guilty. If a guilty plea is entered, sentencing is conducted by a provincial court judge and the case is concluded. Alternatively, the accused may enter a plea of not guilty. If the charges are summary charges only, the accused will go to trial in provincial court.[1] If the charges include indictable offences, then the accused may choose either a provincial court judge or a Queen's Bench trial by judge or jury. If a Queen's Bench trial is selected, a preliminary inquiry is held in provincial court in order to determine whether the evidence is "sufficient for a reasonable jury to convict if they believe the evidence." If it is, the case is committed to trial. All cases involving young offenders in Alberta are tried in Provincial Court, Family and Youth Division, under the Young Offenders Act. A suspect may plead guilty at any time during the legal process.

If the accused does not plead guilty, the child victim may have to testify at proceedings. However, plea negotiations between the prosecuting attorney and the defence attorney can occur at any time during the legal process. For example, the accused may plead guilty to a less serious offence or, in cases involving multiple charges, some charges may be stayed or withdrawn, while the accused pleads guilty to other charges.

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[1] Most of the sections covered by Bill C-15 are "hybrid offences" meaning that they can be classified as either "summary" offences or "indictable" offences. "Summary" offences are considered less serious in nature and carry a lesser penalty than "indictable" offences.

During the legal process the crown prosecutor has a considerable degree of discretionary power in the criminal justice system. The police and crown prosecutor may discuss the decision to charge if the case involves variables that may make the court process difficult. Once the decision has been made to proceed to court, the crown prosecutor "has responsibility for the charges in the judicial system up to their final disposition" (Gunn and Minch, 1988, p. 83). Factors related to the victim, alleged offender and the nature of the abuse allegations are important in the decision regarding case screening. In regard to the child victim, "the prosecutor must decide on the desirability of the child's testimony" (Watkins, 1990, p. 36) before court proceeds. The complexity of these decisions are summarized by MacMurray (1989, p. 234):

> Decisions about what charges, if any, to file, whether to dismiss or drop a case, plea bargaining and sentence recommendations are but a few of the areas of discretion available to prosecutors.

4.1.3 Summary: Protocols

- Because of the principle of "least intrusiveness" expressed in the Alberta Child Welfare Act (1985), complete investigations of allegations of child sexual abuse are required by Alberta Family and Social Services only when the alleged offender is a family member. When the alleged perpetrator is not known by the family (i.e., extrafamilial abuse), and protective services are not determined to be necessary, the case may be referred directly to a community resource.

- In both Calgary and Edmonton, inter-agency committees with representatives from child welfare, police, and other relevant agencies have developed protocols to guide investigations of both physical and sexual abuse.

- Both Calgary Police Service and Edmonton Police Service have specialized sex crimes/child abuse units. In Edmonton all cases of child sexual abuse are referred directly to this unit; in contrast, complaints received by district offices in Calgary are often concluded by the police officer who answered the call and are never referred to the special child abuse unit which is located at police headquarters.

- If charges are laid, the crown prosecutor has considerable discretionary power and may negotiate a plea.

4.2 Child Sexual Abuse Cases Reviewed from the Child Welfare System[2]

This section provides a profile of the child sexual abuse cases that were investigated by the Calgary and Edmonton police for sexual abuse between January 1, 1988 and July 31, 1990. Sample selection involved tracking active police cases within the child welfare system.

4.2.1 Calgary Child Welfare Cases

Victim Characteristics

In Calgary, file reviews were conducted for 244 cases; 18 percent of these cases involved male victims and 82 percent involved female victims. Sexual abuse/exploitation was the "most recent" reason for referral in 70 percent of the cases, however, 20 percent of the cases were not recorded as having been referred as sexual abuse cases at any time.

When information regarding the presenting problems of the child were available (i.e., 58 percent of the cases), anxious (26 percent), delinquent (20 percent), and sexual problems (14 percent) were the most common.

Family Characteristics

Information concerning victims' parents indicated that 17 percent of the mothers had a history of having been physically abused as a child, and 15 percent reported a history of having been sexually abused as a child. Less than four percent of the fathers were reported to have a history of having been physically abused, while eight percent had a history of having been sexually abused as a child.

Alleged Offender Characteristics

In Calgary, 42 percent of the alleged offenders were fathers, step-fathers, foster fathers, or adoptive fathers of the victim, eight percent were siblings and 21 percent were other relatives. Less than nine percent were strangers. Multiple offenders were involved in 15 percent of the cases. The file information on offenders indicated that 23 percent were receiving treatment, ten percent were still living with the victim, and 14 percent still had access to the alleged victim.

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[2] The source of data for Section 4.2 is the Social Services file review information. Detailed information is presented in Appendix D, Tables D4.1 through D4.25. The unit of analysis is child/victim.

Occurrence Profile

Victims most often disclosed the assault to their mother (34 percent of the cases), followed by teacher (15 percent) and counsellor (nine percent). The most common level of intrusion of sexual abuse was genital fondling (23 percent), followed by digital penetration (16 percent) and vaginal penetration with the penis (15 percent). In 29 percent of the cases, siblings were also abused.

Case Profile

The majority of cases (60 percent) were "under investigation" for child sexual abuse at the time of the review. However, 33 percent of the cases had involved three or more social workers over time. Social histories were on file for 60 percent of the cases and case plans were apparent for 67 percent of the cases. The vast majority of children (83 percent) were either in parental care or living with extended family members. Case conferencing with an external agency was documented in 81 percent of cases. In 34 percent of cases, external agency contact was with police, but only one percent of the files had a copy of the police report. Documentation of other legal proceedings was available in only three percent of the cases.

4.2.2 Edmonton Child Welfare Cases

Victim Characteristics

In Edmonton, file reviews were conducted for 396 child welfare cases; 20 percent of these were male and 80 percent were female. Sexual abuse/exploitation was the most recent reason for referral in 60 percent of the cases and 30 percent of the files did not list sexual abuse/exploitation as a reason for referral at any time.

When presenting problems were identified (i.e., in 44 percent of the cases), anxious (16 percent), delinquent (15 percent) and sexual problems (12 percent) were the most frequently listed.

Family Characteristics

In terms of family history, 13 percent of the victims' mothers were listed as having experienced physical abuse in their childhood, compared to nine percent who were sexually abused as a child. Only two percent of the fathers were reported to have been physically abused, while one percent were reported to have been sexually abused as a child.

Alleged Offender Characteristics

In Edmonton, 21 percent of the alleged offenders were fathers, foster fathers, adoptive fathers, or step-fathers, four percent were siblings, and ten percent were other relatives. Victims were abused by friends in 14 percent of cases and by strangers in 35 percent of the cases. More than one offender was involved in 16 percent of the cases. Only nine percent of the offenders were receiving treatment, but less than five percent had access to the victims.

Occurrence Profile

For those cases where disclosure data were available, the mother was the person most often disclosed to (19 percent of the cases). The nature of abuse was not documented in a large number of the Edmonton cases (i.e., 49 percent). When the nature of abuse was recorded, genital fondling (22 percent), followed by oral sex (18 percent) and vaginal penetration with the penis (19 percent) were the most common levels of intrusion. Siblings were also abused in 23 percent of the cases.

Case Profile

Only 35 percent of cases were "under investigation" at the time of the review and 40 percent of the cases had involved three or more social workers over the life of the case. Social histories were on file for 47 percent of the cases and case plans were documented in 39 percent of the cases. Most of the victims (78 percent) were living with a parent(s) or extended family. Case conferencing was documented in 57 percent of the files. In 25 percent of cases, external agency contact was with police. However, less than two percent of the files contained a copy of the police report. Only one percent of the files contained information on other legal proceedings.

4.2.3 Summary: Profile of Child Welfare System Cases Reviewed

- In Calgary 82 percent of the victims were female and 18 percent were male, compared to 80 percent female and 20 percent male in Edmonton.
- At the time of the most recent referral, 20 percent of the Calgary cases and 30 percent of the Edmonton cases had never been referred for sexual abuse.
- Fifteen percent of the victims' mothers and eight percent of the victims' fathers had been sexually abused as children in Calgary, compared to nine

percent of the victims' mothers and one percent of the victims' fathers in Edmonton.

- In Calgary, 42 percent of the alleged offenders were fathers or father figures, eight percent were siblings, 21 percent were other relatives, and seven percent were strangers. In Edmonton, 21 percent of alleged offenders were fathers or father figures, four percent were siblings, 10 percent were other relatives, 14 percent were friends, and 35 percent were strangers.

- Twenty-three percent of the alleged offenders in Calgary received treatment, compared to nine percent in Edmonton.

- Genital fondling was the most common form of abuse reported (23 percent in Calgary and 22 percent in Edmonton). Vaginal penetration was reported in 15 percent of the cases in Calgary and 19 percent of the cases in Edmonton.

- Siblings were also frequently abused (29 percent in Calgary and 23 percent in Edmonton).

- Many cases were "under investigation" at the time of the review (59 percent for Calgary, 35 percent for Edmonton).

- Case plans were on file for 67 percent of the cases in Calgary and 39 percent of the cases in Edmonton.

- Social workers conferred with police in 34 percent of the Calgary cases and 25 percent of the Edmonton cases.

4.3 Parallel Processing of Cases

This section presents information on the "overlap" of active files between the police agencies and the child welfare agency. The data were obtained from the information systems of the various agencies; therefore, the sample includes the theoretical total population of cases.[3]

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[3] Note, however, that the Child Welfare Information System (CWIS) cases included only cases with an investigation outcome of sexual abuse. As suggested in Section 4.2, child welfare cases that were not categorized specifically as sexual abuse may not be included.

4.3.1 Case Overlap in Calgary

Table 4.1 indicates that the Child Welfare Information System (CWIS) consisted of 801 cases having an investigation outcome of "child sexual abuse" in Calgary for the study period. This number represents 513 families; 209 of these families were also listed on the Police Information Management System (PIMS) as having experienced sexual abuse. Thus, the overlap of cases between the two agencies is 41 percent.

Analysis presented in Table 4.2 suggests reasons for this seemingly low degree of overlap. First, cases cleared by charge tend to have CWIS files (i.e., 65 percent). Conversely, cases cleared otherwise or not cleared tend to not have CWIS files. Second, the accused in PIMS cases having a corresponding CWIS file tend to be a member of the child/victim's household (i.e., 46 percent of the cases, compared to 13 percent having no CWIS file). These findings suggest that both agencies were likely to have files on cases where the alleged offender lived with the child (i.e., intrafamilial cases) and there was enough evidence to lay criminal charges in the case.

4.3.2. Case Overlap in Edmonton

Table 4.1 indicates that there were 1148 cases in Edmonton that had an investigation outcome of sexual abuse during the period of the study. This number represents 760 families. Of these 760 families, 362 cases had a corresponding police file and had been investigated for sexual abuse during this time. Thus, the case overlap between the two agencies is 48 percent.

Table 4.1 Alberta Family and Social Services/Police Overlap of Child Sexual Abuse Cases in Calgary and Edmonton, January 1, 1988 - July 31, 1990

Location and Agency		Number of Cases
Calgary A.	Alberta Family and Social Services[1] Number of individual children (victims and siblings) Recorded on the Child Welfare Information System (CWIS)[2]	801
B.	Alberta Family and Social Services Number of families represented by item A[3]	513
C.	Number of CWIS victims recorded on the Calgary Police Service Information Management System (PIMS)	209
D.	Overlap between the two agencies (Item C as a percentage of Item B):	40.7%
Edmonton A.	Alberta Family and Social Services[4] Number of individual children (victims and siblings) Recorded on the Child Welfare Information System (CWIS)[2]	1148
B.	Alberta Family and Social Services Number of families represented by item A[3]	760
C.	Number of CWIS victims recorded on the Edmonton Police Service Records System	362
D.	Overlap between the two agencies (Item C as a percentage of Item B):	47.6%

[1] Consists of Calgary district offices 7, 45 and 54

[2] The actual number of victims and siblings are counted. Thus, multiple occurrences of the same name are controlled for and no single person is counted more that one. It could not be determined which children were victims and which were siblings from the data provided to CRILF.

[3] This is a conservative estimate of the number of families. Two or more individuals were considered to belong to the same "family" if: (1) the surnames matched and (2) the first seven digits of the CWIS file numbers matched. Family connections would be missed if one or more children had a different surname from other family members.

[4] Consists of Edmonton district offices 10, 11, 12, 13, 43, 54 and 62. At the beginning of the study period, all seven of these offices had no child sexual abuse cases. Subsequent reorganization designated district office 10 as Income Support and resulted in the closure of offices 12, 43 and 62. District offices 11, 13 and 54 became responsible for three separate functions of Child Welfare.

Data Sources: Alberta Family and Social Services - Child Welfare Information System (CWIS)
Calgary Police Service - Police Information Management System (PIMS)
Edmonton Police Service - Records System.

Table 4.2 **Characteristics of Child Sexual Abuse Cases Appearing on the Calgary Police Information Management System, (PIMS) According to whether a Corresponding File was Opened on the Child Welfare Information System, January 1, 1988 - July 31, 1990 (CIA)**

	Police Cases Having No Child Welfare File		Police Cases Having a Child Welfare File	
Characteristic	n	%	n	%
Case Status				
Substantiated Cases				
Cleared by Charge	482	36.2	144	64.6
Cleared Otherwise	268	20.1	43	19.3
Not Cleared	467	35.0	23	10.3
Sub-total	1217	91.3	210	94.2
Unfounded Cases	116	8.7	13	5.8
Total[1]	1333	100.0	223	100.0
Relationship of Accused to Complainant				
Unknown	695	52.1	41	18.4
Acquaintance	471	35.3	80	35.9
Husband	1	0.1	0	0.0
Member of Household	166	12.5	102	45.7
Total[1]	1333	100.0	223	100.0
Accused 1 Status				
Unknown	149	11.2	16	7.2
Charged	482	36.2	144	64.6
Suspect	702	52.7	63	28.3
Total[1]	1333	100.1	223	100.1

[1] As shown in Table 4.1, a total of 209 names were common to both agencies. The PIMS data consisted of 1556 police file number; the 209 names represent 223 police file numbers.

Data Source: Calgary Police Service, Police Management Information System (PIMS)

Table 4.3 suggests two trends that explain this low degree of overlap. First, police cases having CWIS files tend to be cleared by charge (32 percent), while police cases not having a corresponding CWIS file tend to be those not cleared (59 percent). Second, the majority of alleged offenders in police Records cases also having CWIS files (55 percent) are family members, whereas the largest proportion not having a CWIS file involve strangers as the alleged offenders.

Consistent with the Calgary cases, it is therefore suggested that overlap tends to occur in cases where there is enough evidence to lay charges and the offender is part of the family.

4.3.3 Summary: Overlap of Case Files

- The overlap of all child sexual abuse case files between the Police Information System and the Child Welfare Information System was 41 percent for Calgary and 48 percent for Edmonton.
- For child sexual abuse cases cleared by charge, the overlap was 65 percent for Calgary and 32 percent for Edmonton.
- For cases where the accused was a family member, the overlap between police and child welfare was 46 percent for Calgary and 55 percent for Edmonton.

4.4 Processing of Cases in the Criminal Justice System

In this section information is presented on how cases are processed through the criminal justice system. Relevant rates are discussed and the "screening" process is documented from initial report to police, through prosecution by the crown to disposition and appeal.

Table 4.3 **Characteristics of Child Sexual Abuse Cases on the Edmonton Police Service Records and CIA Systems, According to whether a Corresponding File was Opened on the Child Welfare Information System, January 1, 1988 - July 31, 1990 (Records) -- January 1, 1989 - July 31, 1990 (CIA)**

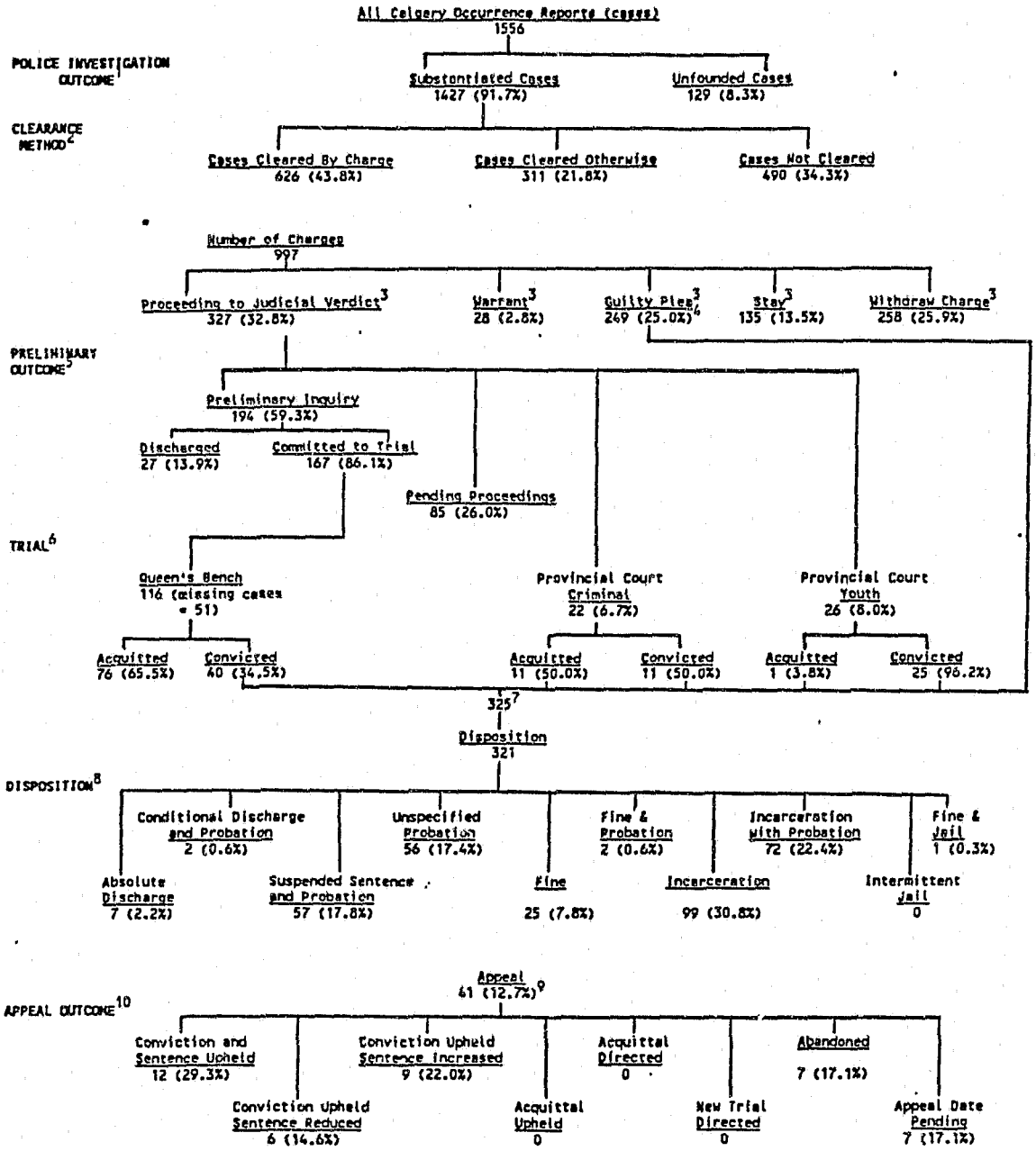
	Police Cases Having No Child Welfare File		Records Cases Having a Child Welfare File	
Characteristic	n	%	n	%
Case Status				
Substantiated Cases				
Cleared by Charge	306	21.7	110	32.0
Cleared Otherwise	171	12.1	66	19.2
Not Cleared	833	59.2	142	41.3
Sub-total	1310	93.0	318	92.4
Unfounded Cases	98	7.0	26	7.6
Total[1]	1408	100.0	344	100.0
Relationship of Offender to Victim[2]				
Babysitter	42	4.2	14	7.6
Family	277	27.8	102	55.1
Known	326	32.7	55	29.7
Stranger	340	34.1	13	7.0
Not Recorded	13	1.3	1	0.5
Total[1]	998	100.1	185	99.9

[1] As shown in Table 4.1, a total of 362 names were common to both agencies. Edmonton Police Records data consisted of 1752 file numbers: the 362 names represent 344 file numbers in Records and 185 file numbers in CIA (which only began on January 1, 1989).

[2] This information is not available in the Edmonton Police Records system, only on the CIS system. Therefore, the total number of cases is smaller than that for case status (see note 1 above).

Data Sources: Edmonton Police Service, Records System (for Case Status).
Edmonton Police Service, Crime Intelligence Analysis System (CIA) for Relationship of Offender to Victim)

Figure 4.2 Criminal Justice System Case Flow Model For Child Sexual Abuse Cases, January 1, 1988 - July 31, 1990, Calgary



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* The unit of analysis changes at this point from case to charge.

1 Percentages based on total # of occurrence reports.
2 Percentages based on total # of substantiated cases.
3 Percentages based on total # of charges.
4 51 (20.5%) of 249 guilty pleas were made by young offenders.
5 Percentages based on total # of charges having a preliminary inquiry outcome (n = 194).
6 Percentages based on total # of charges having a specific type of trial.
7 Conviction rate = 73.8%.
8 Percentages based on total # of charges resulting in a conviction or a guilty plea and a subsequent disposition (n = 321).
9 Percentages based on total # of charges having a trial outcome.
10 Percentages based on total # of charges having an appeal outcome.

4.4.1 Criminal Justice System Case Flow in Calgary[4]

Figure 4.2 describes how child sexual abuse cases reported to Calgary Police Service between January 1, 1988 and July 31, 1990 are processed through the criminal justice system.[5] Note that the total number of reports for this period was 1556 occurrences.

Reporting Rate

Based on the population data for 1988, 1989 and 1990, the reporting rate amounts to 88 cases per 100,000 in 1988, 89 cases per 100,000 in 1989 and 90 cases per 100,000 in 1990.[6]

Unfounded Rate

Based on the total number of reports, only eight percent of the occurrences were identified as unfounded at preliminary investigation.

Clearance Rate

Based on the number of substantiated cases which were investigated, 44 percent[7] were cleared by charges being laid by the police. A further 22 percent of the cases were cleared otherwise -- meaning they would be closed and not investigated further -- and 34 percent were still under investigation (i.e., not cleared).

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[4] See also Appendix D, Tables D4.26 and D4.27.

[5] Child sexual abuse is operationally defined as all cases involving a victim who is under 18 years of age in an occurrence which could result in charges under any of the sections of the Criminal Code listed in Table 2.1.

[6] The total population of Calgary was as follows: 1988 = 657,118; 1989 = 671,138; and 1990 = 692,885. The rate for 1990 is an estimate based on 7/12 of the total.

[7] If the charge rate was based on the total number of cases "cleared," omitting the "still under investigation," the total would be 67 percent.

Distribution of Charges

The total 626 cases, or occurrences, cleared by charge resulted in 997 charges. Single charges were laid in 45 percent of the cases, two charges were laid in 41 percent of the cases, and three or more charges were laid in 14 percent of the cases. The largest proportion of charges proceeded to preliminary inquiry and/or trial (i.e., 33 percent), the second largest proportion (i.e., 26 percent) involved the crown attorney withdrawing charges and 249 charges (25 percent) resulted in guilty pleas (which included 51 cases (21 percent) involving young offenders).

Conviction Rate

The majority (59 percent) of the accused who did not plead guilty elected preliminary inquiry and Queen's Bench trial. Only 22 (seven percent) elected provincial court and 26 (eight percent) young offenders went to trial in provincial youth court.

Where a preliminary inquiry was held, 86 percent of accused were committed to trial and 14 percent were discharged. Trial outcome varied considerably depending on the type of court. Queen's Bench trials most often concluded with acquittals (i.e., 66 percent), with only 35 percent resulting in convictions. In Provincial Court, there was an equal proportion of convictions and acquittals. Youth Court, in comparison, obtained the highest proportion of convictions (i.e., 96 percent). The overall conviction rate based on the formula presented in Section 3.3.2 is 74 percent for all charges relevant to child sexual abuse in Calgary during the time frame of the study.

Disposition[8]

The most common disposition was incarceration (i.e., 53 percent of the dispositions). Almost half (47 percent) of incarceration dispositions involved sentences ranging from three months to one year; 11 percent involved sentences from one year to 18 months and 22 percent involved sentences ranging from 19 months to five years. Most of the remaining convictions were dealt with by some form of probation without incarceration (i.e., 36 percent).

[8] See Appendix D, Table D4.27.

Appeals

In Calgary, 41 appeals were heard. In 29 percent of the appeals, conviction and sentence were upheld; conviction was upheld and sentence reduced in 15 percent and sentence increased in 22 percent of the appeals.

4.4.2 Criminal Justice System Case Flow in Edmonton[9]

Figure 4.3 contains the information on all cases of child sexual abuse reported to Edmonton Police Service between January 1, 1988 and July 31, 1990.[10] The total number of occurrence reports for this period was 1736.

Reporting Rate

Based on population data for 1988, 1989 and 1990, the reporting rate amounts to 119 cases per 100,000 in 1988; 111 cases per 100,000 in 1989, and 114 cases per 100,000 in 1990.[11]

Unfounded Rate

Based on the total number of reports, only seven percent of the occurrences were identified as unfounded at preliminary investigation.

Clearance Rate

Based on the number of substantiated cases which were investigated, 25 percent were cleared by charges being laid by police.[12] A further 16 percent were cleared otherwise and 60 percent were still under investigation.

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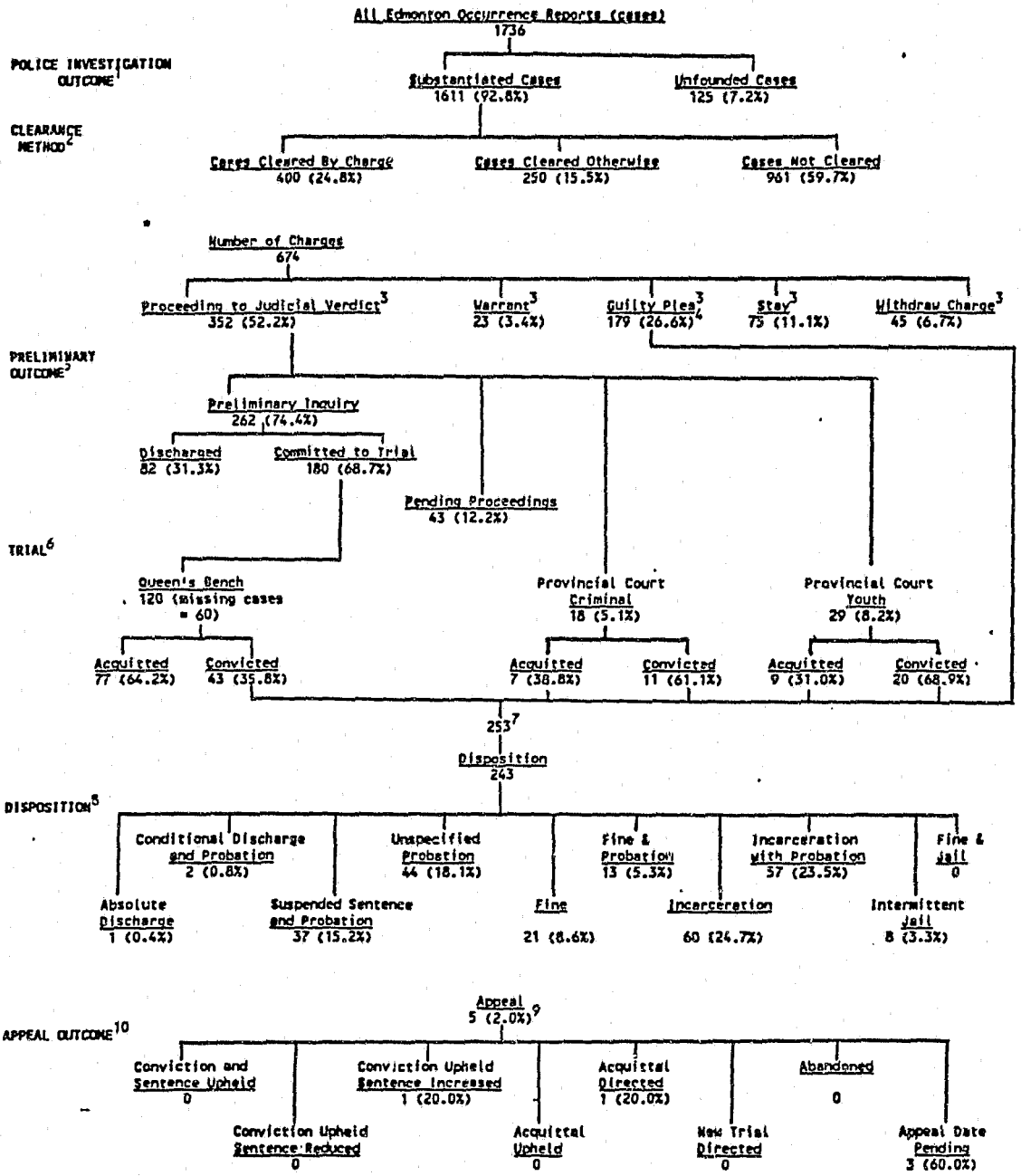
[9] See also Appendix D, Tables D4.26 and D4.28.

[10] Child sexual abuse is operationally defined as all cases involving a victim under 18 years of age in an occurrence which could result in charges under any of the sections of the Criminal Code listed in Table 2.1.

[11] The population of Edmonton was: 1988 = 576,249; 1989 = 583,872, and 1990 = 605,538. The rate for 1990 is an estimate based on 7/12 of the total.

[12] If the charge rate was based on the total number of cases "cleared," i.e., omitting the "still under investigation," the rate would be 62 percent.

Figure 4.3 Criminal Justice System Case Flow Model for Child Sexual Abuse Cases January, 1, 1988 - July 31, 1990, Edmonton



* The unit of analysis changes at this point from case to charge.

1 Percentages based on total # of occurrence reports.
2 Percentages based on total # of substantiated cases.
3 Percentages based on total # of charges.
4 37 (20.7%) of 179 guilty pleas were made by young offenders.
5 Percentages based on total # of charges having a preliminary inquiry outcome (n = 262).
6 Percentages based on total # of charges having a specific type of trial.
7 Conviction rate = 59.1%.
8 Percentages based on total # of charges resulting in a conviction or a guilty plea and a subsequent disposition (n = 243).
9 Percentages based on total # of charges having a trial outcome.
10 Percentages based on total # of charges having an appeal outcome.

Distribution of Charges

The 400 cases, or occurrences, cleared by charge resulted in 674 charges. Single charges were laid in 48 percent of the cases, two charges were laid in 30 percent and three or more charges were laid in 22 percent of the cases. The largest proportion of charges proceeded to preliminary inquiry and/or trial (52 percent). The second largest proportion involved guilty pleas (27 percent) and charges were withdrawn in only seven percent of the cases. Of the 179 guilty pleas, 37 (21 percent) were entered by young offenders.

Conviction Rate

The majority of the accused (74 percent) who did not plead guilty elected preliminary inquiry and Queen's Bench trial. Only five percent elected provincial court trial and 29 (eight percent) young offenders went to trial in provincial youth court.

Where a preliminary inquiry was held, 69 percent of accused were committed to trial and 31 percent were discharged. Trial outcomes varied significantly by type of court. Queen's Bench trial most often concluded with acquittal (i.e., 64 percent), while 36 percent concluded with convictions. For provincial court criminal trials, 61 percent were convicted. Youth Court, in comparison, had the highest proportion of convictions with 69 percent. The overall conviction rate is 59 percent for all charges relevant to child sexual abuse in Edmonton during the time frame of the study.

Dispositions[13]

The most common disposition involved incarceration (i.e., 48 percent of the dispositions). The majority (48 percent) of incarcerations involved sentences ranging from three months to one year, 15 percent involved terms from one year to 18 months and 23 percent involved sentences ranging from 19 months to five years. Most of the remaining convictions (39 percent) were dealt with by some form of probation without incarceration.

Appeals

In Edmonton, only five appeals were taken during the time of the study and only two of these were completed.

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[13] See Appendix D, Table D4.28.

4.4.3 Summary: Criminal Justice Systems Case Flow

- For Calgary, the reported rates of child sexual abuse were 88 cases, 89 cases and 90 cases per 100,000 total population in 1988, 1989 and 1990 respectively. For Edmonton, the reported rates were 119 cases, 111 cases and 114 cases per 100,000 total population in 1988, 1989 and 1990 respectively.

- The cases unfounded rate was eight percent for Calgary and seven percent for Edmonton.

- The cleared rate was 44 percent for Calgary and 25 percent for Edmonton.

- Overall conviction rates were 74 percent for Calgary and 59 percent for Edmonton. The higher rate in Calgary appears to be due largely to a high proportion of guilty pleas and charges withdrawn.

4.5 Decision Making in the Criminal Justice System

This section of the report: (1) provides descriptive information of the victims, offenders, and occurrences from the Police File Review sample and identifies why cases were unfounded and "cleared otherwise"; and (2) identifies the factors which predict the substantiated/unfounded and charged/not charged decisions.

4.5.1 Description of Calgary Cases Reviewed

File reviews were completed on 731 cases which were investigated by the sex crimes and child abuse units of Calgary Police Service during the study period. Characteristics of the victims, accused/suspects and occurrences are briefly outlined below (see also Appendix D, Tables D4.29 to D4.62 for supporting information and additional detail). Information is also provided to explain why cases were concluded as unfounded or cleared otherwise (Appendix D, Tables D4.63 to D4.67).

Victim Characteristics

The cases reviewed involved 159 (22 percent) male victims and 572 (78 percent) female victims. At the time of the report to police, 42 percent of the victims were 12 years of age and over, 26 percent were eight to 11 years of age,

17 percent were five to seven years of age, and 15 percent were four years of age or younger.

Accused Characteristics

The accused was male in the vast majority of cases (i.e., 95 percent), while in 35 (five percent) of the cases, female accused were investigated. In 550 cases (80 percent), a male alleged offender victimized a female, while 142 (21 percent) victimized male children. In comparison, 15 (43 percent) female alleged offenders victimized male children and 20 (57 percent) victimized female children. Most accused were adults when the report was made to the police (i.e., 83 percent were 18 years of age or over), while 17 percent were under 18 years of age. Fathers accounted for 33 percent of the alleged offenders; mothers, less than two percent; siblings, seven percent; and other relatives, 15 percent. The alleged offenders were strangers in only 39 cases (approximately five percent).

Occurrence Characteristics

Victims most often disclosed to their mothers (46 percent of the cases). Friends (ten percent) and teachers (ten percent) were ranked next in terms of to whom the victims disclosed. There were no disclosures in 17 percent of the cases. However, the incident was usually reported to police by child welfare workers (38 percent), with mothers (27 percent) in second place. Only 13 percent of the cases in Calgary were reported within 24 hours of most recent occurrence, but more than half (54 percent) of the cases were reported within one month. An additional 19 percent were reported more than one year after the most recent occurrence. Only one victim was involved in 63 percent of the occurrences, while 37 percent of the cases involved multiple victims. Multiple offenders were involved in ten percent of the cases.

The duration of abuse was more than one year for 182 victims (26 percent), while 254 (36 percent) of the occurrences consisted of only one incident. The most common level of intrusion of sexual behaviour was genital fondling (25 percent), followed by oral sex (18 percent), vaginal penetration with penis (16 percent), and vaginal digital penetration (11 percent). Additional witnesses, usually corroborating, were involved in 31 percent of the cases and experts (e.g., paediatricians) were involved in nine percent of the cases. Enticement (usually money) was used in ten percent of the incidents, alcohol in 16 percent, physical force in 17 percent, and weapons in three percent of the incidents. Physical injuries were sustained in 12 percent of the cases, while perceived emotional injury occurred in 40 percent of the cases.

Reasons for Unfounded and Cleared Otherwise

Of the files reviewed, 100 occurrences (14 percent) were classified as "unfounded." The most common reason given for classifying the case as unfounded was "no evidence" (75 percent). It was determined that only 14 victims or reporters lied in the unfounded cases -- less than two percent of the total number of reports.

Of the 169 (29 percent) substantiated cases for which information was available, 14 percent were "cleared otherwise" at the request of the victim and/or guardian, 73 percent by the police directly, and 12 percent by both parties. The most common reason given by the victims' guardians (in 34 cases) was that they did not want to go to court. For the police, lack of evidence (36 percent) was the most common reason for cleared otherwise cases, followed by questionable credibility of the victim (12 percent).

4.5.2 Predictors of Unfounded Case Status in Calgary

In order to facilitate the identification of the factors which predict unfounded case status, the Knowledge Seeker program described in Chapter 3.0 was employed. This multivariate program identified the best predictors of unfounded case status from the list of predictors (i.e., independent variables) shown in Table 4.4.

Figure 4.4 contains the decision model "tree" which best predicts unfounded case status for Calgary Police Service cases. The tree splits first on "duration of abuse" (which is thus the best predictor of unfounded status). Note, for example, that when duration of abuse was "not reported," 64 percent of the cases were identified as unfounded.[14]

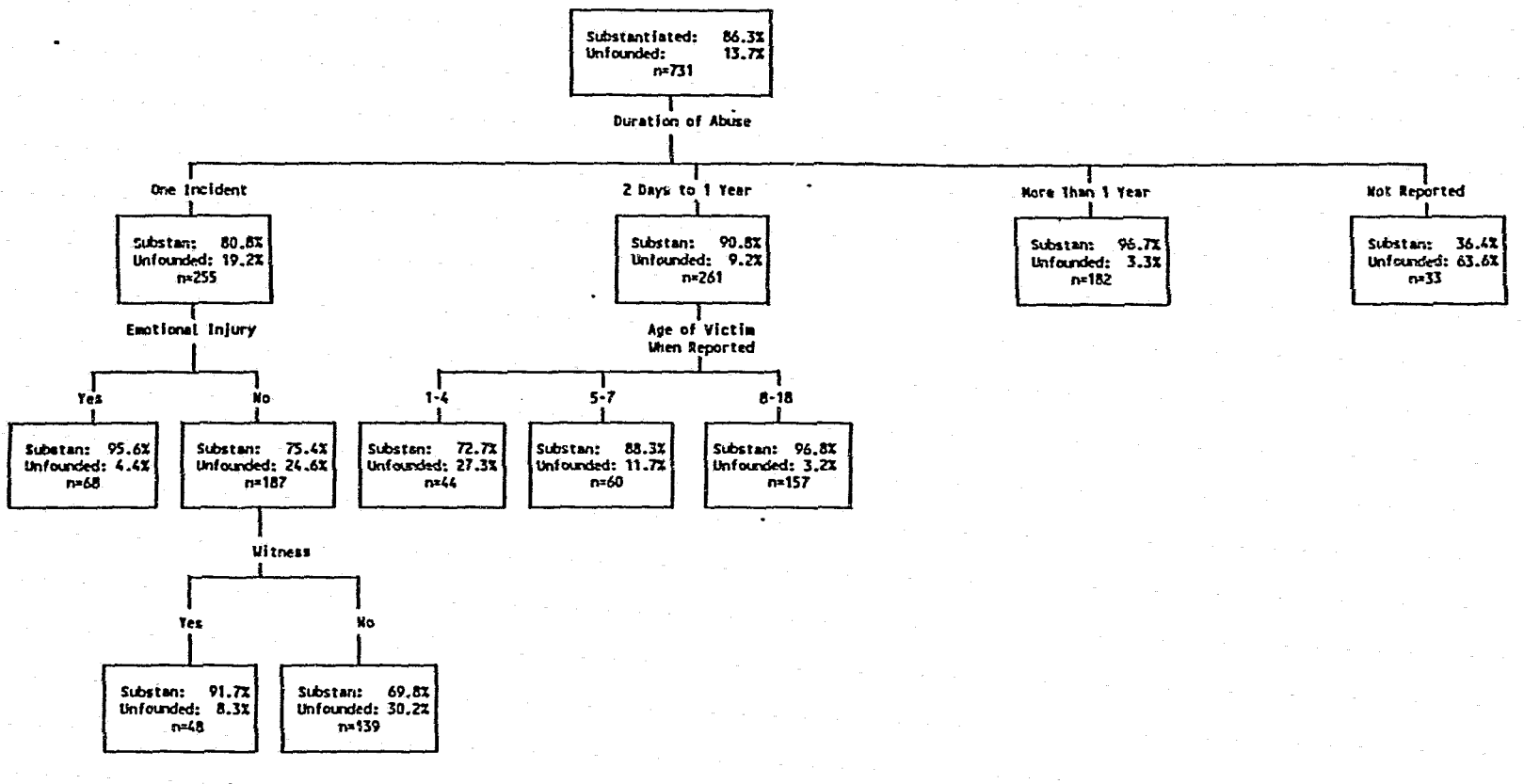
[14] "Not reported" usually meant that there was never a disclosure of a specific incident(s) -- possibly because the victim was too young or would not cooperate.

Table 4.4 List of Variables of Knowledge Seeker Analysis for Figures 4.4 through 4.7

Location	Calgary and Edmonton	
		Range
Independent Variables for Figures 4.4 through 4.7	1. Person child disclosed to	1 - 12
	2. Family resistance	1 - 2
	3. When occurrence was reported	1 - 6
	4. Who reported	1 - 16
	5. Number of victims	1 - 2
	6. Number of offenders	1 - 2
	7. Gender of victim	1 - 2
	8. Age of victim when reported	1 - 6
	9. Duration of abuse	1 - 6
	10. Gender of offender	1 - 2
	11. Age when abuse began	1 - 6
	12. Relationship of offender to victim	1 - 16
	13. Level of intrusion	1 - 13
	14. Used force	1 - 3
	15. Use of enticement	1 - 2
	16. Use of alcohol	1 - 2
	17. Use of drugs	1 - 2
	18. Witness	1 - 2
	19. Physical injuries	1 - 2
	20. Emotional injury	1 - 2
	21. Forensic examination	1 - 2
	22. First agency contact	1 - 6
	23. Age of offender	1 - 8
Dependent Variable for Figures 4.4 & 4.6	Substantiated and Unfounded Cases	
Dependent Variable for Figures 4.5 & 4.7 and 6 to 8	Charged and Other Cases[1]	

[1] Unfounded cases, cases where the alleged offender is under 12 years of age and cannot be charged, and cases where the offender is unknown have been omitted from this analysis.

Figure 4.4 Decision Model for Substantiated and Unfounded Cases for Calgary Police Service[1]



1 Significance Level = .01
Data Source = Police File Review

On the opposite end of the duration of abuse scale, cases consisting of only one incident obtained the next highest probability (i.e., 19 percent) of being identified as unfounded. In the second iteration, the absence of emotional injury raised the probability (to 25 percent) of a case being classified as unfounded. At the third level of iteration, the absence of witnesses again considerably increased the probability of cases being unfounded to 30 percent.

If the duration of abuse is between two days and one year (nine percent of such cases are unfounded) and the age of the victim at the time of the report is four years old or less, 27 percent of the cases were unfounded compared to 12 percent for five to seven year-olds, and only three percent for the same duration and victims over eight years of age.

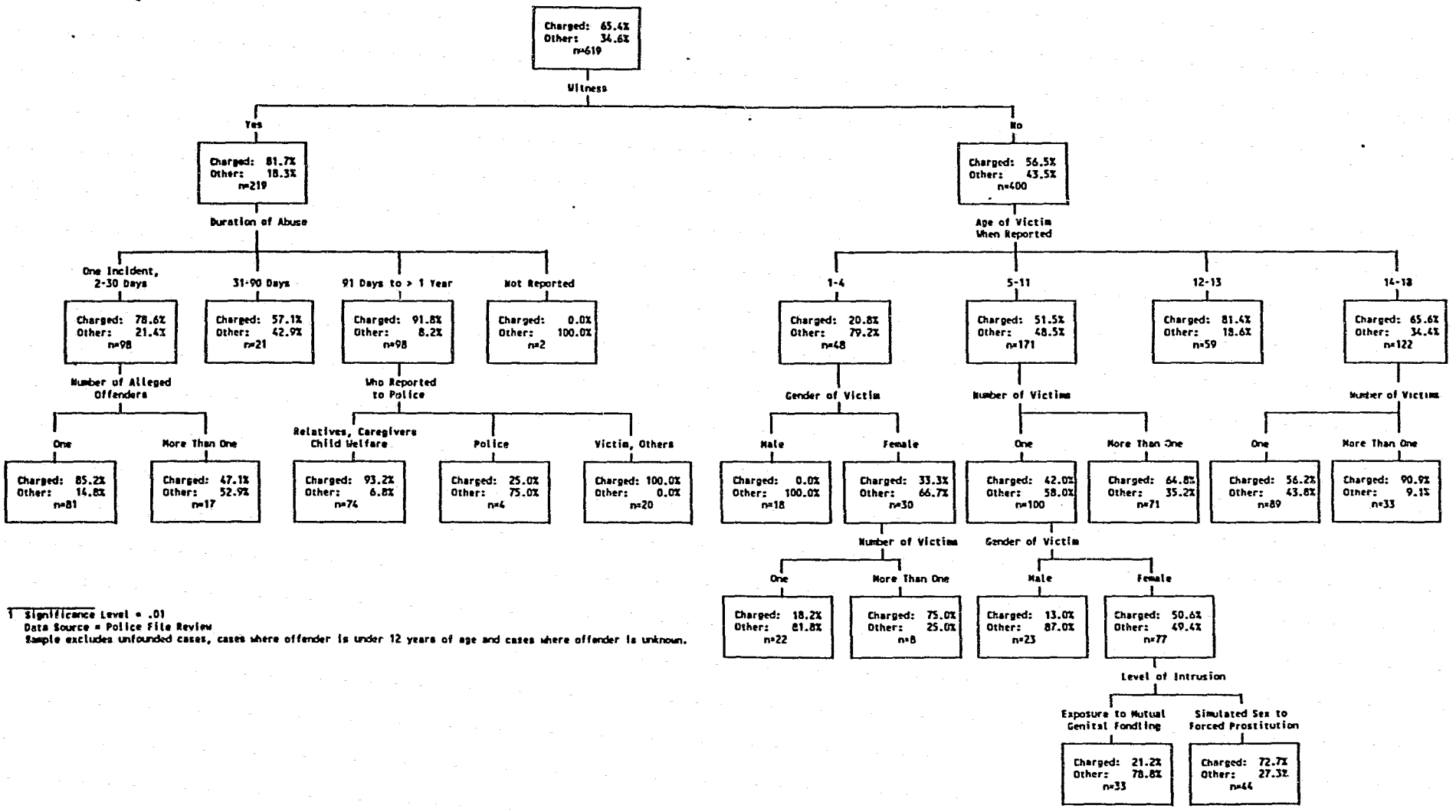
4.5.3 Predictors of Cases Cleared by Charge in Calgary

Figure 4.5 contains the decision model "tree" which best predicts whether cases are cleared by charge, as opposed to those cleared otherwise and not cleared, for Calgary. The first variable (and thus the best predictor from the variables listed in Table 4.4) to predict cleared by charge is the presence of witnesses in the case (i.e., 82 percent compared to 57 percent for no witnesses). For cases having witnesses, the second iteration shows that lengthy abuse, from 91 days to more than one year, raises the probability of being charged to 92 percent. The third iteration indicates that when the abuse is reported to police by relatives, caretakers, and child welfare workers, the percentage of cases charged increases to 93 percent.

Figure 4.5 also shows that if there are witnesses, the duration of abuse is one incident or less than 30 days, and there is only one offender, the percentage of cases being cleared by charge is also relatively high at 85 percent.

In cases having no witnesses, age of the victim is positively correlated to being charged up to the age of 14 years old. Note, for example, that in cases involving no witnesses, charges were laid in less than 21 percent of the cases involving child victims under four years of age, compared to 52 percent for victims five to 11 years old and 81 percent for victims 12 and 13 years old. For victims 14 to 18 years old, however, the proportion of cases resulting in charges increases substantially to 91 percent if there is more than one victim.

Figure 4.5 Decision Model for Cleared by Charge and Other Cases for Calgary Police Service[1]



1 Significance Level = .01
Data Source = Police File Review
Sample excludes unfounded cases, cases where offender is under 12 years of age and cases where offender is unknown.

In the five to 11 year age group, the number of victims is also positively correlated to cases being cleared by charge -- 65 percent of cases having more than one victim resulted in charges compared to 42 percent of cases involving only one victim. The probability that single-victim cases in this age group resulting in charges being laid increases further if the victim is female (i.e., 51 percent); it increases again (to 73 percent) if there is a high level of intrusiveness, i.e., simulated sex to anal penetration.

The probability of cases involving younger victims and no witnesses resulting in charges being laid is also increased by the victim being female (33 percent) and the presence of more than one victim (75 percent).

4.5.4 Description of Edmonton Cases Reviewed

File reviews were completed on 655 cases which were investigated by the sex crimes/child abuse unit of the Edmonton Police Service during the study period. Characteristics of the victims, accused/suspects and occurrences are briefly outlined below (also see Appendix D, Tables D4.29 to D4.62 for supporting information and additional detail). Information is also provided to explain why cases were concluded as unfounded or cleared otherwise (Appendix D, Tables D4.63 to D4.67).

Victim Characteristics

The cases reviewed involved 111 (17 percent) male victims and 544 (83 percent) female victims. At the time of the report to police, 56 percent of the victims were 12 years of age or older, 26 percent were eight to 11 years old, 12 percent were five to seven years old, and less than five percent were under four years old.

Accused Characteristics

The accused was male in the vast majority of cases (i.e., 98 percent), while 15 (two per cent) female accused were also investigated. In 536 cases (84 percent), male alleged offenders victimized female children, while 100 (16 percent) victimized male children. In comparison, nine (60 percent) female alleged offenders victimized male children and six (40 percent) victimized female children. Most alleged offenders were adults when the report was made to the police (i.e., 82 percent were over 18 years old). Fathers accounted for 18 percent of the offenders, mothers for less than one percent, siblings for five percent and other relatives for seven percent of the offenders. Strangers accounted for 25 percent of the offenders.

Occurrence Characteristics

Victims most often disclosed to their mothers (38 percent of the cases). Friends (12 percent) and teachers (seven percent) were ranked next in terms of who the victim disclosed to. There were no disclosures in only two percent of the cases. The incident was usually reported to police by the mother (30 percent) or by a child care worker (26 percent). In 53 percent of the Edmonton cases, the occurrence was reported within 24 hours. An additional 22 percent of the occurrences were reported within one month and only 11 percent were reported more than one year after the occurrence. Only one victim was involved in 64 percent of cases, while 36 percent involved multiple victims. Multiple offenders were involved in seven percent of the cases.

The duration of abuse was more than one year for 89 (14 percent) of the victims, however, 378 occurrences (58 percent) consisted of only one incident. The most common level of intrusion of sexual abuse was genital fondling (22 percent), followed by exposure (15 percent), vaginal penetration with the penis (14 percent), and oral sex (12 percent). Witnesses were present for 31 percent of the cases -- only four (less than one percent) experts were identified. Enticement (usually money) was used by offenders in 12 percent of the incidents, alcohol in 14 percent, physical force in 29 percent, and weapons in four percent of the cases. Physical injuries were sustained in ten percent of the cases, while perceived emotional injury occurred in 18 percent of the cases. Videotapes of the child interview were made in 18 percent of the cases.

Reason for Unfounded and Cleared Otherwise

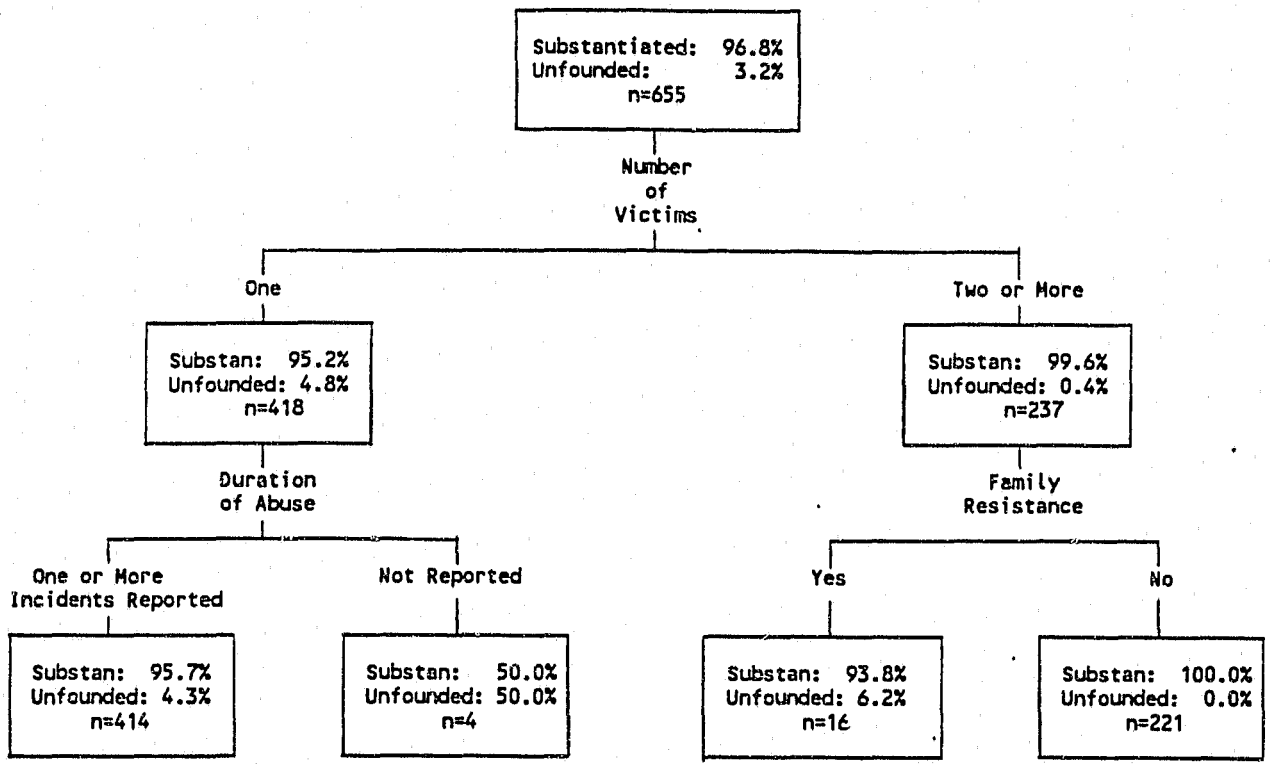
Only 21 (three percent) of the files reviewed were classified as unfounded. The most common reason given for this classification was "no evidence" (48 percent), while it was determined that the victim or reporter lied in only six of the 21 unfounded cases.

Of the 77 cases cleared otherwise (12 percent of the total substantiated cases) for which information was available, 34 percent were "cleared otherwise" at the request of the victim and/or guardian, 61 percent by the police, and five percent by both parties. The most frequent reason given by the police was lack of evidence (24 percent). The most common reason given by the victim and/or guardian was "did not want to go to court" for eight cases (ten percent of the cleared otherwise cases).

4.5.5 Predictors of Unfounded Case Status in Edmonton

Figure 4.6 contains the decision model which best predicts the classification of cases as unfounded. The tree splits first on number of victims, which is therefore the best predictor of unfounded case status from the independent variables listed in Table 4.4. Note that when there is only one victim, the percentage unfounded was five percent, compared to less than one percent for cases with two or more victims. The second iteration in cases involving one victim indicates that the probability of being unfounded is further increased for cases where the duration of abuse is not reported (50 percent), i.e., cases where disclosures tend not to occur.

Figure 4.6 **Decision Model for Substantiated and Unfounded Cases for Edmonton Police Service**[1]



1 Significance Level = .05
Data Source = Police File Review

Cases involving two or more victims tend not to be classified as unfounded (i.e., less than one percent). However, if family resistance is present, the proportion of unfounded cases increases significantly (six percent).

4.5.6 Predictors of Cleared by Charge Cases in Edmonton

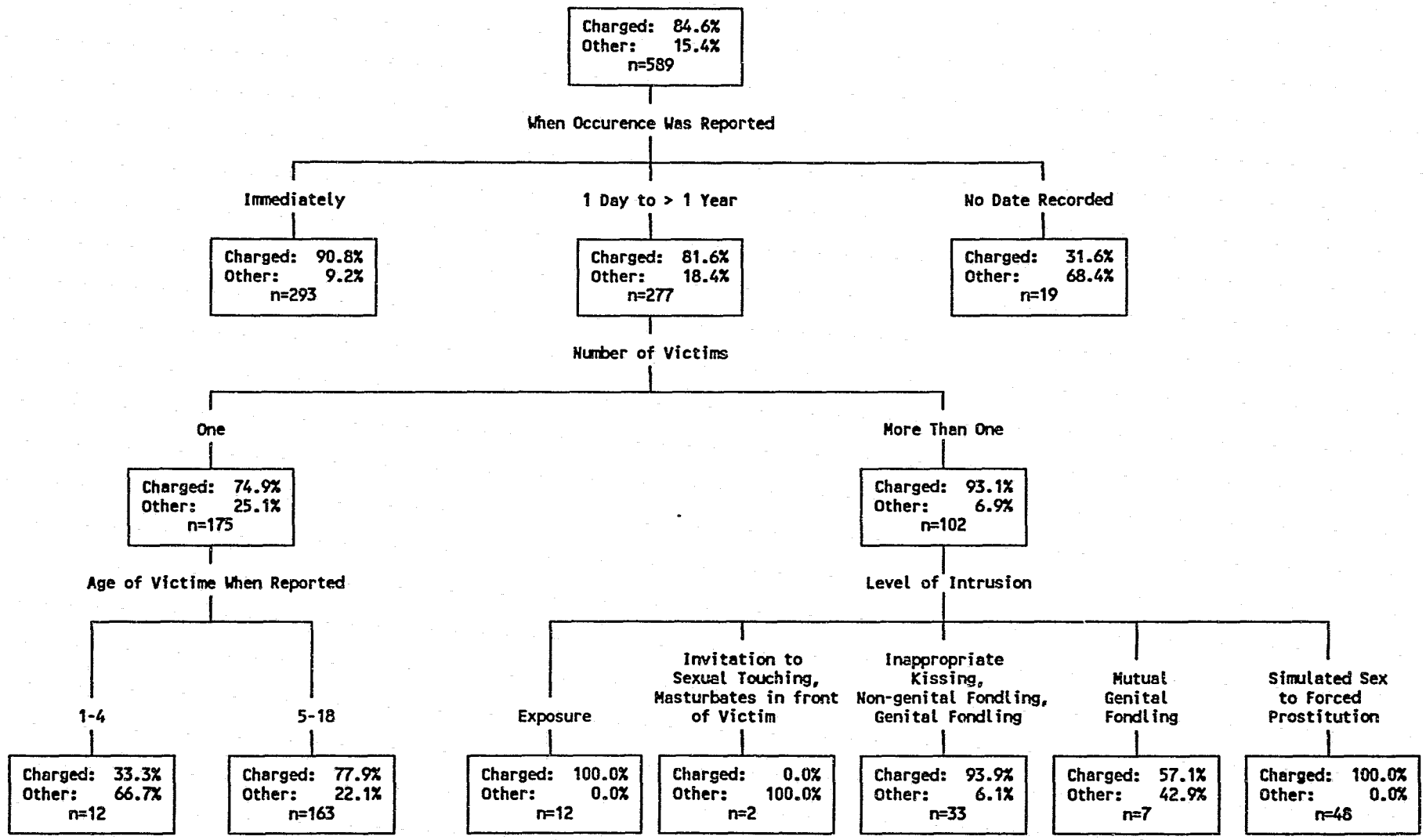
Figure 4.7 contains the decision model which best predicts whether Edmonton cases are cleared by charge, as opposed to cleared otherwise and not cleared. The first variable to split (and thus the best predictor from the list of independent variables shown in Table 4.4 to predict cleared by charge) is "when the occurrence was reported." Note that when the alleged incident was reported immediately, 91 percent of the cases were concluded by laying charges compared to only 32 percent of the cases when no date was recorded (i.e., no specific disclosure occurred). In the second iteration, the number of victims became the most significant predictor. Cases involving more than one victim were cleared by charge 93 percent of the time, compared to 75 percent of the cases involving only one victim. Further, the third iteration indicates that specific levels of intrusion significantly contribute to whether charges are laid. Note, for example, that for cases involving more than one victim, all of the cases characterized by the highest level of abuse "simulated sex through to forced prostitution" were cleared by charge status. Likewise, the opposite end of the intrusion scale, all cases involving only exposure, were also cleared by charge. The middle categories of intrusion "inappropriate kissing through to genital fondling" also achieved a relatively high rate, i.e., 94 percent. It is, however, very interesting to note that mutual genital fondling was comparatively lower; only 57 percent of these cases were cleared by charge.

In cases involving only one victim, age at the time of the report has a positive effect in cleared by charge status. Note, for example, that 78 percent of the cases involving victims ranging from age five to 18 were cleared by charge, compared to 33 percent for those under four years of age.

4.5.7 Summary: Decision Making in the Criminal Justice System

- In Calgary, 78 percent of the victims were female and 22 percent were male, compared to 83 percent female and 17 percent male victims in Edmonton.

Figure 4.7 Decision Model for Cleared by Charge and Other Cases for Edmonton Police Service[1]



[1] Significance Level = .01
Data Source = Police File Review
Sample excludes unfounded cases and cases where offender is under 12 years of age.

- In Calgary, 41 percent of the victims were 12 - 18 years old, 26 percent were eight - 11 years old, 17 percent were five to seven years old and over 15 percent were under four years old. In Edmonton, 56 percent of the victims were 12 - 18 years old, 26 percent were eight - 11 years old, 12 percent were five to seven years old and less than five percent were under four years old.

- Most of the alleged offenders were males i.e., 95 percent in Calgary and 98 percent in Edmonton. Only a few were female, i.e., five percent in Calgary and two percent in Edmonton.

- In Calgary, 21 percent of the male accused victimized male children and 57 percent of the female accused victimized female children. For Edmonton, the comparable figures were 16 percent and 40 percent respectively.

- In Calgary, accused were most likely to be fathers or father figures (i.e., 33 percent) or other relatives (24 percent). In contrast, for Edmonton, accused were most likely to be strangers (25 percent), while 18 percent of the accused were fathers or father figures.

- Accused were under 18 years old in 17 percent of Calgary cases and 18 percent of Edmonton cases.

- Reports were most frequently made by social workers (38 percent) in Calgary and most often by mothers (30 percent) in Edmonton.

- Only 13 percent of the cases were reported within 24 hours in Calgary, compared to 53 percent of the cases in Edmonton.

- In both cities, approximately 37 percent of the cases involved multiple victims.

- Physical injuries were sustained by 12 percent of the Calgary victims and ten percent of the Edmonton victims. Further, 40 percent of the Calgary victims and 18 percent of the Edmonton victims were perceived to be emotionally injured.

- Many of the differences between the Calgary and Edmonton cases above are most likely due to the fact that in Calgary, cases involving older victims, reported immediately to the district offices, were not referred to the special child sexual abuse crime unit and thus are not included in the sample. In contrast, the Edmonton sample of cases reviewed is the total population of cases for the city.

- In Calgary, ten percent of the cases involved multiple accused, compared to seven percent for Edmonton.

- The duration of abuse was more than one year in 26 percent of the cases in Calgary, compared to 14 percent of the cases in Edmonton. Fifty-eight percent of the cases in Edmonton involved only one incident, compared to 36 percent of the Calgary cases.

- Genital fondling was the most common form of abuse in both cities (25 percent for Calgary and 22 percent for Edmonton), followed by oral sex in Calgary (18 percent) and vaginal penetration in Edmonton (14 percent). Vaginal penetration occurred in 16 percent of the Calgary cases.

- The significant predictors of unfounded case status, in order of importance, in Calgary, were "duration of abuse not specifically reported," "lack of perceived emotional injury of the victim," and "absence of witnesses." In Edmonton, the most significant predictors were "only one victim," "duration of abuse not specifically reported," and "family resistance to investigation."

- The most significant predictor of a case being cleared by charge in Calgary were the "presence of witnesses," and the "duration of abuse being 31 - 90 days." Other important predictors that were positively associated with a case resulting in charges were "age of the victim up to 14 years old," "more than one victim," and "increased levels of intrusion." For Edmonton cases, the most significant predictors of a case being cleared by charge were "occurrence reported immediately," "more than one victim," and "age of victim over five years old."

4.6 Case Duration

Table 4.5 presents data on the average duration of cases from the time of first occurrence through various stages to the conclusion of the trial for Calgary and Edmonton.

Table 4.5 Average Elapsed Time Between Date of First Occurrence, Most Recent Occurrence, Report to Police, Preliminary Inquiry and Trial, By Location, January 1, 1988 - July 31, 1990

Time Period	Calgary			Edmonton		
	n	s.d.	$\bar{X}$ days (months)	n	s.d.	$\bar{X}$ days (months)
First Occurrence to Report to Police	313	929.4	627.4 (20.9)	460	808.8	374.8 (12.5)
Most Recent Occurrence to Report to Police	300	547.7	243.6 (8.1)	456	460.6	152.6 (5.1)
Report to Police to Preliminary Inquiry	99	125.4	159.3 (5.3)	140	82.5	155.3 (5.2)
Report to Police to Trial[1]	220	173.6	268.8 (9.0)	331	164.4	245.0 (8.2)
Preliminary Inquiry to Trial[1]	100	107.4	195.0 (6.5)	139	113.0	207.0 (6.9)
First Occurrence to Trial[1]	218	986.2	927.6 (30.9)	331	930.2	629.1 (21.0)
Most Recent Occurrence to Trial[1]	207	612.9	518.4 (17.3)	327	573.9	440.3 (14.7)

[1] Trial date was obtained from CJIS and represents the date on which proceedings are concluded.

Data Sources: Police File Review
Criminal Justice Information System (CJIS)

Unit of Analysis: Case (Victim/Occurrence)

4.6.1 Duration of Calgary Cases

The average duration from first occurrence to report to police is 20.9 months. However, the high standard deviation of 929 days indicates a broad range of duration over many years. Next, elapsed time between report to police and preliminary inquiry was 5.3 months; again, though, the standard deviation is high at 130 days, indicating that many victim/witnesses may have to wait up to eight or nine months after the investigation begins before coming to the preliminary inquiry. For cases going to trial this average elapsed time between report to police and trial is nine months, while duration from most recent occurrence to trial averages 17.3 months.

Analysis of elapsed time by year (see Appendix D, Tables D4.68 to D4.70) revealed a trend towards increased elapsed time. For example, from report to police to trial the average time increased from 8.5 months in 1988 to 9.2 months in 1990.

4.6.2 Duration of Edmonton Cases

The average elapsed time for first occurrence to report to police is 12.5 months. Elapsed time between report to police and preliminary inquiry is 5.2 months with a standard deviation of 82 days. Cases going to trial had an average elapsed time of 8.2 months between report to police and trial. The average time that elapsed between preliminary inquiry and trial is 6.9 months, while the average elapsed time between most recent occurrence and trial is 14.7 months.

Analysis of elapsed time by year (Appendix D, Tables D4.68 to D4.70) indicates a slight trend to decreasing elapsed time. For example, report to police to trial time decreased from 8.1 months in 1988 to 6.9 months in 1990.

4.6.3 Summary: Case Duration

- For cases that went to trial in Calgary, the average time from most recent occurrence to the time the report to police was made was 8.1 months, compared to 5.1 months for Edmonton cases.

- In Calgary, the average time from report to police to the preliminary inquiry was 5.3 months, compared to 5.2 months in Edmonton.

- The duration from preliminary inquiry to trial was 6.5 months for Calgary and 6.9 months for the Edmonton cases.

- The average time from report to police to trial was nine months for Calgary cases and 8.2 months for Edmonton cases.

- From 1988 to 1990, the average time from report to police to trial increased slightly in Calgary (from 8.5 months to 9.2 months) and decreased in Edmonton (from 8.1 months to 6.9 months).

4.7 Child Victim/Witnesses in the Court Process

In this section, the Court Observation and Court Observation Rating Scales are analyzed to reflect on the child witness performance during court proceedings.

First, general background information is briefly discussed, then multivariate analysis is employed using the Knowledge Seeker software to identify predictors of child witness behaviour in terms of the following subscales: anxious/withdrawn; sad/cries; and ability to communicate. The independent variables employed in this analysis are listed in Table 4.6. Because of the small sample sizes, the results of this analysis should be interpreted cautiously.

4.7.1 Court Proceedings in Calgary - Background Information

Fifteen male victim/witnesses (21 percent) and 58 female victim/witnesses (80 percent) were observed in court in Calgary from August 1, 1989 to July 31, 1990. Their ages ranged from six years old (n=7, ten percent) to 18 years old. However, the majority of children (58 percent) were between 12 and 15 years old.[15]

The most frequently experienced levels of intrusion were genital fondling (18 percent), vaginal penetration with penis (18 percent), oral sex (14 percent), and digital penetration (14 percent). Most of the observations were either in Queen's Bench preliminary inquiry held in Provincial Court (51 percent), or at Queen's Bench trial (47 percent). Only two youth court proceedings were observed.

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[15] See Appendix D, Tables D4.71 to D4.99 for detailed information.

Table 4.6 **List of Sample Parameters and Variables of Knowledge Seeker Analysis for Figures 4.8 through 4.12**

	Variables	
		Range
Independent Variables for Figures 4.8 through 4.12	1) Gender of witness	1 - 2
	2) Age of witness	1 - 6
	3) Total time of examination-in-chief	1 - 9
	4) Total time of cross-examination	1 - 9
	5) Number of court appearances	1 - 4
	6) Number of victims	1 - 2
	7) Number of alleged offenders	1 - 2
	8) Gender of alleged offenders	1 - 2
	9) Use of weapon	1 - 2
	10) Number of witnesses	1 - 3
	11) Expert witnesses	1 - 2
	12) Person child disclosed to	1 - 12
	13) When occurrence was reported	1 - 6
	14) Who reported	1 - 16
	15) Relationship of offender to victim	1 - 16
	16) Level of intrusion of abuse	1 - 13
	17) Use of force	1 - 3
	18) Use of enticement	1 - 2
	19) Use of alcohol	1 - 2
	20) Use of drugs	1 - 2
	21) Physical injuries	1 - 2
	22) Emotional injury	1 - 2
	23) Forensic examination	1 - 2
	24) First agency contact	1 - 6
	25) Age of alleged offender	1 - 8
	26) Duration of abuse	1 - 6
	27) Innovative procedures used	1 - 3
	28) Number of people in courtroom during child witness testimony	1 - 7
	29) Support adult stays in courtroom	1 - 2
	30) Witnesses cleared from court	1 - 2
Dependent Variable for Figures 4.8 & 4.10	Witness behaviour: Anxious/Withdrawn	
Dependent Variable for Figure 4.11	Witness behaviour: Sad/Cries	
Dependent Variable for Figures 4.9 & 4.12	Witness behaviour: Ability to communicate	

4.7.2 Child Behaviour in Calgary Proceedings

Anxious/Withdrawn

Figure 4.8 contains the results of the analysis of predictors for the anxious/withdrawn behaviour subscale. The first variable to split and thus the most significant predictor of the child being highly anxious/withdrawn in the court process was physical injuries. The children who had experienced injury during the abuse incident(s) demonstrated significantly higher anxiety (82 percent) than those children who had not been injured (48 percent). The second iteration indicates that for those children who did not experience physical injury, anxiety was still high when expert witnesses were involved. This could indicate that these children, while not suffering physical injury, might have experienced a higher proportion of emotional injury and/or been involved in more complex cases, thus requiring the presence of the expert witness.

Sad/Cries

No variables were significantly correlated to the sad/cries subscale in the Calgary sample.

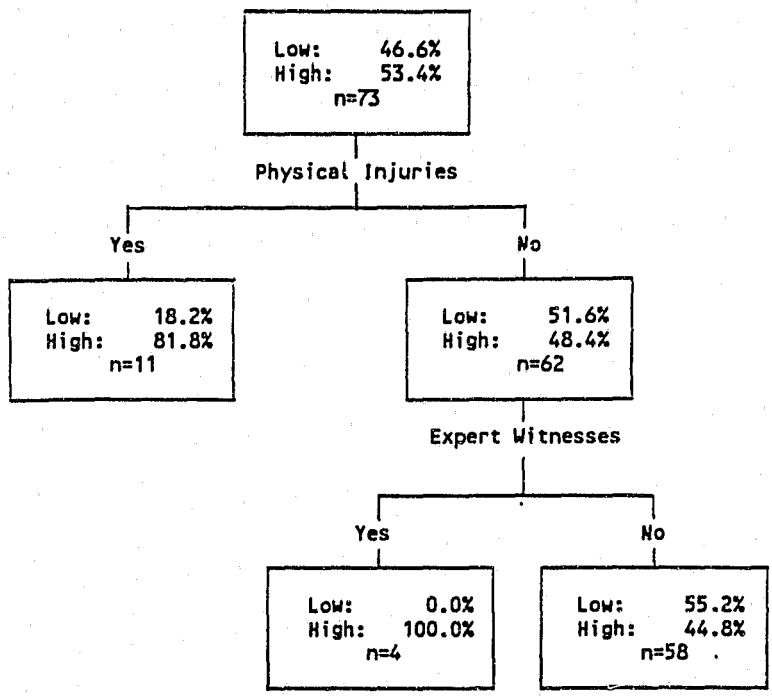
Ability to Communicate

Figure 4.9 contains the results for the analysis of the predictors of ability to communicate. Only one variable (when occurrence was reported to police) obtained a significant relationship to the dependent variable. Note that incidents reported "immediately" had the high correlation with high ability to communicate. In contrast, when the abuse was reported more than one year after it occurred, or if it was vague and no date was recorded, then only 13 percent demonstrated a high ability to communicate.

4.7.3 Proceedings in Edmonton - Background Information

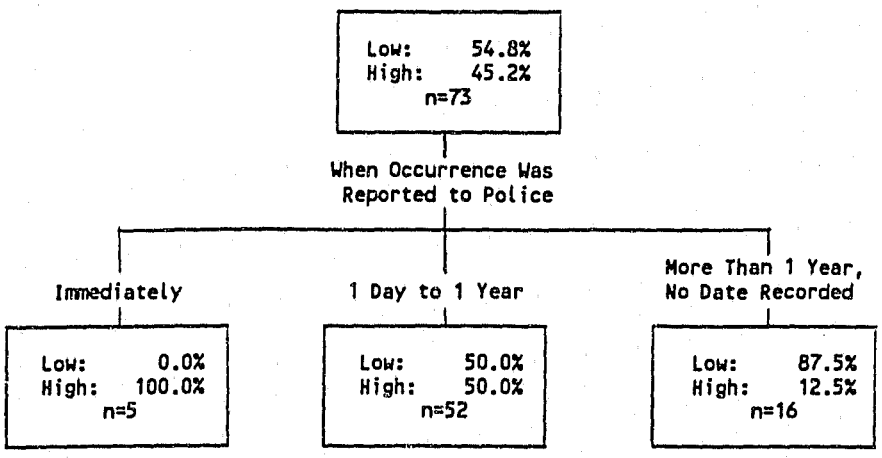
Seventeen male victim/witnesses (32 percent) and 37 female victim/witnesses (69 percent) were observed in court in Edmonton from August 1, 1989 to July 31, 1990. Their ages ranged from seven years old to 18 years old; 44 percent were 16 to 18 years old, 44 percent were between 12 and 15 years old. There were five children between eight and 11 years old and one seven year old. The most frequently experienced level of intrusion was genital fondling (45 percent), followed by vaginal penetration (27 percent) and mutual genital fondling (eight percent).

Figure 4.8 Prediction Model for Witness Behaviour: Anxious/Withdrawn for Calgary Court Proceedings[1]



1 Significance Level = .05
Data Sources = 1. Court Observation Schedule
2. Court Observation Rating Scales
3. Police File Review

Figure 4.9 Prediction Model for Witness Behaviour: Ability to Communicate for Calgary Court Proceedings[1]



1 Significance Level = .05
Data Sources = 1. Court Observation Schedule
2. Court Observation Rating Scales
3. Police File Review

Most observations were made in Queen's Bench preliminary inquiry held in Provincial Court (45 percent), and Queen's Bench trial (46 percent), however, four observations were also made in Provincial Criminal Court and one was made in Youth Court.

4.7.4 Child Behaviour in Edmonton Court Proceedings

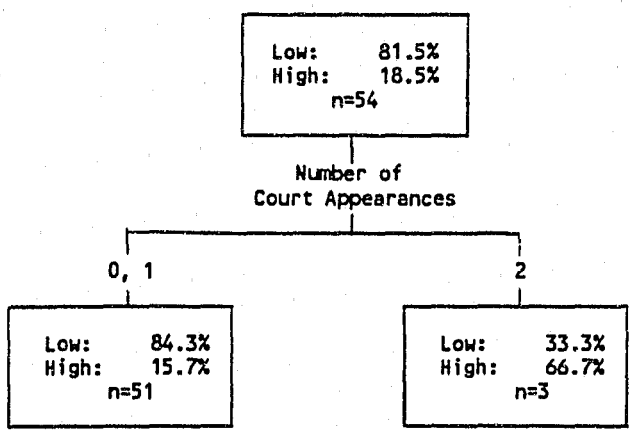
Anxious/Withdrawn

Figure 4.10 contains the results of the analysis of predictors for the anxious/withdrawn behaviour subscale. The first and only variable to emerge in the analysis (of the 30 independent variables listed in Table 4.6) was the number of court appearances. Child witnesses who had experienced two or more court appearances were high on the anxious/withdrawn subscale compared to children who were in court for the first time or who only had one previous experience. One obvious explanation for this finding is that "having to tell the story repeatedly" and being challenged results in stress.

Sad/Cries

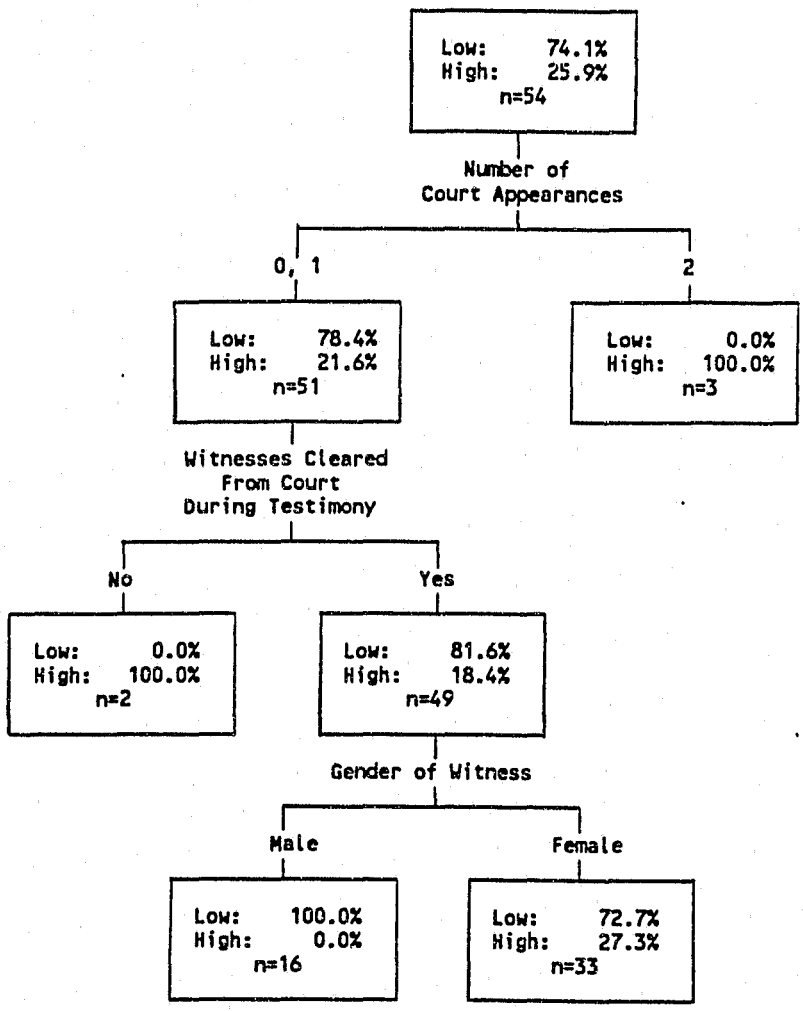
Figure 4.11 contains the results for the analysis of the predictors for the sad/cries subscale. Again, as with anxious/withdrawn above, the number of previous court appearances is the most significant predictor of the sad/cries subscale. Obviously, children who had to retell their stories found it difficult. A second iteration indicates that the witnesses being cleared from the courtroom during the testimony is an important predictor of the sad/cries subscale for those children who have only been in court once or never before. Note, for example, when witnesses are not cleared, both of the child victim witnesses (100 percent) obtained high scores on the sad/cries subscale compared to 18 percent of the cases where witnesses were cleared. Further, the information indicates a tendency for the female victim/witnesses to score higher on the sad/cries subscale.

Figure 4.10 Prediction Model for Witness Behaviour: Ability to Communicate for Calgary Court Proceeding[1]



1 Significance Level = .20
Data Sources = 1. Court Observation Schedule
2. Court Observation Rating Scales
3. Police File Review

Figure 4.11 Prediction Model for Witness Behaviour: Sad/Cries for Edmonton Court Proceedings[1]



1 Significance Level = .05
Data Sources = 1. Court Observation Schedule
2. Court Observation Rating Scales
3. Police File Review

Ability to Communicate

Figure 4.12 contains the results of the analysis of the predictors for witnesses' ability to communicate. The first and only variable to split was the number of people in the courtroom. When there were less than ten people in the courtroom, 79 percent of the witnesses demonstrated high ability to communicate, compared to 53 percent for situations where more than ten people were in the courtroom.

4.7.5 Summary: Child Victim/Witnesses in the Court Process

- In Calgary, fifteen male and 58 female victim/witnesses were observed. Their ages ranged from six years old (n=7) to 18 years old -- most (58 percent) were between 12 and 15 years old. The most common levels of intrusion experienced by this group were genital fondling (18 percent), vaginal penetration with penis (18 percent), oral sex (14 percent), and digital penetration (14 percent).

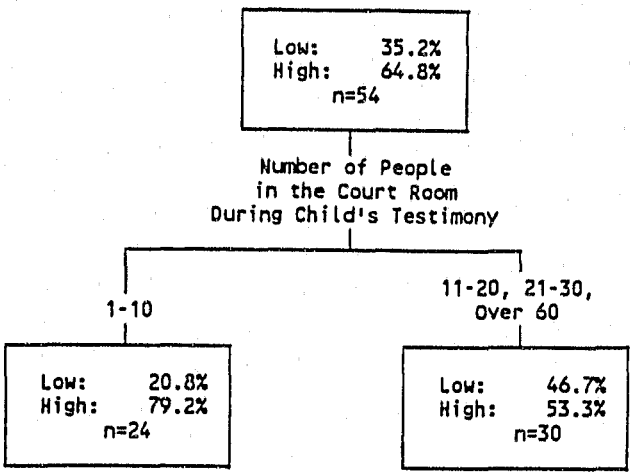
- In Edmonton, 17 male and 37 female victim/witnesses were observed. Their ages ranged from a low of seven to 18 years old -- the vast majority (85 percent) were between 12 and 18 years old. The most common levels of intrusion were genital fondling (45 percent), vaginal penetration (27 percent), and mutual genital fondling (eight percent).

- Child victim/witnesses in Calgary manifested the following behaviours: children who were physically injured during the abuse incidents were significantly anxious and withdrawn; children in cases involving expert witnesses were also significantly anxious, and in cases where the report was made more than one year after the incident, the child's ability to communicate was significantly lower.

- Child victim/witnesses in Edmonton manifested the following behaviours: children who had two or more court appearances were significantly anxious, withdrawn and cried; the ability to communicate decreased as the number of people in court increased, and clearing the court decreased sadness and crying.

- Because of the age difference between the child victim/witnesses observed in Calgary and Edmonton (they were considerably older in Edmonton) the two samples are not directly comparable.

Figure 4.12 Prediction Model for Witness Behaviour: Ability to Communicate for Edmonton Court Proceedings[1]



1 Significance Level = .05
Data Sources = 1. Court Observation Schedule
2. Court Observation Rating Scales
3. Police File Review

5.0 IMPLEMENTATION AND IMPACT OF BILL C-15, AN ACT TO AMEND THE CRIMINAL CODE AND THE CANADA EVIDENCE ACT

This chapter focusses specifically on the implementation and impact of Bill C-15 and is most relevant to the third major purpose of this study:

(3) to identify the degree to which the goals and objectives of Bill C-15, An Act to Amend the Criminal Code and the Canada Evidence Act, have been achieved.

The analysis of data in this chapter will be structured according to the specific research questions which relate to the goals and objectives of Bill C-15 discussed in Chapter 2.0 and listed in Table 2.2.

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

Question 1.1: Are the overall rates of charges under sections 151 CC (Sexual interference for children under 14), 152 CC (Invitation to sexual touching for children under 14), and 153 CC (Sexual exploitation for children 15-18) compared to subsections 146(1) XCC (Sexual intercourse with female under 14 years), and 146(2) XCC (Sexual intercourse with female between 14-16 years) going up?

Calgary

Table 5.1 contains the number of charges under sections relevant to child sexual abuse and assault in Calgary from 1986 to 1990. An overall increase in the total number of charges is apparent. In 1988 the increase over 1987 was +20 percent, followed by a further increase of +22 percent in 1989 and then a slight decrease (12 percent) in 1990. Overall, from 1987 to 1990 the number of charges laid increased by +30 percent.

Table 5.1 Number of Charges Under Sections Relevant to Child Sexual Abuse and Assault in Calgary from 1986 -1990

Charge Section Number[1]	1986 n	1986 %	1987 n	1987 %	1988 n	1988 %	1989 n	1989 %	1990 n	1990 %
Old Code XCC										
Sections 146(1) & (2)	5	3.2	6	2.8						
Section 150	3	1.9	2	0.9						
Section 151										
Section 152	1	0.6								
Section 153										
Section 155	2	1.3	1	0.5						
Section 156										
Section 157	30	19.5	55	25.7						
Section 166										
Section 167										
Section 168										
Section 169	11	7.1	12	5.6						
Sexual Assault Old/New Code[2]										
Sections 246.1,246.2,246.3[3] and Section 271	102	66.2	138	64.5	147	57.2	156	49.7	130	46.8
Section 272							8	2.5	6	2.2
Section 273										
New Code										
Section 151					47	18.3	81	25.8	74	26.6
Section 152					9	3.5	6	1.9	14	5.0
Section 153					5	1.9	15	4.8	17	6.1
Section 155					5	1.9	3	1.0	5	1.8
Section 159					2	0.8	8	2.5	2	0.7
Section 160										
Section 170										
Section 171										
Section 172										
Sections 173(1) & (2)					42	16.3	28	8.9	25	9.0
Section 212							9	2.9	5	1.8
TOTALS	154	100.0	214	100.0	257	100.0	314	100.0	278	100.0
Percentage change over previous year				+ 39.0%		+ 20.1%		+ 22.2%		- 11.5%

[1] See Table 2.1, pages 8-9, for a brief description of each section.

[2] The new Criminal Code was proclaimed January 1, 1988. Sexual assault sections 246.1, 246.2 and 246.3 were changed to sections 271, 272 and 273 respectively, however, the contents of these sections were not changed.

[3] Distinction are not made on most code subsections (e.g., section 246.1 v. section 246.2) since the Police Information System captures only 3 digits.

Data Source: Police Information Management System (PIMS)

Unit of Analysis: Charge

To a large extent these overall increases are a function of the increases in charges under sections 151, 152 and 153 compared to the old subsections 146(1) and (2). Note that there were only five charges laid under section 146 in 1986 and six in 1987. In addition, 30 charges were laid under section 157 in 1986 and 55 in 1987. In comparison, 61 charges were laid under the new codes in 1988, 102 in 1989 and 105 in 1990. Most of the charges were laid under section 151, while section 153 has been the least used section (i.e., two charges in 1988, eight in 1989 and six in 1990). As a group, however, it is clear that the new codes are being employed significantly more frequently than the old codes, particularly in 1989 and 1990. There has also been a significant corresponding increase in the number of charges laid under section 271, however, the relative proportion of charges laid under section 271 continued to decrease (i.e., in 1990 it accounted for 47 percent of the charges).

Edmonton

Table 5.2 contains the number of charges under sections relevant to child sexual abuse and assault in Edmonton from 1986 to 1990. An overall increase in the total number of relevant charges is apparent. In 1988 the increase over 1987 was +19 percent, followed by a further increase of +6 percent in 1989 and +27 percent in 1990. Overall, the number of charges laid increased by +60 percent from 1987 to 1990.

Most of the overall rate increases are due to the increase in charges under sections 151, 152 and 153 compared to the old subsections 146(1) and (2). For example, only 15 charges were laid under section 146 (Sexual intercourse with a female under 14 years) in 1986, and eight in 1987. In addition, 28 charges were laid under section 157 (Gross indecency) in 1986, 31 in 1987 and 20 in 1988. In comparison, 32 charges were laid under the new codes sections 151, 152 and 153 in 1988, 62 in 1989 and 95 in 1990. Most of the charges were laid under section 151 and the fewest under section 153. As a group, however, it is clear that the new codes are being employed significantly more frequently than the old codes, particularly in 1989 and 1990. Charges under section 271 were relatively stable up to 1990, when there was a significant increase in the number of charges (i.e., n=191), while the relative proportion of charges laid under this section continued to decrease (i.e., in 1990 it accounted for 53 percent of the total charges).

Question 1.2: Are the new offences (i.e., sections 151 (Sexual interference for children under 14), 152 (Invitation to sexual touching for children under 14) and 153 (Sexual exploitation for children 15-18) covering a broad range of conduct, not just intercourse?

Table 5.2 Number of Charges Under Sections Relevant to Child Sexual Abuse and Assault in Edmonton from 1986 - 1990

Charge Section Number[1]	1986		1987		1988		1989		1990	
	n	%	n	%	n	%	n	%	n	%
Old Code XCC										
Sections 146(1) & (2)	15	5.7	8	3.6	10	3.8	1	0.4	7	2.0
Section 150	6	2.3	4	1.8						
Section 151										
Section 152										
Section 153										
Section 155	6	2.3	3	1.3	3	1.1	3	1.1	1	0.3
Section 156					2	0.8				
Section 157	28	10.7	31	13.8	20	7.5	9	3.2	16	4.5
Section 166										
Section 167										
Section 168										
Section 169	27	10.3	15	6.7						
Sexual Assault Old/New Codes[2]										
Sections 246.1, 246.2 & 246.3[3]	176	67.4	160	71.4	164	61.7	159	56.4	191	53.4
and Section 271	3	1.1	2	0.9	4	1.5	5	1.8		
Section 272			1	0.4			1	0.4		
Section 273										
New Code										
Section 151					19	7.1	45	16.0	76	21.2
Section 152					11	4.1	9	3.2	13	3.6
Section 153					2	0.8	8	2.8	6	1.7
Section 155					7	2.6	1	0.4	6	1.7
Section 159					3	1.1	2	0.7	4	1.1
Section 160									3	0.8
Section 170										
Section 171										
Section 172										
Section 173(1)					14	5.3	24	8.5	23	6.4
Section 173(2)					6	2.3	5	1.8	7	2.0
Section 212					1	0.4	10	3.5	5	1.4
TOTALS	261	100.0	224	100.0	266	100.0	282	100.0	358	100.0
Percentage change over previous year			-14.2%		+ 18.8%		+ 6.0%		+ 27.0%	

[1] See Table 2.1, pages 8-9, for a brief description of each section.

[2] The new Criminal Code was proclaimed January 1, 1988. Sexual assault sections 246.1, 246.2 and 246.3 were changed to sections 271, 272 and 273 respectively, however, the contents of these sections were not changed.

[3] Distinction are not made on most code subsections (e.g., section 246.1 v. section 246.2) since the Police Information System captures only 3 digits.

Data Source: Police Information Systems (Records and CIA)

Unit of Analysis: Charge

Calgary

Before analyzing detailed data separately for Calgary and Edmonton, it is informative to make a general comparison of the types of behaviours associated with charges laid under subsection 146(1) (Sexual intercourse with a female under the age of 14) of the old Criminal Code and sections 151, 152, 153 and 271 (Sexual assault) of the new Criminal Code, for Calgary and Edmonton together. Data were available on 12 charges under subsection 146(1) that were investigated during the time frame of this study. Of these 12 cases, all reported vaginal penetration with penis (see Appendix D, Tables D5.1 through D5.3). In contrast, intercourse was reported for only 16 percent, ten percent, 33 percent and 16 percent of the cases where charges were laid under sections 151, 152, 153 and 271 respectively (Appendix D, Table D5.3).

Table 5.3 contains a breakdown of the types of behaviours that occurred in cases where charges were laid under sections 151, 152 and 153 and subsection 173(2) (Exposure to child under 14) for later discussion.

Under section 151, note that the most frequently reported activity was genital fondling (69 percent of the cases), followed by chest fondling (34 percent) and vaginal penetration with a finger (23 percent). Only 14 percent of the cases charged under section 151 involved intercourse, and an additional 18 percent involved oral sex on the victim.

The behaviour pattern for section 152 is as broad as that associated with section 151, but is somewhat different. Victim fondling offender (70 percent) is the most common behaviour followed by exposure (50 percent) and genital fondling (40 percent). Oral sex was also reported in 40 percent of the cases, however, vaginal penetration with the penis only occurred in two cases.

The behaviour patterns associated with section 153 were very similar to the pattern associated with section 151. The most frequently reported activity was genital fondling (63 percent), followed by chest fondling (53 percent) and vaginal penetration with penis (32 percent).

Edmonton

Referring again to Table 5.3, the most frequently reported activity for cases charged under section 151 was genital fondling (69 percent) followed by chest fondling (33 percent) and buttocks fondling (22 percent). Intercourse was experienced in only 11 percent of the cases.

Table 5.3 Range of Conduct for Cases Having Charges Under Sections 151, 152, 153 or 173(2), (and Other Sections) of the New Criminal Code, by Location, January 1, 1988 - July 31, 1990[1]

Number of Cases Involving

Location and Section		Exposure	Invitation	Show Pornography	Undress	Masturbation	Inappropriate Kissing	Chest Fondling	Buttocks Fondling	Genital Fondling	Victim Fondled Offender
Calgary											
s.151	n	21	7	7	28	13	31	48	11	97	31
	%	14.9	5.0	5.0	19.9	9.2	22.0	34.0	7.8	68.8	22.0
s.152	n	5	2	1	1	2	2	3	-	4	7
	%	50.0	20.0	10.0	10.0	20.0	20.0	30.0	-	40.0	70.0
s.153	n	5	-	3	5	4	5	10	3	12	4
	%	26.3	-	15.8	26.3	21.1	26.3	52.6	15.8	63.2	21.1
s.173(2)[2]	n	-	-	-	-	-	-	-	-	-	-
	%	-	-	-	-	-	-	-	-	-	-
Edmonton											
s.151	n	6	8	3	3	7	13	24	16	50	15
	%	8.3	11.1	4.2	4.2	9.7	18.1	33.3	22.2	69.4	20.8
s.152	n	8	10	3	4	5	1	2	2	8	8
	%	40.0	50.0	15.0	20.0	25.0	5.0	10.0	10.0	40.0	40.0
s.153	n	1	-	1	2	-	1	5	-	6	1
	%	14.3	-	14.3	28.6	-	14.3	71.4	-	85.7	14.3
s.173(2)[2]	n	22	-	- -	-	-	-	-	-	-	-
	%	100.0	-		-	-	-	-	-	-	-

Table 5.3 (continued)[1]

Number of Cases Involving

Location and Section		Forced Activity w/others	Simulated Inter-course	Vaginal Penetration with Finger	Attempted Vaginal Penetration	Anal Penetration with finger	Oral Sex on Offender	Oral Sex on Victim	Vaginal Penet-ration w/penis	Anal Penetra-tion w/penis	Forced Pros-titution	Total Cases (n=)
Calgary												
s.151	n	2	24	33	5	4	11	26	19	6	-	141
	%	1.4	17.0	23.4	3.5	2.8	7.8	18.4	13.5	4.3	-	
s.152	n		1	3	-	-	1	4	2	-	-	10
	%	-	10.0	30.0	-	-	10.0	40.0	20.0	-	-	
s.153	n	-	5	2	1	1	3	5	6	1	-	19
	%	-	26.3	10.5	5.3	5.3	15.8	26.3	31.6	5.3	-	
s.173(2)[2]	n	-	-	-	-	-	-	-	-	-	-	0
	%	-	-	-	-	-	-	-	-	-	-	
Edmonton												
s.151	n	3	11	13	4	1	6	9	8	2	-	72
	%	4.2	15.3	18.1	5.6	1.4	8.3	12.5	11.1	2.8	-	
s.152	n	5	-	2	1	1	3	2	-	2	-	20
	%	25.0	-	10.0	5.0	5.0	15.0	10.0	-	10.0	-	
s.153	n	1	-	2	-	-	-	1	-	-	-	7
	%	14.3	-	28.6	-	-	-	14.3	-	-	-	
s.173(2)[2]	n	-	-	-	1	-	-	-	-	-	-	22
	%	-	-	-	4.5	-	-	-	-	-	-	

[1] Throughout this table, "Total Cases" refers to all cases having at least one charge under the specified section. Note that other charges may also be present, and will therefore contribute to the behaviour present.

[2] For section 173(2), cases are only included in this table if the child was under 14 year of age when abuse began. For the remaining sections, all cases are included, regardless of age.

Data Sources: Police File Review
Criminal Justice Information System (CJISX)

Unit of Analysis: Case (victim/occurrence)

The behaviour pattern for section 152 was also broad but different. As might be expected, the most frequently identified behaviour was invitation, which was reported in 50 percent of the cases. This behaviour was followed by genital fondling (40 percent). Intercourse was not reported for any of the cases, but oral sex was reported in two cases (ten percent).

The behaviour associated with section 153 was similar to that associated with section 151. Specifically, genital fondling (86 percent) was reported most frequently, followed by chest fondling (71 percent). However, no cases involving intercourse were reported and only one case involved oral sex.

In conclusion, it is obvious from the data that the new offences are covering a significantly broad range of conduct, not just intercourse.

Question 1.3: What are the conviction rates associated with sections 151 (Sexual interference for children under 14), 152 (Invitation to sexual touching for children under 14) and 153 (Sexual exploitation for children 15-18)?

Calgary

Information on the conviction rates for charges laid under sections 151, 152 and 153 in Calgary is contained in Tables 5.4, 5.5 and 5.6 respectively. The overall conviction rates were 52 percent for section 151, 100 percent for section 152 and zero percent for section 153. In relation to section 151, the conviction rate is due to the high number of guilty pleas, i.e., n=18 or approximately 13 percent of the total number of charges laid. Only five cases (four percent of the total) resulted in conviction and 53 charges (38 percent of the total) were withdrawn. It is also interesting to note that the majority (n=92, 65 percent) of accused charged under section 151 were also charged under section 271 (Sexual assault). However, the rate of charges withdrawn under section 271 was relatively low (i.e., 14 percent).

At the time of data collection none of the section 152 charges in Calgary were concluded by trial. The high conviction rate was due to three guilty pleas and the rest of the cases concluded with charges withdrawn (n=3) or other conclusions (n=4).

As indicated by Table 5.6, none of the charges laid under section 153 resulted in conviction or guilty pleas. In addition, five charges (26 percent of the total) were withdrawn.

Table 5.4 Trial Outcome for Charges under Section 151 of the New Criminal Code, by Location, January 1, 1988 - July 31, 1990

	Calgary			Edmonton		
	n	% STTL	% TTL	n	% STTL	% TTL
Trial Outcome						
Acquittal/Discharge	21	80.8	14.9	16	55.2	22.9
Convicted	5	19.2	3.5	13	44.8	18.6
Subtotal	26	100.0		29	100.0	
Otherwise Dealt With						
Guilty Plea	18	17.3	12.8	13	50.0	18.6
Charge Withdrawn	53	50.9	37.6	4	15.4	5.7
Other[1]	33	31.7	23.4	9	34.6	12.9
Subtotal	104	100.0		26	100.0	
Trial Pending	11		7.8	15		21.4
Total number of cases with one or more charges under s.151	141		100.0	70		100.0
Conviction Rate	52.3%			61.9%		

[1] "Other" includes stays, warrants and incomplete

Data Sources: Criminal Justice Information System (CJIS)
Police Review File

Unit of Analysis: Case (victim/occurrence)

Table 5.5 Trial Outcome for Charges under Section 152 of the New Criminal Code, by Location, January 1, 1988 - July 31, 1990

	Calgary			Edmonton		
	n	% STTL	% TTL	n	% STTL	% TTL
Trial Outcome						
Acquittal/Discharge	-	-	-	2	100.0	10.0
Convicted	-	-	-	-	-	-
Subtotal	-	-		2	100.0	
Otherwise Dealt With						
Guilty Plea	3	30.0	30.0	11	64.7	55.0
Charge Withdrawn	3	30.0	30.0	1	5.9	5.0
Other[1]	4	40.0	40.0	5	29.4	25.0
Subtotal	10	100.0		17	100.0	
Trial Pending	-	-	-	1		5.0
Total number of cases with one or more charges under s.152	10		100.0	20		100.0
Conviction Rate	100.0%			84.6%		

[1] "Other" includes stays, warrants and incomplete

Data Sources: Criminal Justice Information System (CJIS)
Police Review File

Unit of Analysis: Case (victim/occurrence)

Table 5.6 Trial Outcome for Charges under Section 153 of the New Criminal Code, by Location, January 1, 1988 - July 31, 1990

	Calgary			Edmonton		
	n	% STTL	% TTL	n	% STTL	% TTL
Trial Outcome						
Acquittal/Discharged	3	100.0	15.8	2	50.0	28.6
Convicted	-	-	-	2	50.0	28.6
Subtotal	3	100.0		4	100.0	
Otherwise Dealt With						
Guilty Plea	-	-	-	-	-	-
Charge Withdrawn	5	41.7	26.4	-	-	-
Other[1]	7	58.3	36.8	-	-	-
Subtotal	12	100.0		-	-	-
Trial Pending	4		21.1	3		42.9
Total number of cases with one or more charges under s.153	19		100.0	7		100.0
Conviction Rate	0			50.0%		

[1] "Other" includes stays, warrants and incomplete

Data Sources: Criminal Justice Information System (CJIS)
Police Review File

Unit of Analysis: Case (victim/occurrence)

Edmonton

Tables 5.4, 5.5 and 5.6 also contain information regarding conviction rates for charges laid under sections 151, 152, and 153 in Edmonton. The overall conviction rates were 62 percent for section 151, 85 percent for section 152 and 50 percent for section 153. The relatively high conviction rate for section 151 is due to both a high number of court proceedings resulting in convictions (n=13, 19 percent of the total number of charges) and guilty pleas (also n=13, 19 percent of the total number of charges). A total of 16 charges (23 percent of the total) were either acquitted or discharged, but only four charges (six percent of the total) were withdrawn.

In terms of section 152, the high conviction rate can be explained by the fact that 55 percent of the cases (n=11) concluded by guilty pleas. Only two completed court proceedings and both of those were acquitted and/or discharged.

Finally Table 5.6 indicates that two of the section 153 charges resulted in acquittal or discharge and two resulted in conviction.

Overall these conviction rates compare favourably to conviction rates reported in studies of adult sexual assault victims. Loh (1980), for example, found a conviction rate of 57 percent for assault charges and 59 percent for rape. However, successful conclusions of most of the cases are due to guilty pleas as opposed to convictions by trial. Section 153 is seldom used in either Calgary or Edmonton and when it is prosecuted it is likely to end in acquittal/discharge. However, caution must be exercised in making conclusions regarding the conviction success of sections 152 and 153 given the relatively low number of charges laid.

Question 1.4: What factors are associated with charges being laid, guilty pleas, and convictions for section 151 (Sexual interference for children under 14)?[1]

The decision models below were produced to explain three dependent variables: charges being laid, guilty pleas, and conviction for charges under section 151. Table 5.7 contains a complete listing of the independent variables included in each analysis.

[1] This question was meant to cover sections 151, 152 and 153, however, only section 151 obtained frequencies large enough to be analyzed; thus it is the only section investigated.

Table 5.7 List of Variables of Knowledge Seeker Analysis for Figures 5.1 through 5.6 and 5.9 through 5.12

Location	Calgary and Edmonton	
Independent Variables for Figures 5.1 through 5.6 and 5.9 through 5.12		Range
	1. Person child disclosed to	1 - 12
	2. When occurrence was reported	1 - 6
	3. Who reported	1 - 16
	4. Number of victims	1 - 2
	5. Number of offenders	1 - 2
	6. Gender of victim	1 - 2
	7. Age of victim when reported	1 - 6
	8. Duration of abuse	1 - 6
	9. Gender of offender	1 - 2
	10. Relationship of offender to victim: intrafamilial or extrafamilial	1 - 2
	11. Level of intrusion	1 - 13
	12. Used force	1 - 3
	13. Use of enticement	1 - 2
	14. Use of alcohol	1 - 2
	15. Use of drugs	1 - 2
	16. Number of witnesses	1 - 2
	17. Number of expert witnesses	1 - 2
	18. Use of weapon	1 - 2
	19. Physical injuries	1 - 2
	20. Emotional injury	1 - 2
	21. Forensic examination	1 - 2
	22. First agency contact	1 - 6
	23. Age of offender	1 - 8
Dependent Variable for Figures 5.1 and 5.4	Charges laid and other cases	
Dependent Variable for Figures 5.2 and 5.5	Guilty plea and other cases	
Dependent Variable for Figures 5.3 and 5.6	Conviction and acquittal cases	
Dependent Variable for Figures 5.9, 5.10, 5.11 and 5.12	No jail/jail sentence cases	

Calgary: Laying Charges Under Section 151

Figure 5.1 contains the results of the multivariate analysis to explain laying charges under section 151. The decision model splits first on age of the alleged offender, which is therefore the most important variable in predicting charges being laid under section 151. This relationship, however, is not linear. Both low age (12 to 17 years old) and high age (over 56 years old) are negatively correlated to charges being laid under this section, with only 14 percent and 25 percent of the cases resulting in charges being laid. In comparison, 51 percent of cases involving alleged offenders 18 to 55 years old resulted in charges being laid.

For adult alleged offenders under 55 years old, the model splits next on use of force. For this group, the probability of laying charges under section 151, either alone or in combination with other charges, was higher if no force was used on the victim. Specifically, 57 percent of the "no force" group cases resulted in charges being laid compared to 37 percent of the "physical/verbal force" group.

In the next iteration, the importance of the presence of a forensic examination is demonstrated. Note that charges were laid in 76 percent of cases having a forensic examination compared to 54 percent of cases not having a forensic examination. The probability of charges being laid in cases having a forensic examination is significantly increased for female victims; 90 percent of cases involving female victims resulted in charges being laid compared to 20 percent for male victims.

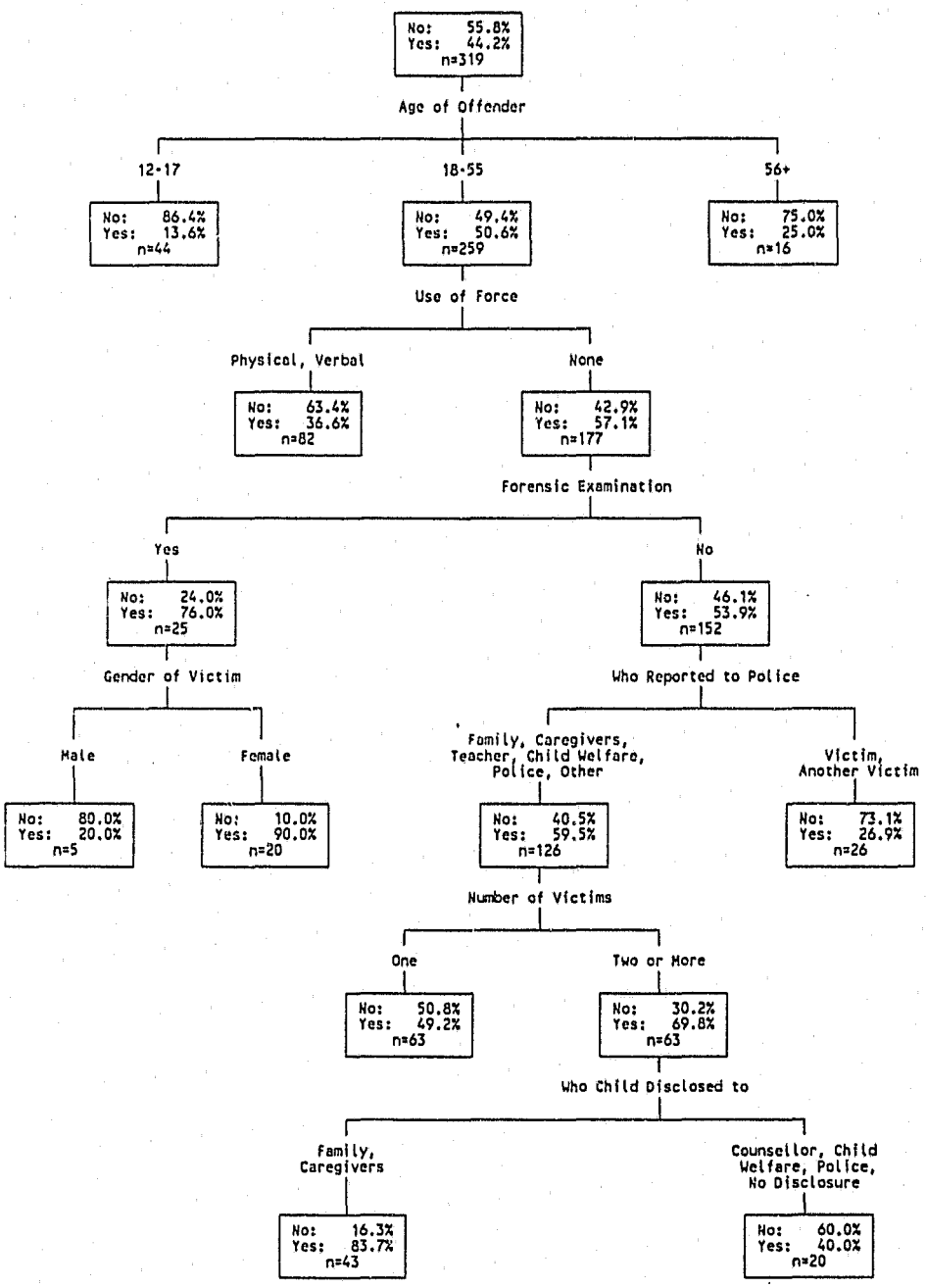
For cases having no forensic examination, who reported to police is also an important predictor. Cases in which the victims reported directly have a lower probability (27 percent) of resulting in charges being laid compared to cases where the report was made by others, such as family members, teachers and child welfare workers (60 percent).

In the next iteration, the significance of the number of victims is demonstrated. In cases involving two or more victims, the percentage of cases where charges were laid was 70 percent compared to 49 percent for cases involving single victims. The probability of cases with two or more victims having a charge under section 151 is further increased if the child originally disclosed to family members and caregivers (i.e., 84 percent), as opposed to not disclosing or disclosing to a counsellor, child welfare worker, or police (40 percent).

Calgary: Guilty Plea/Other

Once charges were laid many cases concluded with the accused pleading guilty. Figure 5.2 contains the results of multivariate analysis of all cases where the accused pled guilty to charges under section 151 compared to cases that proceeded to trial. All the independent variables listed in Table 5.7 were used in the analysis. The results indicate, however, that only one variable, age of the offender, was significantly related to guilty pleas. Offenders under 35 years old tended to plead guilty (i.e., 69 percent) more often than offenders 36 and older (only 29 percent pled guilty).

Figure 5.1 Decision Model for Laying Charges Under Section 151, Calgary Cases[1]



[1] Significance Level = .01
Data Sources: 1. Police File Review
2. Criminal Justice Information System (CJIS)
Unit of Analysis: Case (victim/occurence)

Calgary: Acquittal v. Conviction

An analysis was also run for cases charged under section 151 which proceeded to trial (see Figure 5.3). Again all independent variables listed in Table 5.7 were used. The first variable to split the decision model, and thus the best predictor for conviction, was number of victims. Cases involving only one victim were more likely to result in conviction (46 percent) compared to cases involving more than one victim. The probability of single victim cases resulting in conviction was further increased if the child was not perceived by the police to be emotionally injured. These cases obtained a conviction rate of 80 percent, compared to 17 percent for cases where there was emotional injury.

Edmonton: Laying Charges Under Section 151

Figure 5.4 contains the results of the multivariate analysis to explain laying charges under section 151. From the list of independent variables in Table 5.7, the decision model splits first on use of force; thus, force is the most significant predictor for laying charges under section 151. Cases involving the use of physical force tended not to be charged under section 151 (only ten percent were charged). In contrast, 18 percent of cases involving verbal force or no force resulted in laying charges.

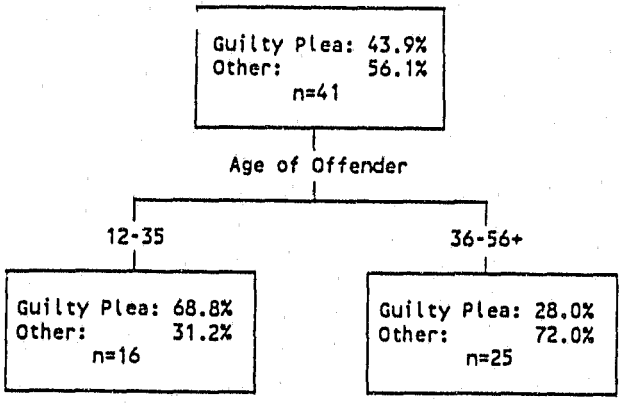
On the second iteration, the level of intrusion, in combination with verbal and no force, emerged as a significant predictor of being charged. Interestingly, those cases involving mutual genital fondling had the highest probability of being charged (i.e., 56 percent). In contrast, cases involving exposure obtained the lowest proportion of charges under section 151 (three percent).

Edmonton: Guilty Plea/Other

Once charged under section 151, some cases were concluded when the accused pled guilty. Figure 5.5 contains the results of the multivariate analysis of all cases where the accused plead guilty to charges under section 151 compared to all other section 151 cases that proceeded to trial.

All independent variables listed in Table 5.7 were included in the analysis. Only two of these variables emerged as significant in predicting guilty pleas. The first of these was duration of abuse. For cases where the duration was more than one year, none of the accused pled guilty. For cases where the duration was three months to one year, all five (100 percent) pled guilty; for cases where the duration was one incident to 90 days, 32 percent pleaded guilty. For this last group, the probability of a guilty plea was increased if the occurrence was reported more than two days after the incident (i.e., eight percent).

Figure 5.2 Prediction Model for Guilty Plea/Other Under Section 151, Calgary Cases

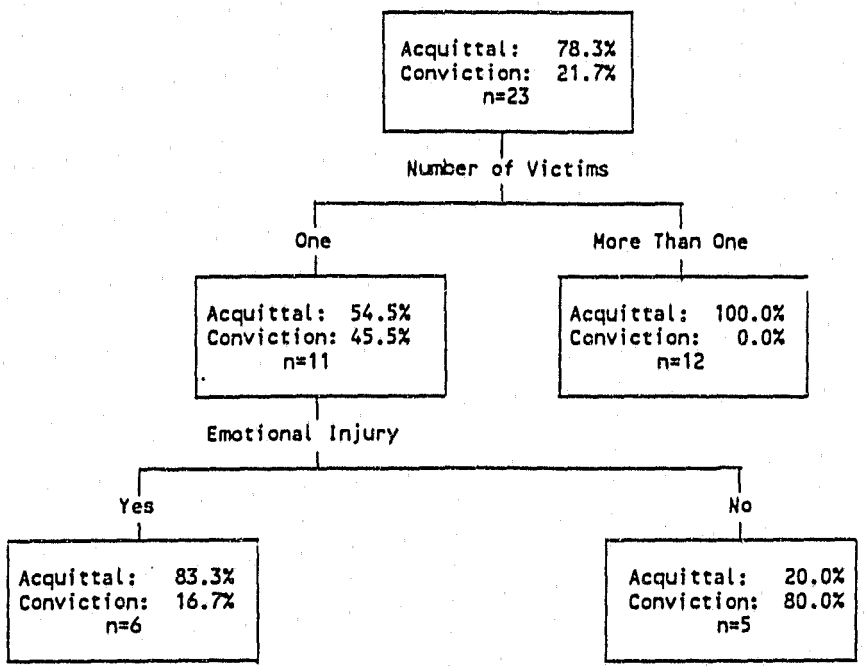


1 Significance Level = .05

Data Sources = 1. Police File Review
2. Criminal Justice Information System (CJIS)

Unit of Analysis: Case (victim/occurrence)

Figure 5.3 Prediction Model for Acquittal/Conviction for Charges Under Section 151, Calgary Cases[1]

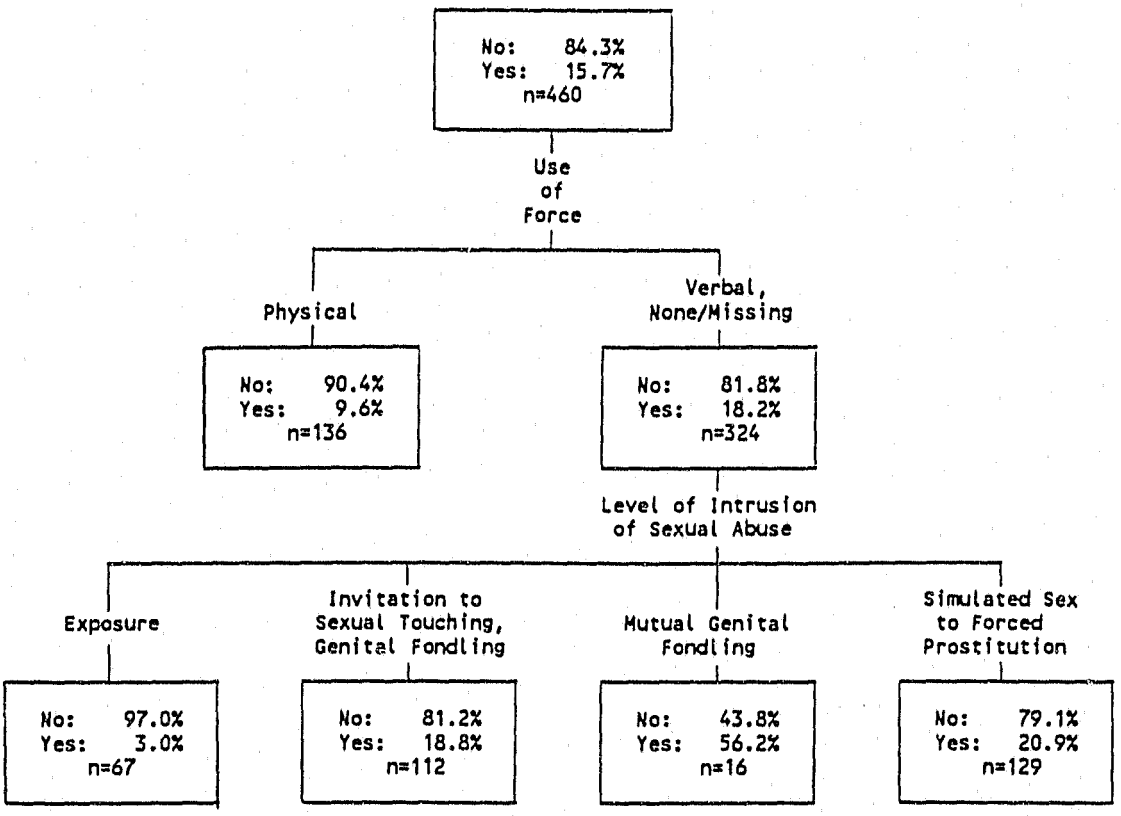


1 Significance Level = .05

Data Sources = 1. Police File Review
2. Criminal Justice Information System (CJIS)

Unit of Analysis: Case (victim/occurrence)

Figure 5.4 Decision Model for Laying Charges Under Section 151, Edmonton Cases[1]



1 Significance Level = .05

Data Sources = 1. Police File Review
2. Criminal Justice Information System (CJIS)

Unit of Analysis: Case (victim/occurrence)

Edmonton: Acquittal v. Conviction

An analysis was also conducted for cases which proceeded to trial (see Figure 5.6). Of all the independent variables listed in Table 5.7 only two variables were significantly related to convictions under section 151. On the first iteration, relationship of the offender to the victim (i.e., intrafamilial v. extrafamilial) split, making it the most significant predictor of conviction under section 151. Convictions were obtained in 75 percent of the extrafamilial cases, compared to only 20 percent of the intrafamilial cases. However, as indicated by the second iteration, the probability of an intrafamilial case resulting in a conviction is increased if the child victim is perceived to be emotionally injured.

5.1.1 Summary: Objective # 1

- From 1987 to 1990, charges under Criminal Code sections relevant to child sexual abuse increased by 30 percent in Calgary and 60 percent in Edmonton. Increases were due mainly to an increase in charges laid under sections 151 (Sexual interference) and 271 (Sexual assault).

- The behaviour most frequently associated with section 151 (Sexual interference) in both cities was genital fondling.

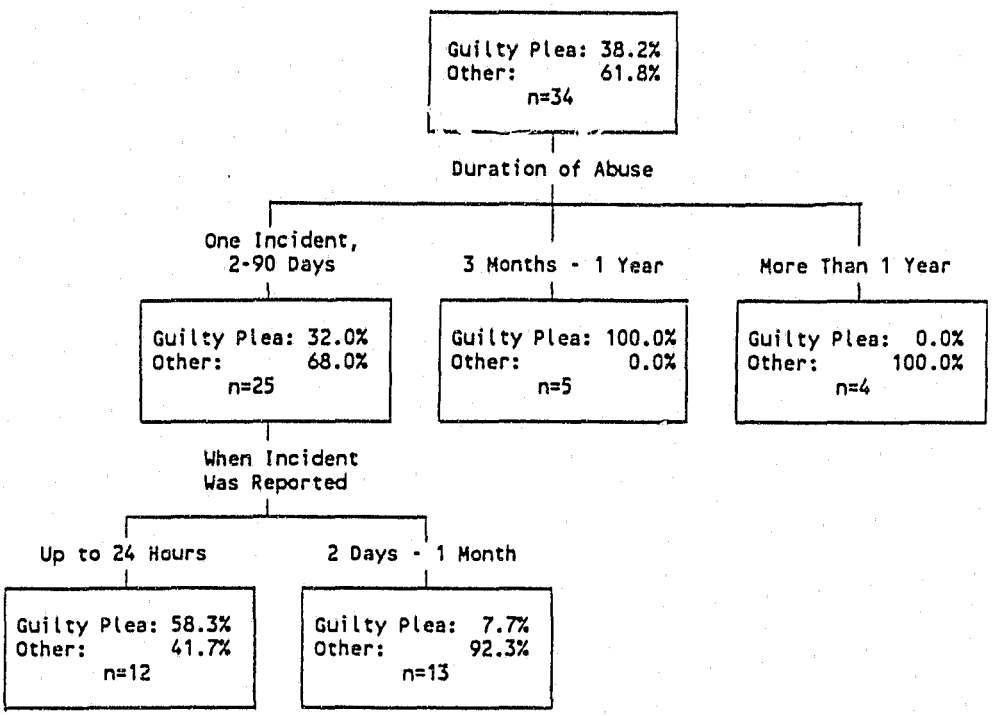
- The behaviour most frequently reported for section 152 (Invitation to sexual touching) was, in Calgary, victim fondled offender and, in Edmonton, invitation to touch.

- The behaviour most frequently reported for cases charged under section 153 (Sexual exploitation) for both cities was genital fondling, followed by chest fondling.

- Crown prosecutors in Calgary withdraw a considerable number of charges under the new sections 151, 152 and 153. In contrast, few charges were withdrawn by Edmonton crown prosecutors.

- Conviction rates under the new sections 151, 152 and 153 were 52 percent, 100 percent (only three cases -- all guilty pleas), and zero percent respectively in Calgary. In comparison, the rates of convictions were 62 percent, 85 percent, and 50 percent respectively in Edmonton.

Figure 5.5 Prediction Model for Guilty Plea/Other Under Section 151, Edmonton Cases[1]

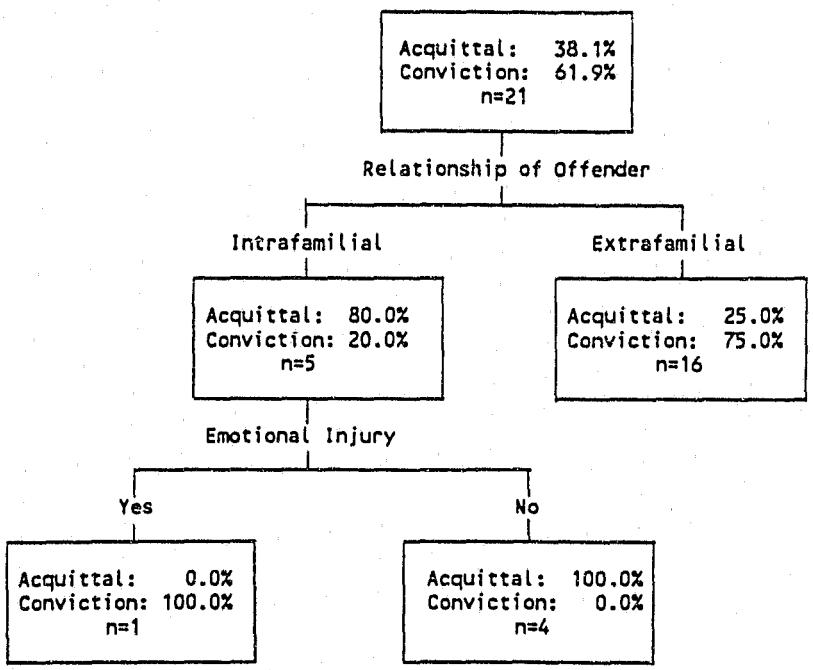


1 Significance Level = .05

Data Sources = 1. Police File Review
2. Criminal Justice Information System (CJIS)

Unit of Analysis: Case (victim/occurrence)

Figure 5.6 Prediction Model for Acquittal/Conviction for Charges Under Section 151, Edmonton Cases[1]



1 Significance Level = .05

Data Sources = 1. Police File Review
2. Criminal Justice Information System (CJIS)

Unit of Analysis: Case (victim/occurrence)

- The factors significantly related to laying charges under section 151 (Sexual interference) in Calgary were: the age of the alleged offender (those under 18 tended to be charged); lack of the use of force; the existence of a forensic examination, and more than one female victim. For Edmonton cases, the most significant factors were: the lack of the use of force, and mutual genital fondling.

- In Calgary, accused being under 18 years old was the most significant predictor of guilty pleas. In contrast, Edmonton cases in which the duration of abuse was three months to one year tended to conclude with guilty pleas.

- The best predictor of convictions under section 151 (Sexual interference) at trial in Calgary was having single as opposed to multiple victims. For Edmonton cases, the conviction rate was significantly higher for extrafamilial abuse (i.e., offender was not a family member).

5.2 Objective # 2: To Provide More Protection for Young Victims

Question 2.1: Are charges being laid under subsections 212(2) (Living off the avails of a prostitute under 18) and 212(4) (Obtaining person under 18 for sexual purposes)?

During 1989, nine charges were laid under section 212 in Calgary. In 1990, the number decreased to five charges (see Table 5.1). In Edmonton, ten charges were laid under section 212 in 1989 and five in 1990 (see Table 5.2).

Charges under section 212 do not seem to reflect the real level of the problem of juvenile prostitution. The Calgary Police Commission Prostitution Report (1991) provides a probable explanation. This report documents that in 1988, 52 charges were laid under section 195.1 (Soliciting), for female prostitutes under 18 years old. In 1989, there were 57 charges under section 195.1, rising to 79 charges in 1990. The age of the female prostitute charged under the Young Offenders Act ranged to a low of 13 years old.

Unfortunately, comparable data were not available for the Edmonton Police Service when this report was written. However, we have reason to believe that the tendency to use section 195.1 to deal with female prostitution under 18 would also hold.

The lack of use of subsections 212(2) and (4) and the continued use of section 195.1 is not consistent with the spirit of Bill C-15, i.e., the protection of

the young. However, the objectives of the use of section 195.1, according to the Calgary report, is to "prevent the young person continuing to work as a prostitute." With the help of the Justice of the Peace as the Youth Court Judge, the youth are often barred from the "stroll" areas of Calgary as a condition of release. In addition, the police seem to be applying the solicitation legislation simply because it is enforceable.

In contrast, anecdotal information obtained during this study suggests that subsection 212(2) (Living off the avails of a prostitute under 18 years) is only enforceable when a prostitute "turns" against a pimp. Likewise, charges under subsection 212(4) (Obtaining a person under 18 years of age for sexual purposes) could only be enforced if the "John" is caught in the act. Thus, traditional policing methods do not seem to be appropriate for enforcement of subsections 212(2) and 212(4).

Question 2.2: Are convictions obtained for charges under subsection 212(2) (Living off the avails of a prostitute under 18) and 212(4) (Obtaining person under 18 for sexual purpose)?

No cases involving charges under these sections were concluded during the time of the study.

Question 2.3: Are charges being laid under subsection 173(2) (Exposure to child under 14 years)?

Calgary

The Calgary Police Information System data contained in Table 5.1 does not distinguish between subsections on specific charges, making it impossible to identify whether charges were laid under subsections 173(1) (Indecent act) or 173(2) (Exposure to child under 14 years). Further, disposition data only document two cases charged under subsection 173(2) during the time of this study.

Edmonton

Disposition data were available on 26 charges under subsection 173(2) in Edmonton for the time period January 1, 1988 to July 31, 1990.

Question 2.4: What conduct is being associated with subsection 173(2) (Exposure to child under 14 years)?

Calgary

Referring back to Table 5.3, no data are available on charges being laid under subsection 173(2) in Calgary.

Edmonton

Table 5.3 indicates that, in cases where charges are laid under subsection 173(2), the most common (and usually the only) behaviour present is exposure (100 percent of the cases on which information was available).

While subsection 173(2) is being used (at least in Edmonton) for dealing with exposure to persons under 14 years of age, it is interesting to note that it is being used only when exposure is the primary activity. Data on the nature of abuse behaviour (Appendix D, Table D5.2), however, indicates that exposure is quite often one component of a cluster of behaviours which are covered by other charges, such as sections 151, 152, 153, 155 and 159. It seems that when exposure occurs, in combination with other more serious behaviours, such as fondling, masturbation etc., charges are laid under the more serious hybrid offence sections and subsection 173(2) a summary section is not used.

Question 2.5: What is the conviction rate for subsection 173(2) (Exposure to child under 14 years)?

Calgary

Table 5.8 indicates that only two charges were laid during the study period under subsection 173(2) in Calgary. One of these charges concluded as a guilty plea, the other as a conviction. This results in a conviction rate of 100 percent, however, given the small number of cases, this rate may not be reliable.

Edmonton

Table 5.8 indicates that of the 26 cases involving charges under subsection 173(2), 14 (54 percent of the total) concluded with a guilty plea, and seven (27 percent) were acquitted. This results in a conviction rate of 67 percent.

Table 5.8 Trial Outcome for Charges under Section 173(2) of the New Criminal Code, by Location, January 1, 1988 - July 31, 1990[1]

	Calgary			Edmonton		
	n	% STTL	% TTL	n	% STTL	% TTL
Trial Outcome						
Acquittal/Discharged	-	-	-	7	100.0	26.9
Convicted	1	100.0	50.0	-	-	-
Subtotal	1	100.0		7	100.0	
Otherwise Dealt With						
Guilty Plea	1	100.0	50.0	14	73.7	53.8
Charge withdrawn	-	-	-	2	10.5	7.7
Other[2]	-	-	-	3	15.8	11.5
Subtotal	1	100.0		19	100.0	
Trial Pending	-	-	-	-	-	-
Total number of cases with one or more charges under s.173(2)	2		100.0	26		100.0
Conviction Rate	100.0%			66.7%		

Table only includes children who were under 14 years of age when abuse began.

[2] Other includes stays, warrants and incomplete.

Data Sources: Criminal Justice Information System (CJIS)
Police File Review

Unit of Analysis: Case (Victim/occurrence)

Since section 150.1 (Consent no defence) outlines the conditions under which consent can and cannot be raised as a defence, Questions 2.6, 2.7 and 2.8 have been developed to test the adherence to this rather complex section.

Question 2.6: Has consent been accepted by the courts as a defence? (Section 150.1 (Consent no defence).)

Unfortunately, the data available do not permit us to examine whether the courts actually "accepted" consent as a defence. However, the Preliminary Inquiry Transcript Review does identify whether the defence raised consent as an issue. This information is discussed below.

Calgary

Table 5.9 indicates that consent as a defence was raised by the defence counsel in cross-examination in 48 percent of the cases heard in Calgary.

Edmonton

Table 5.9 also indicates that consent as a defence was raised by the defence counsel cross-examination in 18 percent of the cases in Edmonton.

Question 2.7: Has mistaken age been accepted by the courts as a defence? (Section 150.1 (Consent no defence).)

The data available do not permit us to directly test whether the courts accepted mistaken age as a defence. However, data are available on whether it was raised by defence counsel.

Calgary

Table 5.10 indicates that less than nine percent of the defence counsels in Calgary mentioned mistaken age as a defence during cross-examination.

Edmonton

As indicated in Table 5.10 only one defence counsel of 49 in Edmonton raised the issue of mistaken age during cross-examination.

Question 2.8: How does the age difference between the victim (ages 14 to 17) and the offender relate to sections 151 (Sexual interference), 152 (Invitation to sexual touching), 173(2) (Exposure) and 271 (Sexual assault)? (Section 150.1(2) (Consent and age difference).

Table 5.9 Consent as Defence Raised as Issue in Cross-Examination, By Location, August 1, 1989 to July 31, 1990

Consent Raised as a Defence	Calgary		Edmonton		Total	
	n	%	n	%	n	%
Yes	11	47.8	9	18.4	20	27.8
No	12	52.2	40	81.6	52	72.2
Total	23	100.0	49	100.0	72	100.0

Data Source: Preliminary Inquiry Transcript Review

Unit of Analysis: Case (victim/occurrence)

Table 5.10 Mistaken Age as Defence Raised as Issued in Cross-Examination, By Location, August 1, 1989 to July 31, 1990

Mistaken Age as Defence	Calgary		Edmonton		Total	
	n	%	n	%	n	%
Yes	2	8.7	1	2.0	3	4.2
No	21	91.3	48	98.0	69	95.8
Total	23	100.0	49	100.0	72	100.0

Data Source: Preliminary Inquiry Transcript Review

Unit of Analysis: Case (victim/occurrence)

For both Calgary and Edmonton only six cases were identified where age difference was relevant under subsection 150.1(2). All of these involved charges under section 271. One of these cases was concluded by a guilty plea, two by conviction and three by acquittal.

5.2.1 Summary: Objective # 2

- In both Calgary and Edmonton, very few charges were laid under subsection 212(2) (Living off the avails of a prostitute under 18 years) and subsection 212(4) (Obtaining a person under 18 years for sexual purpose) during the study -- i.e., for Calgary, nine charges were laid in 1989 and five in 1990; for Edmonton, ten charges were laid in 1989 and five charges in 1990. A Calgary Police Service Report, however, indicates that juvenile prostitutes continue to be charged under subsection 195.1 (Soliciting).

- During the time of the study 26 charges were laid in Edmonton under subsection 173(2) (Exposure to child under 14 years); comparable information was not available for Calgary.

- The most common, and usually only, behaviour associated with subsection 173(2) was "exposure." When exposure occurred in combination with other behaviour, charges tended to be laid for the more serious offences.

- Despite the new section 150.1 (Consent no defence), consent was raised by defence counsel in 48 percent of the court proceedings in Calgary and 18 percent in Edmonton. Likewise, mistaken age was raised in nine percent of the Calgary cases and two percent of the Edmonton cases.

- Only six cases (for both Calgary and Edmonton) were identified where age difference under subsection 150.1(2) was relevant. The conviction rate for these cases was 50 percent.

5.3 Objective # 3: To Eliminate Gender Bias Regarding Victim and Offenders

Question 3.1: Are charges being laid in cases involving male victims under sections 151 (Sexual interference for children under 14), 152 (Invitation to sexual touching for children under 14) and 153 (Sexual exploitation for children 15-18)?

Tables 5.11 and 5.12 contain information on charges under section 151 and section 152 by male and female victims. Data were not available for cases involving charges under section 153.

Table 5.11 Trial Outcomes for Cases Having Charges under Section 151 of the New Criminal Code, by Location and Gender of Victim, January 1, 1988 - July 31, 1990

	Calgary				Edmonton			
	n		%		n		%	
Section 151								
Gender of Victim								
Male	20		14.2		10		13.9	
Female	121		85.8		62		86.1	
Total	141		100.0		72		100.0	
Trial Outcome	Males		Females		Males		Females	
	n	%	n	%	n	%	n	%
Acquittal/Discharge	-	-	21	80.8	7	87.5	10	45.4
Convicted	-	-	5	19.2	1	12.5	12	54.5
Subtotal	-	-	26	100.0	8	100.0	22	100.0
Otherwise Dealt With	Males		Females		Males		Females	
	n	%	n	%	n	%	n	%
Guilty Plea	3	16.7	15	17.4	1	50.0	12	48.0
Charge Withdrawn	8	44.4	45	52.3	-	-	4	16.0
Other[1]	7	38.9	26	30.2	1	50.0	9	36.0
Subtotal	18	100.0	86	100.0	1	100.0	25	100.0
Trial Pending	2		9		-		15	
Total number of cases with one or more charge under s.151	20		121		10		62	
Conviction Rate	100.0%		48.8%		22.2%		70.6%	

[1] Other includes stays, warrants and incomplete.

Data Sources: Criminal Justice Information System (CJIS)
Police File Review

Unit of Analysis: Case (victim/occurrence)

Table 5.12 Trial Outcomes for Cases having Charges under Section 152 of the New Criminal Code, by Location and Gender of Victim, January 1, 1988 - July 31, 1990

	Calgary				Edmonton			
	n		%		n		%	
Section 152								
Gender of Victim								
Male	1		10.0		5		25.0	
Female	9		90.0		15		75.0	
Total	10		100.0		20		100.0	
Trial Outcome	Males		Females		Males		Females	
	n	%	n	%	n	%	n	%
Acquittal/Discharge	-	-	-	-	1	100.0	1	100.0
Convicted	-	-	-	-	-	-	-	-
Subtotal	-	-	-	-	1	100.0	1	100.0
Otherwise Dealt With	Males		Females		Males		Females	
	n	%	n	%	n	%	n	%
Guilty Plea	-		3	33.3	3	75.0	8	61.5
Charge Withdrawn	1	100.0	2	22.2	-	-	1	7.7
Other[1]	-	-	4	44.4	1	25.0	4	30.7
Subtotal	1	100.0	9	100.0	4	100.0	13	100.0
Trial Pending	0		-		-		1	
Total number of cases with one or more charge under s.152	1		9		5		15	
Conviction Rate	0		100.0%		75.0%		88.9%	

[1] Other includes stays, warrants and incomplete.

Data Sources: Criminal Justice Information System (CJIS)
Police File Review

Unit of Analysis: Case (victim/occurrence)

Calgary

The Calgary data in Tables 5.11 and 5.12 indicate that charges are being laid in cases involving male victims. Under section 151, 14 percent of the victims were male, while under section 152, ten percent of the victims were male.

Edmonton

The Edmonton data in Tables 5.11 and 5.12 indicate that charges are being laid in cases involving male victims. Under section 151, 14 percent of the victims were male, while under section 152, 25 percent of the victims were male.

Question 3.2: Are charges involving male victims under sections 151 (Sexual interference for children under 14), 152 (Invitation to sexual touching for children under 14) and 153 (Sexual exploitation for children 15-18) resulting in convictions?

Calgary

Tables 5.11 and 5.12 indicate that cases involving male victims are being successfully prosecuted, at least for section 151. Note, for example, that although no cases involving male victims proceeded to trial, three cases (of 20) concluded with guilty pleas. Eight cases, however, had the charges withdrawn. Due to the small number of cases, comparison with female victim cases is not warranted.

Edmonton

Tables 5.11 and 5.12 indicate that cases involving male victims are being successfully prosecuted in Edmonton. In comparison with cases involving female victims under section 151, however, the conviction rate is considerably lower (i.e., 22 percent compared to 71 percent) due mainly to the relatively high number of acquittals/discharges (i.e., seven of ten cases) in cases involving males. In terms of section 152, three cases of five involving male victims concluded with guilty pleas.

Question 3.3: Are charges being laid involving female offenders for sections 151 (Sexual interference for children under 14), 152 (Invitation to sexual touching for children under 14) and 153 (Sexual exploitation for children 15-18)?

Only one case involving a female offender proceeded to disposition during the time of the study. This accused was charged under section 153.

Question 3.4: Are these charges resulting in guilty pleas/convictions?

Other than the case mentioned above, no data are available.

The low frequency of cases involving female offenders is somewhat unexpected since approximately five percent of the cases investigated by police in Calgary and only two percent of the cases investigated in Edmonton involved female suspects. However, most of these cases seem to be screened out prior to laying charges. If we consider only cases where the police have cleared by charge, this proportion drops to less than two percent (n=6) in Calgary and to less than two percent (n=9) in Edmonton.

5.3.1 Summary: Objective # 3

- For charges laid under section 151 (Sexual interference), the percentage of male victims was 14 percent (86 percent females) for both Calgary and Edmonton.
- For charges laid under section 152 (Invitation to sexual touching), the percentage of male victims was ten percent (90 percent females) for Calgary and 25 percent (75 percent females) for Edmonton.
- During the time of the study only one female accused was charged under sections 151 (Sexual interference), 152 (Invitation to sexual touching) and 153 (Sexual exploitation), and subsequently brought to trial and acquitted in Edmonton. In Calgary, no cases involving female offenders were concluded during the study.

5.4 Objective # 4: To Provide Protection for Children in Cases Where Disclosure is Delayed[2]

Question 4.1: Are charges being laid in cases where reporting to police is more than one year after the incident occurred? (The repeal of section 141 XCC (time limitation).)

Question 4.2: Are these charges resulting in convictions?

---

[2] Section 141 XCC, which provided for a one-year limitation period for certain sexual offences, was repealed by Bill C-15.

Calgary

Table 5.13 indicates that six percent of the cases charged involved reporting the incident more than one year after it occurred. These 14 cases resulted in 17 charges. These charges were concluded by three guilty pleas and two acquittals, resulting in a conviction rate of 60 percent. The crown prosecutor withdrew charges in ten (77 percent) of the cases prior to proceeding.

Edmonton

Table 5.13 indicates that less than two percent of the Edmonton cases charged involved reporting the incident more than one year after it occurred. None of these cases were concluded by the end of the study.

5.4.1 Summary: Objective # 4

- Only six percent of the Calgary cases and two percent of the Edmonton cases charged involved incidents reported more than one year after they occurred.

- The conviction rate relevant to these cases in Calgary was 60 percent. However, the crown prosecutors withdrew 77 percent of these charges prior to proceeding. None of the Edmonton cases were concluded by the end of the study.

5.5 Objective # 5: To Review the Problem of Child Sexual Abuse Victims Giving Evidence

Question 5.1: Are videotapes being used in evidence? (Section 715.1 (Videotaped evidence).)

Calgary

During the timeframe of the study, in only three of 731 cases investigated and reviewed were videotapes made. Audiotapes, however, were frequently made. None of the videotapes and audiotapes were used in evidence. However, one case investigated by the RCMP (R. v. Beauchamp and Beauchamp) was observed in court and will be discussed later.

Table 5.13 Trial Outcomes for Charges Relevant to Child Sexual Assault, According to Amount of Elapsed Time between the Incident and Report to Police, By Location, January 1, 1988 - July 31, 1990

	Calgary				Edmonton			
	n	%			n	%		
Charges[1]								
Reported within 1 year of incident	198	90.8			232	97.5		
Reported more than 1 year after incident	14	6.4			4	1.7		
Amount of elapsed time unknown	6	2.8			2	0.8		
Total Cases[2]	218	100.0			238	100.0		
Trial Outcome	≤ 1 year		> 1 year		≤ 1 year		> 1 year	
	n	%	n	%	n	%	n	%
Acquittal/Discharge	38	65.5	2	100.0	76	69.7	-	-
Convicted	20	34.5	-		33	30.3	-	-
Subtotal[3]	58	100.0	2	100.0	109	100.0	-	-
Otherwise Dealt With	≤ 1 year		> 1 year		≤ 1 year		> 1 year	
	n	%	n	%	n	%	n	%
Guilty Plea	69	42.1	3	23.1	67	84.8	-	-
Charge Withdrawn	95 57.9		10	76.9	12	15.2	-	-
Other[4]	-	-	-	-	-	-	-	-
Subtotal[3]	164	100.0	13	100.0	79	100.0	-	-
Trial Pending[3]	28		2		55		2	
Total number of cases with one or more charges under s.275	250		17		243		2	
Conviction Rate	70.1%		60.0%		56.8%		0	

[1] This includes charges under section 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 to 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 sections 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 trail has been completed for a case consisting of two section 151 charges and one section 153 charge, two separate trail outcomes appear in this table. This explains why Calgary, for example, shows a total of 218 cases in the top section and 267 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.

Data Sources: Criminal Justice Information System (CJIS)
Police File Review
Unit of Analysis: Case (victim/occurrence) or charge (see notes 2 and 3)

Edmonton

During the time period of the study videotapes of the victim were made for 119 (18 percent) of the cases investigated by the Edmonton Police Service. However, very few were used in evidence; these are briefly discussed below.

The first case considering the use of videotaped evidence was R. v. Meddoui.[3] The trial judge was required to address two major issues: (a) what constituted "a reasonable time after the offence" for the making of the videotape and (b) what was required before the child could be said to have "adopted" the contents of the videotape. The trial judge held that the tape had been made within a reasonable time (two days after the offence date) and that the child had adopted its contents. This opinion was upheld on appeal.[4]

On February 27, 1989, the constitutional validity of section 715.1 was challenged in Alberta in R. v. Thompson.[5] McKenzie, J., ruled that the section violated the accused's rights under the Charter of Rights and Freedoms. Nevertheless, in this case, the accused was convicted. This decision appears to have effectively halted further attempts to use the videotape provisions at the Queen's Bench level until R. v. Beauchamp and Beauchamp.[6] In that case, the defence raised the same Charter issues as had been raised in Thompson. The argument was unsuccessful, the videotape was admitted and the accused were convicted on June 28, 1990. As neither of these cases were appealed, there are now conflicting opinions in the Alberta Court of Queen's Bench about the constitutional validity of the videotaped evidence section.

The only case to reach the Alberta Court of Appeal was the appeal from conviction in Meddoui.[7] The Court of Appeal did not discuss the constitutional validity of the section and made only a passing reference to the concerns raised by McKenzie, J., in Thompson. It is not clear whether the Court rejected the ruling in Thompson or whether, because the trial decision in Meddoui was rendered

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[3] R. v. Meddoui (unreported), Edmonton Registry, Nov. 1, 1988, Sinclair, J. (Alta. Q.B.).

[4] R. v. Meddoui (1991) 61 C.C.C. (3d) 345, 2 C.R. (4th) 316, 111 A.R. 295 (C.A.), Kerans, Harradence and Girgulis, JJ.A. A new trial was ordered for different reasons.

[5] R. v. Thompson (1989), 68 C.R. (3d) 328, 97 A.R. 157 (Alta. Q.B.).

[6] R. v. Beauchamp and Beauchamp (unreported), Calgary No. 8901-0707-CO, June 28, 1990, Power, J. (Alta. Q.B.).

[7] Supra, n. 23.

prior to Thompson, when the validity of the section had not yet been challenged, the Court saw no need to consider that issue.

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

Question 5.3: Are younger victim/witnesses giving testimony under the new "promise to tell the truth" provisions of 16(3) CEA (Child witness oath/promise to tell the truth)?

Calgary

Table 5.14 shows that, of the total of 83 victims under 18 observed in various court proceedings in Calgary, 45 percent were sworn directly, 41 percent were sworn after questioning and 15 percent gave evidence under the promise to tell the truth provision. As Table 5.15 indicates, for those children under 14 years old, only 12 percent were sworn directly, 63 percent were sworn after questioning and 25 percent promised to tell the truth.

Table 5.14 Basis on which Child's Evidence is Accepted in Court, By Location, August 1, 1989 to July 31, 1990[1]

Oath	Calgary		Edmonton		Total	
	n	%	n	%	n	%
Sworn Directly	37	44.6	42	65.6	79	53.7
Sworn After Questioning	34	41.0	10	15.6	44	29.9
Promise to Tell the Truth	12	14.5	12	18.8	24	16.3
Total	83	100.0	64	100.0	147	100.0

[1] Data Source: Court Observation Schedule

Unit of Analysis: Victim/Proceeding Type

Edmonton

Table 5.14 indicates that 66 percent of the child victims/witnesses under 18 years old were sworn directly in Edmonton proceedings, 16 percent were sworn after questioning and 19 percent gave evidence under the "promise to tell the truth" provision. For child victims/witnesses under 14 years of age, only three (13 percent) were sworn directly, 38 percent were sworn after questioning and 50 percent promised to tell the truth.

Table 5.15 Basis on which Child's (Under 14 years) Evidence is Accepted in Court, By Location, August 1, 1989 to July 31, 1990

Oath	Calgary		Edmonton		Total	
	n	%	n	%	n	%
Sworn Directly	6	12.2	3	12.5	9	12.3
Sworn After Questioning	31	63.3	9	37.5	40	54.8
Promise to Tell the Truth	12	24.5	12	50.0	24	32.9
Total[1]	49	100.0	24	100.0	73	100.0

[1] Missing Cases = 4 Total N=77

Data Source: Court Observation Schedule

Unit of Analysis: Victim/Proceeding Type

Question 5.4: What type of questions were asked by the judge?

Calgary

Table 5.16 lists the type of questions asked by the judge while deciding whether to swear the child witness. The Calgary judges asked a considerable number of questions. The most frequent question concerned the child's knowledge of truth or lies (32 percent), followed by general questions (28 percent), questions regarding the child going to Sunday school or church (18 percent) and the child's understanding of the meaning of the oath (14 percent).

(18 percent) and the child's understanding of the meaning of the oath (14 percent).

Table 5.16 Factors Considered by Judge in Deciding Whether to Swear Child, by Location, August 1, 1989 - July 31, 1990

Factors Considered	Calgary[1]				Edmonton[1]			
	Yes		No		Yes		No	
	n	%	n	%	n	%	n	%
General questions	24	27.6	63	72.4	2	3.1	62	96.9
Child understands where (s)he is and why	8	9.2	79	90.8	2	3.1	62	96.9
Child goes to Sunday school	16	18.4	71	81.6	-	-	64	100.0
Child understands the meaning of oath	12	13.8	75	86.2	-	-	64	100.0
Child's knowledge of truth or lie	28	32.2	59	67.8	2	3.1	62	96.9
Instructing child how to answer	6	6.9	81	93.1	7	10.9	57	89.1
Crown asks questions for judge	3	3.4	84	96.6	-	-	64	100.0

[1] Total n of cases: Calgary = 87, Edmonton 64; total = 151

Data Source: Court Observation Schedule

Unit of Analysis: Victim Proceeding Type

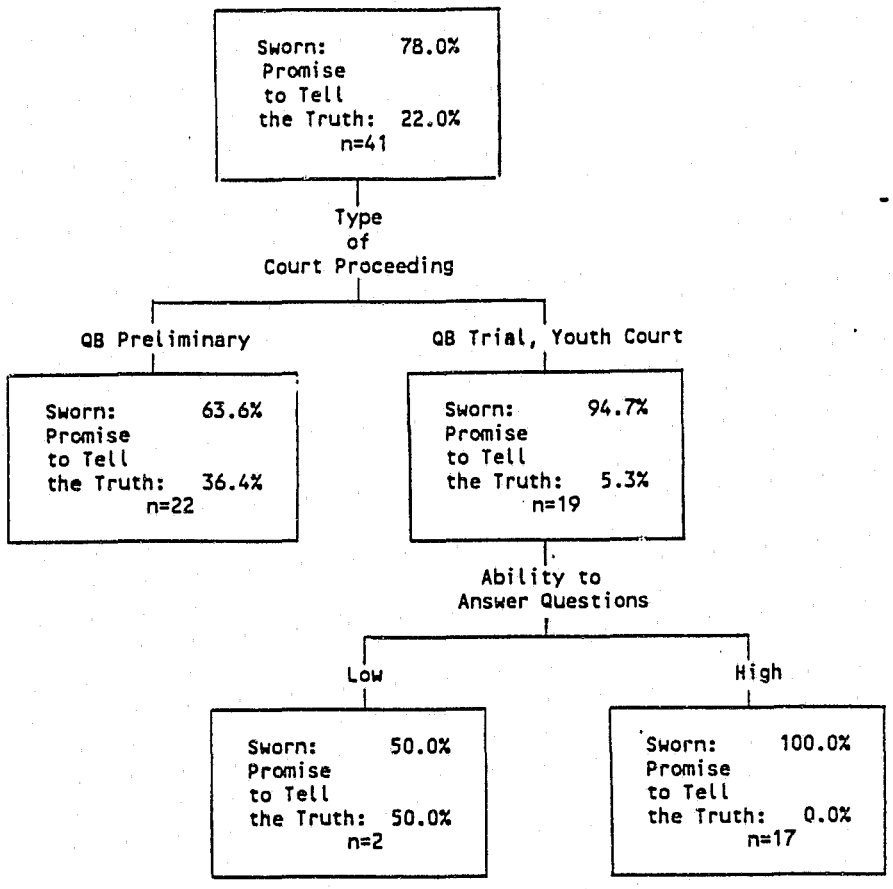
Edmonton

Table 5.16 indicates that the Edmonton judges did not tend to question the child witness extensively. Most frequently (i.e., 11 percent of the cases) they simply instructed the child how to answer the questions.

Question 5.5: What factors are associated with the use/nonuse of the provisions under section 16(1) CEA (Child witness oath/promise to tell the truth)?

The decision model in Figure 5.7 has been developed to explain the judicial decision whether to permit the child to be sworn or to use the promise to tell the truth provision. Table 5.17 lists the independent variables included in the analysis.

Figure 5.7 Prediction Model for Oath Decisions for Calgary Court Proceedings[1]



1 Significance Level = .05

Data Source = Court Observation Schedule and Court Observation Rating Scales

Table 5.17 List of Sample Parameters and Variables of Knowledge Seeker Analysis for Figures 5.7 and 5.8

	Sample Parameters	
Figures 5.7 and 5.8	1) Location 2) Omit cases where witness is 14 years of age or older	
	Variables	
Independent Variables for Figures 5.7 and 5.8	1) Gender of witness 2) Age of witness 3) Type of court proceeding 4) Number of court appearances 5) Witness behaviour: Anxious/Withdrawn 6) Witness behaviour: Sad/Cries 7) Witness behaviour: Ability to Communicate 8) Witness behaviour: Ability to answer Questions	Range 1-2 1-7 1-4 1-4 1-2 1-2 1-2 1-2
Dependent Variable for Figures 5.7 and 5.8	Oath Decision	

Calgary

Figure 5.7 contains the results of the multivariate analysis for the sworn/promise decision for court proceedings in Calgary observed between July 31, 1989 and July 31, 1990. The first variable to split, and thus the most significant in predicting whether the child witness was sworn, was the type of court proceeding. Note that 64 percent of the child witnesses in the preliminary inquiry held in Provincial Court were sworn compared to 95 percent of the child witnesses in Queen's Bench trial and Youth Court trial. The probability of being sworn was further increased, as the second iteration indicates, when the child's ability to answer questions was high.

Edmonton

Figure 5.8 contains the results of the multivariate analysis for the sworn/promise decisions for court proceedings in Edmonton observed between July 31, 1989 and July 31, 1990. The first and only variable to split and thus explain a significant amount of variation in the decision was the actual age of the victim/witness. Note that 90 percent of the older witnesses, 12 and 13 years old, were sworn compared to only 33 percent of witnesses under 11 years old.

Question 5.6: Is unsworn testimony weighed differently by the courts?

There were no data to reflect directly on this question. However, no information was obtained through the observations that would suggest that the information was weighed differently under the promise to tell the truth provision.

5.5.1 Summary: Objective # 5

- During the time frame of the study, only three videotapes were made in the 731 investigations by the Calgary Police Service -- none of which were used in court. Lack of equipment and appropriate space seems to be the reason videotaping was not more extensively used.

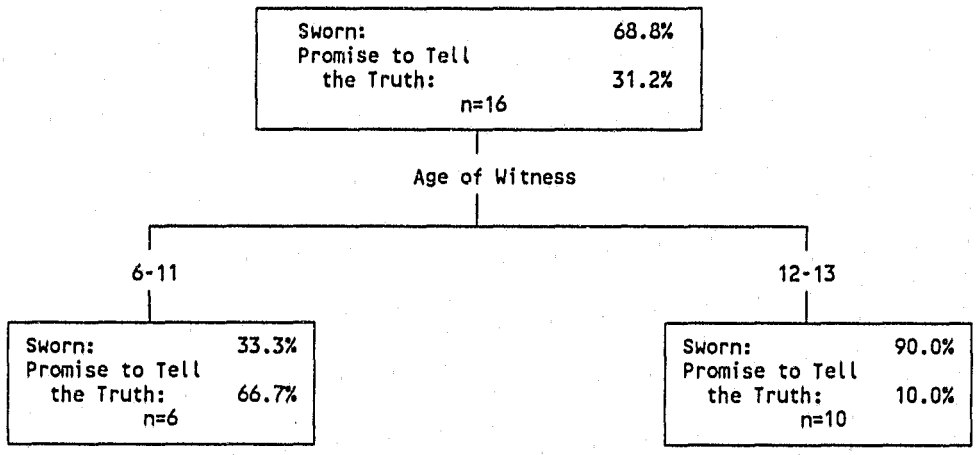
- In Edmonton 119 (18 percent of the total investigations) videotapes were made for investigative purposes, but very few were used in evidence.

- Of the children under 14 years of age who gave evidence in court, in Calgary 12 percent were sworn directly, 63 percent were sworn after questioning, and 25 percent promised to tell the truth. In comparison, for Edmonton cases; 13 percent were sworn directly, 38 percent were sworn after questioning, and 50 percent promised to tell the truth.

- In determining whether a child should be sworn, Calgary judges frequently asked questions about the child's knowledge of truth and lies, questions regarding church and Sunday school, and questions concerning the child's understanding of the oath. Edmonton judges, in contrast, tended not to question the child, but rather instructed the child how to answer.

- In Calgary, the probability of a child being sworn was significantly higher for Queen's Bench and Youth Court than for preliminary inquiries held in Provincial Court, whereas the only significant predictor for Edmonton cases was the age of the victim/witness (those over 12 years old tended to be sworn).

Figure 5.8 Prediction Model for Oath Decisions for Edmonton Court Proceedings[1]



[1] Significance Level = .20

Data Source = Court Observation Schedule and Court Observation Rating Scales

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

Question 6.1: Is corroboration still important in decisions to commit to trial and/or convict at trial? (See section 274 (Corroboration not required).)

While there are no data that reflect directly on the issue of the importance of corroboration -- given that corroboration is not required (section 274) -- some indirect information may be relevant. First, the importance of the existence of witnesses may be an indication of corroboration. Witnesses would presumably somehow support the testimony of the child witness. Second, if there is more than one victim giving testimony, the evidence of one child could be assumed to corroborate the testimony of another, even though the incident might have been completely different.[8] We will now review the previous data analysis with this proposition in mind.

Calgary

Some of the findings for Calgary cases suggest that corroboration, as measured by the number of victims, and existence of witnesses, is important for predicting clearance by charge but is actually negatively correlated to convictions. Figure 4.5, for example, indicates that both the existence of witnesses and more than one victim were highly correlated to clearance by charge for all charges relevant to sexual abuse. Consistent with these findings, Figure 5.1 indicates that the number of victims is positively related to laying charges under section 151.

In contrast, however, Figure 5.3 indicates that there is clearly a negative relationship between the number of victims and convictions entered under section 151. Specifically, single victim cases have a significantly higher probability of concluding with convictions than do multiple victim cases.

Edmonton

For Edmonton cases, the importance of the number of victims in predicting clearance by charge is also demonstrated; however, no significant relationship was found regarding the existence of witnesses (see Figure 4.7). Further, neither of these variables was found to be significantly related to conviction. Specifically, as

[8] For the most part we are referring here to cases of multiple victims in a "series" as opposed to simultaneous multiple victims. Multiple series victims have a common offender but not a common incident. Multiple simultaneous victims have a common offender and incident. Thus, technically, evidence given by multiple series victims is "similar fact" evidence rather than corroboration. Here, however, we are interpreting it in the broadest sense.

Figure 4.7 indicates, 93 percent of the cases with more than one victim were cleared by charge compared with 75 percent of those cases involving one witness.

Question 6.2: Are there areas of alleged behaviour and/or types of cases where credibility of the victim is problematic?

The issue of the credibility of the victims received particular attention in a series of cases where the alleged offenders were teachers. During the duration of the study, four such cases went to trial in Calgary. These cases were similar in the fact that the alleged offenders were teachers and all cases involved multiple serial victims.[9] All cases also concluded with acquittals, as follows:

(1) in R. v. Inglis, the accused was acquitted of sexually assaulting three students in 1989;

(2) in R. v. Espinoza, the accused was acquitted in 1989 of six charges of sexual interference and seven charges of sexual assault, involving seven female pupils aged 9 to 14 years old;

(3) in R. v. Soltes, the accused was acquitted of sexually assaulting four students; and

(4) in R. v. Diodati, the accused was acquitted of sexually assaulting two male students.

In all of these cases a number of victims gave "similar fact" evidence.

Publicity surrounding these cases has raised several controversial issues. First, both the Alberta Teachers Association (ATA) and the Alberta School Trustees Association (ASTA) argued that teachers as an occupational group should be protected from being publicly named (Calgary Herald, April 14, 1991). Second, the ATA has encouraged its members who have been acquitted to sue their accusers in civil court. The association has also indicated a willingness to give financial support to teachers seeking such damages (Calgary Herald, April 3, 1991). Third, a controversy has developed between the ATA and the Calgary Public School Board. In February 1991, the school board adopted a policy which allows board staff to conduct an internal review of alleged sexual misconduct by teachers, even if police investigation does not result in convictions. The board felt internal investigations are needed "because some actions which might not be considered sexual assault under the Criminal Code may still be

[9] Serial victims - the victims were allegedly assaulted at different times.

unacceptable" (Calgary Herald, January 23, 1991). The ATA disagrees with the board's new policy and feels that it is the responsibility of the professional association to deal with unprofessional behaviour (Calgary Herald, February 14, 1991). At the time this report was written, none of these issues had been resolved.

However, an April 14, 1991 article in the Calgary Herald indicates that "the Alberta Teachers Association says that since September 1989 Alberta teachers have been charged in cases it has dealt with." There have been five acquittals, five guilty verdicts, four cases where charges were stayed, one withdrawn and one absolute discharge. Three cases are still in the courts. These figures indicate a conviction rate of 55 percent.

Question 6.3: Are expert witnesses used and what types of evidence are they giving?

Calgary

The Police File Review data indicate that expert witnesses were consulted in nine percent of the cases investigated by the sex crimes and child abuse units of the Calgary Police Service (see Appendix D, Table D4.62). In terms of the court cases observed, expert witnesses testified in seven cases (eight percent) (see Table 5.20).

Edmonton

Only four (or less than one percent) cases involving expert witnesses were investigated by the Edmonton Police Service. No experts testified in court cases actually observed.

Question 6.4: Is "sexual activity" and/or "reputation" evidence being raised at preliminary inquiry and/or trial? (Section 276(1) (No evidence concerning sexual activity) and section 277 (Reputation evidence).)

Calgary

Table 5.18 lists the issues raised by defence counsel in cross-examination. The table indicates that "past sexual conduct of the victim" was raised in only one of 23 cases in Calgary. "Reputation" of the victim was never raised by defence in the cases reviewed.

Table 5.18 Issues Raised as Defence in Cross-Examination, by Location, August 1, 1989 - July 31, 1990

Issues Raised	CALGARY[1]				EDMONTON[1]			
	YES		NO		YES		NO	
	n	%	n	%	n	%	n	%
Identity of accused	9	39.1	14	60.9	2	4.1	47	95.9
Nature of contact	16	69.6	7	30.4	20	40.8	29	59.2
Consent to acts	11	47.8	12	52.2	9	18.4	40	81.6
No threats or force	6	26.1	17	73.9	11	22.4	38	77.6
No relationship of authority	1	4.3	22	95.7	3	6.1	46	93.9
Honest belief re: age	2	8.7	21	91.3	1	2.0	48	98.0
Use of drugs/alcohol - Accused	1	4.3	22	95.7	5	10.2	44	89.8
Use of drugs/alcohol - Victim	-	-	23	100.0	9	18.4	40	81.6
Provocation by victim	6	26.1	17	73.9	1	2.0	48	98.0
Past sexual conduct of victim	1	4.3	22	95.7	3	6.1	46	93.9
Reputation of victim	-	-	23	100.0	9	18.4	40	81.6
Fabrication of allegation	9	39.1	14	60.9	10	20.4	39	79.6
Inconsistent with prior testimony	2	8.7	21	91.3	1	2.0	48	98.0
Circumstances of disclosure	13	56.5	10	43.5	18	36.7	31	63.3
Reasons for disclosure	9	39.1	14	60.9	8	16.3	41	83.7

[1] Total n of cases: Calgary = 23, Edmonton = 49; total = 72

Data Source: Preliminary Inquiry Transcript Review

Unit of Analysis: Case (victim/occurrence)

In addition to these issues, it is interesting to note that the most common issues raised were the nature of the contact in the cases (70 percent), followed by circumstances of the disclosure (57 percent), consent to the acts (48 percent), and fabrication of allegation (39 percent).

Edmonton

Table 5.18 also lists the issues raised by defence counsel in cross-examination in Edmonton. "Past sexual conduct of the victim" was raised in three cases (six percent) and "reputation of the victim" was raised in nine cases (18 percent).

In addition, it is interesting to note that the most frequent other issues raised were the nature of the conduct (41 percent of the cases), followed by the circumstances of disclosure (37 percent), no threats or force (22 percent), fabrication of allegation (20 percent), and consent to acts (18 percent).

5.6.1 Summary: Objective # 6

- For Calgary cases, corroboration as measured by "multiple victims" and existence of witnesses was an important factor in the police decision to lay charges. In Edmonton, only multiple victims was an important factor in the police decision to lay charges.

- Presence of multiple victims was associated with acquittal in Calgary.

- Expert witnesses were used in eight percent of Calgary court cases and in less than one percent of Edmonton court cases.

- Past sexual conduct was very seldom raised by defence counsel in either Calgary or Edmonton (i.e., one of 23 cases in Calgary and three of 49 cases in Edmonton).

- Victim reputation was never raised by defence counsel in Calgary, but was raised in 18 percent of the cases reviewed in Edmonton.

- Publicity surrounding cases involving four Calgary area school teachers raised questions concerning false allegations and publication of the teacher's names. However, province-wide statistics on child sexual abuse cases indicates a conviction rate of 55 percent.

5.7 Objective # 7: To Avoid Repetitious Interviews with the Child Victim/Witness

Question 7.1: Are videotapes being made at the initial investigative stage?

Question 7.2: Who is present at the videotaped interview?

Question 7.3: How many times are victims/witnesses made to repeat their disclosures?

Question 7.4: Does use of the videotape reduce the number of times a child must tell the story?

As indicated in Section 5.5, very few videotapes were used in evidence during the study time period. Further, videotapes were made in only three Calgary investigations and in only 119 (18 percent) cases in Edmonton. Thus, the response to the above questions is limited by the fact that information is available only for Edmonton and the tapes were used only for investigation.

Edmonton

Police conducted the videotape interviews in the vast majority (98 percent) of the videotape sessions. Social workers conducted only three sessions, however, 21 social workers functioned as co-interviewers. Disclosures were taped for 94 percent of the cases and the offender was identified in 93 percent of the videotaped interviews. Police felt that the videotape helped the investigation in 78 percent of the cases.

5.7.1 Summary: Objective # 7

- During the timeframe of the study only three videotapes were made by Calgary police, while 119 (18 percent) of the total investigations were made by the Edmonton police.
- The majority of police investigators surveyed (78 percent) in Edmonton indicated that the videotapes helped the investigation. Further, the videotape (although not used in court) was used to help prepare the child for giving evidence.

5.8 Objective # 8: To Provide Support and Assistance to the Child Victim/Witness While Giving Testimony

Question 8.1: Have any innovative programs or procedures been implemented such as victim assistance programs, crown preparing witness, other?

At the beginning of the study there were no victim assistance programs for child sexual abuse victims/witnesses in Alberta. Any preparation for court occurred on an individual basis. Given the absence of programs and the lack of formal procedure regarding court preparation, the only data relevant to this question are obtained from the crown prosecutor's questionnaire and apply to Calgary and Edmonton together.

Table 5.19 indicates that 94 percent of the crown prosecutors who responded to the mailed questionnaire usually meet with child victims/witnesses prior to court. In terms of what they do when they meet with the child, 100 percent of the respondents indicated that they "explain the court process," followed by explaining the type of questions the crown prosecutor asks (97 percent), those the defence lawyer asks, explaining the oath (82 percent) and telling the child to inform them if the accused or spectators are intimidating (77 percent). In contrast to the common items only one crown prosecutor mentioned explaining that acquittal does not mean disbelief.[10]

Towards the end of the study, we became aware of a number of counselling programs that had recently begun to provide counselling assistance to children who would be testifying in court.

Question 8.2: Videotapes used to refresh memory?

As indicated above very few videotapes were used in court proceedings during the study. Edmonton Police Service, however, videotaped a large proportion of the interviews with child victims. Of the group interviewed on videotape in Edmonton during the study 22 percent of the videotapes were used to review and prepare the child witness for court proceedings.

Question 8.3: Have screen and/or closed-circuit televisions been used in the court?

[10] It should be noted that this response was obtained through an open-ended question and thus was not specifically requested.

Question 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?

Question 8.5: Are other innovative supports used?

Table 5.20 contains a list of innovative supports used to assist the child while giving testimony for both Calgary and Edmonton.

Calgary

Table 5.20 indicates the child testified behind a screen in nine percent of the cases. Closed-circuit televisions, however, were not used.

Support adults stayed in the courtroom in the majority of cases, i.e., 75 percent. However, only six adults (seven percent) accompanied the child to the stand. In one case the child was permitted to sit on an adults knee while giving evidence and in six cases (seven percent) the child was permitted to bring a toy or blanket to the stand.

Edmonton

Table 5.20 indicates that, in Edmonton, the child witness testified behind a screen in only two cases (three percent) and closed-circuit television was not used.

Support adults were present in the courtroom for 48 percent of the cases, but accompanied the child to the stand in only one case. In three cases (five percent) the child was permitted to bring a toy or blanket to the stand, and in four cases (six percent) the child testified with props, such as anatomically correct dolls.

Question 8.6: What was the effect of these procedural and evidentiary charges on the child witness?

Table 5.19 Proportion of Crown in Alberta Who Meet with Child Sexual Abuse Victims/Witnesses and What They Do

	YES		NO		TOTAL	
	n	%	n	%	n	%
Usually meet with child victim/witness	34	94.4	2	5.5	36	100.0
What they do						
Show child a courtroom	26	76.5	8	23.5	34	100.0
Explain court process	34	100.0	0	-	34	100.0
Explain type of questions asked by crown	33	97.1	1	2.9	34	100.0
Explain type of questions asked by defence	31	91.2	3	8.8	34	100.0
Tell child to inform you if accused or spectators are intimidating	26	76.5	8	23.5	34	100.0
Provide reading material	13	38.2	21	61.8	34	100.0
Role play with victim	6	17.6	28	82.4	34	100.0
Introduce court personnel	17	50.0	17	50.0	34	100.0
Go over questions before court	21	61.8	13	38.2	34	100.0
Refer to appropriate agency	13	38.2	21	61.8	34	100.0
Explain the oath	28	82.4	6	17.6	34	100.0
Other[1]						
Review what child will say	1	2.9	-	-	-	-
Review video	1	2.9	-	-	-	-
Review influences on child outside of court	1	2.9	-	-	-	-
Explain that not guilty plea does not mean disbelief	1	2.9	-	-	-	-

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

Table 5.20 Courtroom Environment During the Child's Testimony, by Location, August 1, 1989 - July 31, 1990

Items Observed	CALGARY[1]				EDMONTON[1]			
	YES		NO		YES		NO	
	n	%	n	%	n	%	n	%
Child testifies behind screen	8	9.2	79	90.8	2	3.1	62	96.9
Child testifies via closed-circuit television	-	-	87	100.0	-	-	64	100.0
Child given booster seat	1	1.1	86	98.9	-	-	64	100.0
Adult holds child on knee	1	1.1	86	98.9	-	-	64	100.0
Adult accompanies child to stand	6	6.9	81	93.1	1	1.6	63	98.4
Support adults stays in courtroom	65	74.7	22	25.3	31	48.4	33	51.6
Witnesses cleared during child's testimony	72	82.7	15	17.2	62	96.9	2	3.1
Accused cleared from court	-	-	87	100.0	-	-	64	100.0
Spectators cleared from court	1	1.1	86	98.9	4	6.3	60	93.8
Child allowed to turn from accused[2]	44	50.6	43	49.4	2	3.1	62	96.9
Child's view of accused obstructed	15	17.2	72	82.8	1	1.6	63	98.4
Expert testifies re: child's testimony	7	8.0	80	92.0	-	-	64	100.0
Child allowed to bring blanket, toy, etc.	6	6.9	81	93.1	3	4.7	61	95.3
Child allowed to testify with props	1	1.1	86	98.9	4	6.3	60	93.8
Other innovative procedures used (e.g., dolls, pictures, etc.)	8	9.2	79	90.8	7	10.9	57	89.1

[1] Total n of cases: Calgary = 87, Edmonton = 64; Total = 151

[2] Many of the Provincial courtrooms are set up so that the accused does not face the victim(s). Thus, this question is not reliable.

Data Sources: Court Observation Schedule

Unit of Analysis: Victim/Proceeding Type

In Section 4.7, the following court innovation variables were included in the multivariate analysis of the child performance: (a) number of innovative procedures used; (b) number of people in courtroom during the child/witness testimony; (c) support adults staying in courtroom; and (d) witnesses cleared from courtroom.[11] The results relevant to this question are reviewed below.

Calgary

For the Calgary group the findings were very limited in terms of the court innovation variables. None were found to be significantly correlated to any of the child victim/witness performance variables.

Edmonton

For the child victims/witnesses in Edmonton (see Figure 4.11), "witnesses being cleared from the courtroom" was found to be positively correlated to lower scores on the sad/cries performance variable. These witnesses tended to be mothers, and police who had investigated the case. Further, a small number of people in the courtroom during the child's testimony was found to be correlated with high ability to communicate.

Situations Which Added Stress

While we are not able to identify a great number of things that lower the stress of appearing in court on the child, the court observation provided anecdotal information which is of interest. Examining Calgary and Edmonton together, the most common notation was "the accused making faces" at the victim (11 percent of the cases observed), followed by "disruption by people coming and going" (nine percent) and accused 's relatives and/or friends intimidating the witness outside the courtroom (eight percent).

Question 8.7: Has subsection 486(1) (Exclusion of public) been used to exclude the public?[12]

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[11] These were the only innovative variables that occurred with sufficient frequency to be included in the analysis.

[12] Section 486(1) (Exclusion of public) predates Bill C-15, however, this provision is particularly applicable to sexual offences and thus is analyzed here.

Calgary

Table 5.21 contains information on the request and order to exclude the public under subsection 486(1). Five (22 percent) requests were documented by the Preliminary Inquiry Transcript Review. All five of these exclusions were ordered by the judge.

Table 5.21 Request Made for Exclusion of Public (under Section 486(1)) and Ordered, by Location[1]

Exclusion requested	Calgary		Edmonton		Total	
	n	%	n	%	n	%
Yes	5	21.7	9	18.4	14	19.4
No	18	78.3	40	81.6	58	80.6
Total	23	100.0	49	100.0	72	100.0
Exclusion ordered						
Yes	5	21.7	4	8.2	9	12.5
No	18	78.3	45	91.8	63	87.5
Total	23	100.0	49	100.0	72	100.0

[1] Data Source: Preliminary Inquiry Transcript Review

Unit of Analysis: Case (victim/occurrent)

Edmonton

Table 5.21 indicates the request to exclude the public under subsection 486(1) was made in nine cases (18 percent). This request was ordered by the judge in four cases (44 percent).

5.8.1 Summary: Objective # 8

- At the beginning of the study, there were no specific witness preparation programs in Edmonton or Calgary. More recently, some counselling programs have begun this activity.

- Crown prosecutors in both cities (94 percent of those responding to the mailed questionnaires) met with the child prior to proceedings.

- Crown prosecutors explained the court process (100 percent), the types of questions they would ask (97 percent), and the oath (82 percent), and told the child to inform them if the accused or spectators intimidated them (77 percent).

- Screens were used in nine percent of the Calgary court cases and three percent of the Edmonton cases.

- Support adults stayed in the courtroom for 75 percent of the Calgary cases and 48 percent of the Edmonton cases.

- Support adults accompanied the child victim/witness to the stand in six (seven percent) of the Calgary cases and only in one case in Edmonton.

- Exclusion of the public was requested in 22 percent (and ordered in all) of the Calgary court cases. In Edmonton, it was requested in 18 percent of the cases, but ordered for less than half of those requested (45 percent).

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

Question 9.1: Has subsection 486(3) (Order restricting publicity) been used to ban publication of identifying information?

Calgary

Table 5.22 contains information on the request and order for ban on publication of the victim's identity under subsection 486(3). Findings indicate that a ban was requested in 61 percent of the cases in Calgary. All of the requests were ordered by the judge.

Table 5.22 Request Made for Ban on Publication of Victim's Identity (under Section 486(3)) and Ordered, by Location[1]

Request Publication Ban	Calgary n	Calgary %	Edmonton n	Edmonton %	Total n	Total %
Yes	14	60.9	27	55.1	41	56.9
No	9	39.1	22	44.9	31	43.1
Total	23	100.0	49	100.0	72	100.0
Exclusion ordered						
Yes	14	60.9	26	53.1	40	55.6
No	9	39.1	23	46.9	32	44.4
Total	23	100.0	49	100.0	72	100.0

[1] Data Source: Preliminary Inquiry Transcript Review

Unit of Analysis: Case (victim/occurrence)

Edmonton

Table 5.22 indicates that requests for a ban on publication under subsection 486(3) were made in 27 (55 percent) of the cases reviewed in Edmonton. All but one of these 27 requests (96 percent) were ordered by the judge.

5.9.1 Summary: Objective # 9

- Requests for ban on publicity under subsection 486(3) were made in 61 percent of the Calgary court cases and all were ordered. In Edmonton, requests were made in 55 percent of the court cases and ordered in all but one case.

5.10 Objective # 10: To Provide for a Range of Sentence Responses to a Broad Range of Severity of Abuse

Previous data identified two very clear trends which limit the data analysis of this section. First, section 151 (Sexual interference for children under 14) is the only section of the new codes introduced by Bill C-15 which obtained sufficient frequencies for detailed analysis. Second, changes in the rates of charging for section 271 (Sexual assault) indicate that it plays a significant part in the overall response to child sexual abuse. Therefore, this section of the report will first present information on the conviction rates and trial outcomes for charges under subsection 246(1) (Sexual assault) and section 271 and then will focus the sentencing analysis on both section 151 and section 271.

Conviction Rates for Section 271

Calgary

Information on conviction rates for charges laid under section 271 (Sexual assault) is contained in Table 5.23. The overall rate for section 271 was high at 81 percent in Calgary. To a large extent this high conviction rate is due to the high number of guilty pleas, i.e., 36 percent of all charges laid. The number of convictions was also relatively high (44 percent) compared to the number of acquittals. Finally, 40 charges (14 percent of the total) were withdrawn.

Edmonton

The information on conviction rates for charges laid under section 271 (Sexual assault) is contained in Table 5.23. The overall conviction rate is 60 percent in Edmonton. This relatively high rate is due mainly to the high number of guilty pleas, i.e., 28 percent of the total charges. The proportion of convictions and acquittals was 12 percent and 27 percent of the total charges respectively. Only five charges (less than two percent of the total) were withdrawn.

Table 5.23 Trial Outcome for Charges under Section 246(1) and 271, by Location, January 1, 1988 - July 31, 1990

	Calgary			Edmonton		
	n	% STTL	% TTL	n	% STTL	% TTL
Trial Outcome						
Acquittal/Discharge	31	56.4	10.5	89	69.0	27.0
Convicted	24	43.6	8.2	40	31.0	12.1
Subtotal	55	100.0		129	100.0	
Otherwise Dealt With						
Guilty Plea	105	48.6	35.7	92	59.4	27.9
Charge Withdrawn	40	18.5	13.6	5	3.2	1.5
Other[1]	71	33.0	24.1	58	37.4	17.6
Subtotal	216	100.0		155	100.0	
Trial Pending	23		7.8	46		13.9
Total number of cases with one or more charges under s.246(1) and/or s.271	294		100.0	330		100.0
Conviction Rate		80.6%			59.7%	

[1] Other includes stays, warrants and incomplete.

Data Sources: Criminal Justice Information System (CJIS)
Police Rile Review

Unit of Analysis: Case (victim/occurrence)

Question 10.1: Does the type of sentence relate to characteristics of the offence, victim and/or the offender?

In this section information is first presented on the specific types of dispositions for section 151 (Sexual interference for children under 14) and

section 271 (Sexual assault). Then, multivariate analysis is conducted to identify predictors of incarceration for both section 151 and section 271. The independent variables employed in this analysis include the 23 independent variables listed in Table 4.4.[13]

Calgary Dispositions

Table 5.24 contains a breakdown of disposition types for section 151 and section 271, as well as detailed information on sentencing.

In terms of section 151 the most common disposition was incarceration (30 percent) and incarceration with probation (30 percent), which results in a total incarceration rate of 60 percent. The next most common sentence was suspended sentence and probation, at 23 percent. Incarceration was for three months or less in 50 percent of cases, followed by 13 to 18 months (21 percent) and four to six months (17 percent). The average incarceration time for section 151 was 6.7 months.

Dispositions for section 271 are somewhat similar to section 151. The incarceration rate was 62 percent of all dispositions. The next highest category was unspecified probation at 28 percent. Of those incarcerated, the most common sentence was three months or less (32 percent). The second largest category of incarcerations was seven to 12 months (27 percent) and 13 to 18 months (15 percent). The average time of incarceration for section 271 was 9.9 months.

Edmonton Dispositions

Table 5.24 contains a breakdown of disposition types for section 151 and section 271, as well as detailed information on sentencing.

The most common disposition in Edmonton for section 151 was incarceration. The total rate of incarceration amounted to 48 percent; probation accounted for the rest of the cases. The most frequent sentence involving incarceration was seven to 12 months for 39 percent of those incarcerated; the next most frequent sentence was 13 to 18 months (23 percent). The average incarceration time for section 151 was 11.1 months.

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[13] Unfortunately, data on prior convictions, a possible key variable in predicting sentence, was not available to the research team on most of the accused. Likewise, the amount of time spent in pretrial custody was not available.

Table 5.24 Trial Outcomes and Dispositions for Sections 151 and 271 in Calgary and Edmonton, January 1, 1988 - July 31, 1990

	CALGARY				EDMONTON			
	s. 151		s. 271		s. 151		s. 271	
	n	% STTL	n	% STTL	n	% STTL	n	% STTL
Disposition Type								
Absolute Discharge	2	5.0	-	-	-	-	1	2.1
Conditional Discharge & Probation	-	-	-	-	1	3.7	1	2.1
Suspended Sentence & Probation	9	22.5	5	5.2	3	11.1	5	10.4
Unspecified Probation[1]	2	5.0	27	27.8	8	29.6	9	18.8
Fine	3	7.5	4	4.1	-	-	4	8.3
Fine & Probation	-	-	1	1.0	2	7.4	-	-
Incarceration	12	30.0	28	28.9	8	29.6	13	27.1
Incarceration with Probation	12	30.0	32	33.0	5	18.5	11	22.9
Intermittent Jail	-	-	-	-	-	-	4	8.3
Fine & Jail	-	-	-	-	-	-	-	-
Total	40	100.0	97	100.0	27	100.0	48	100.0
Probation Time								
0 - 6 months	2	8.7	11	17.5	3	15.8	3	10.0
7 - 12 months	9	39.1	17	27.0	5	26.3	13	43.3
13 - 18 months	6	26.1	12	19.0	3	15.8	8	26.7
19 - 24 months	6	26.1	20	31.7	6	31.6	5	16.7
25 - 36 months	-	-	3	4.8	2	10.5	1	3.3
Subtotal	23	100.0	63	100.0	19	100.0	30	100.0
Probation Conditions								
Community Service Work	-	-	10	83.3	-	-	2	66.7
Treatment/Counselling	-	-	-	-	1	100.0	-	-
No Contact with Victim	-	-	-	-	-	-	-	-
No Contact with Children	-	-	-	-	-	-	-	-
Weapons Prohibition	-	-	2	16.7	-	-	1	33.3
Subtotal	-	-	12	100.0	1	100.0	3	100.0
Fine - Amount in Dollars								
$ 1 - 100	-	-	-	-	-	-	1	20.0
$ 101 - 200	-	-	2	40.0	1	33.3	2	40.0
$ 201 - 300	2	66.7	1	20.0	1	33.3	-	-
$ 301 - 400	-	-	1	20.0	-	-	-	-
$ 401 - 500	-	-	1	20.0	-	-	1	20.0
Over $500 dollars	1	33.3	-	-	1	33.3	1	20.0
Subtotal	3	100.0	5	100.0	3	100.0	5	100.0
Fine - Default								
1 - 10 days	-	-	1	25.0	-	-	-	-
11 - 15 days	-	-	1	25.0	1	50.0	1	33.3
16 - 30 days	2	66.7	2	50.0	-	-	1	33.3
Over 30 days	1	33.3	-	-	1	50.0	1	33.3
Subtotal	3	100.0	4	100.0	2	100.0	3	100.0

Table 5.24 (continued)

	CALGARY				EDMONTON			
	s. 151		s. 271		s. 151		s. 271	
	n	% STTL	n	% STTL	n	% STTL	n	% STTL
Fine - Time to Pay								
1 - 30 days	1	33.3	1	20.0	-	-	-	-
31 - 60 days	1	33.3	1	20.0	-	-	-	-
Over 60 days	1	33.3	3	60.0	-	-	1	100.0
Subtotal	3	100.0	5	100.0	-	-	1	100.0
Incarceration								
Single Charge	6	25.0	20	33.3	3	25.0	9	32.1
Consecutive Charge	2	8.3	9	15.0	2	16.7	-	-
Concurrent Charge	-	-	-	-	3	25.0	4	14.3
Unspecified (with other charges)	10	41.7	25	41.7	4	33.3	12	42.9
Intermittent	6	25.0	6	10.0	-	-	3	10.7
Subtotal	24	100.0	60	100.0	12	100.0	28	100.0
Incarceration Time								
3 months	12	50.0	19	31.7	1	7.7	7	25.0
4 - 6 months	4	16.9	8	13.3	2	15.4	7	25.0
7 - 12 months	2	8.3	16	26.7	5	38.5	3	10.7
13 - 18 months	5	20.8	9	15.0	3	23.1	4	14.3
19 - 24 months	1	4.2	5	8.3	2	15.4	6	21.4
25 - 36 months	-	-	1	1.7	-	-	-	-
37 - 48 months	-	-	1	1.7	-	-	-	-
49 - 60 months	-	-	-	-	-	-	1	3.6
Over 60 months	-	-	1	1.7	-	-	-	-
Subtotal	24	100.0	60	100.0	13	100.0	28	100.0
Average	$\bar{X}$	6.7	$\bar{X}$	9.9	$\bar{X}$	11.1	$\bar{X}$	11.2

[1] "Unspecified Probation" means either conditional discharge or suspended sentence. Unfortunately, the way in which the outcomes of some cases were listed in the information system required creation of this category.

Data Sources: Calgary Police Service, Police Information Management System (PIMS)
Criminal Justice Information System (CJIS)

Unit of Analysis: Charge

Dispositions for section 271 are again similar to section 151. Incarceration was ordered in 50 percent of the convictions and various types of probation accounted for the remaining cases. The most common lengths of incarceration were three months or less (25 percent) and four to six months (25 percent), followed by 19 to 24 months (21 percent) and 13 to 18 months for 14 percent of those incarcerated. The average incarceration time for section 271 was 11.2 months.

Predictors of Incarceration

Calgary

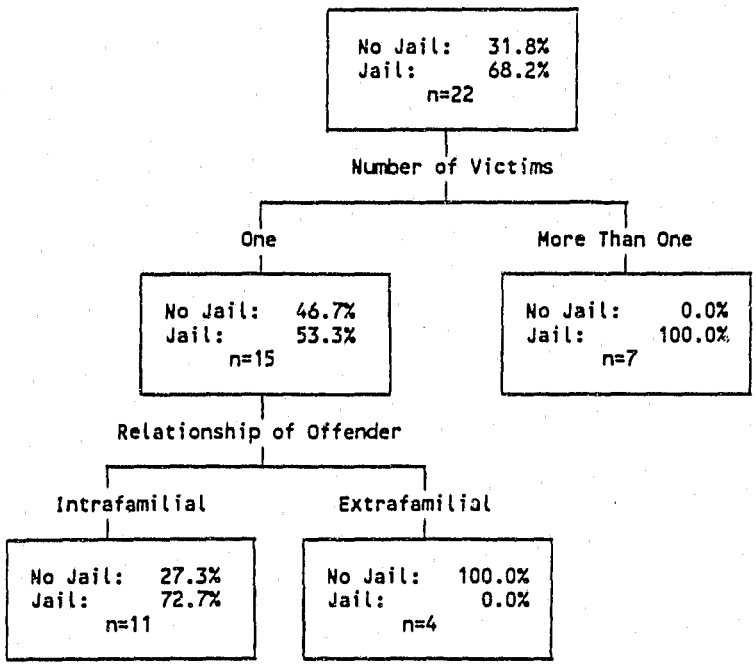
Figure 5.9 contains the decision model produced by a multivariate analysis of incarceration under section 151. The first variable to split, and thus the most significant, was "number of victims." Only 53 percent of offenders convicted of victimizing one child received jail sentences compared to 100 percent of those who had multiple victims. On the second iteration, the relationship of the offender to the victim was a significant predictor. Offenders who were family members were more likely to receive a jail term than extrafamilial offenders in cases involving one victim (73 percent compared to zero percent).

Figure 5.10 contains a similar multivariate analysis which identifies predictors for incarceration for convictions under section 271. The first variable to split was the age of the offender. This indicates that young offenders (12 to 17 years old) were significantly less likely to be incarcerated (i.e., 47 percent) than adult offenders (i.e., 95 percent). The probability of young offenders being incarcerated, however, was increased significantly if the abuse was more than one incident (i.e., the proportion increased to 70 percent). The probability of adult offenders being incarcerated also increased if the victim was under 16 years old (i.e., 98 percent compared to 50 percent for victims over 16 years old).

Edmonton

Figure 5.11 contains the decision model produced by a multivariate analysis to identify predictors of incarceration for section 151 in Edmonton cases. The first variable to split, and thus the most significant predictor of incarceration, was the age of the offender. The group obtaining the lowest probability of being jailed was offenders who were 12 to 18 years old. None of this group were incarcerated. Older offenders, with the exception of those 36 to 55 years old, obtained high levels of incarceration (81 percent and 100 percent compared to 17 percent for the 36 to 55 age group). At the second iteration, the probability of offenders being jailed was increased significantly if the victim was perceived by police to be emotionally injured (i.e, 100 percent).

Figure 5.9 Decision Model for No Jail/Jail Under Section 151, Calgary Cases[1]

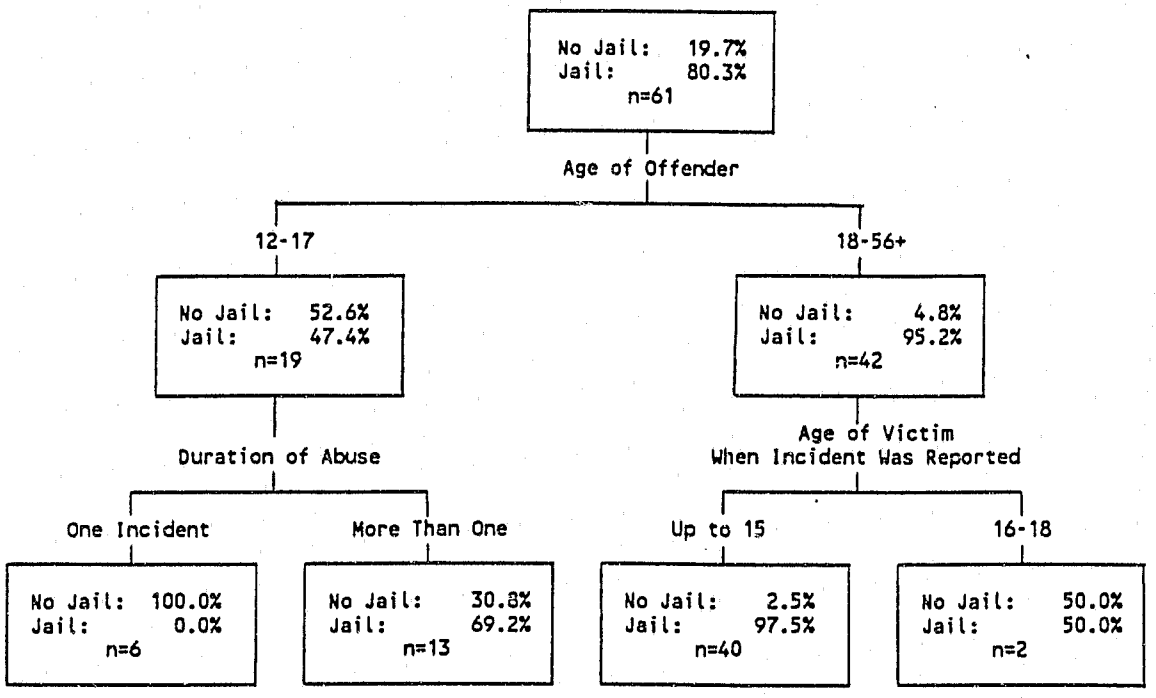


1 Significance Level = .05

Data Sources = 1. Police File Review
2. Criminal Justice Information System (CJIS)

Unit of Analysis: Case (victim/occurrence)

Figure 5.10 Decision Model for No Jail/Jail Under Section 271, Calgary Cases[1]

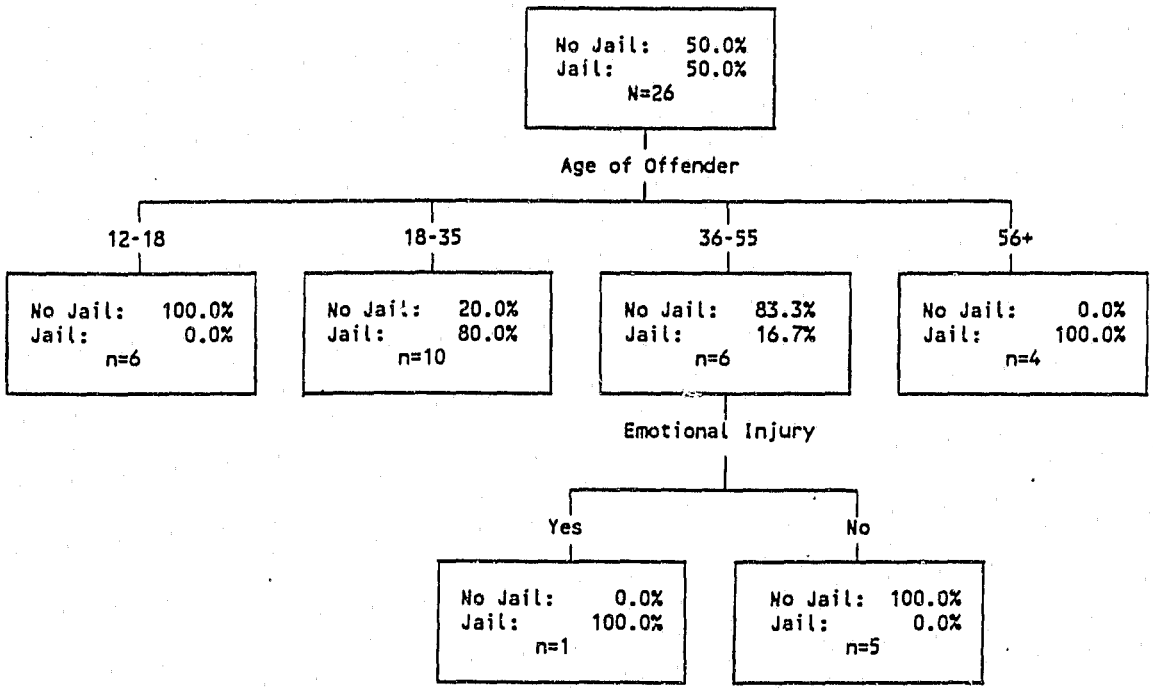


1 Significance Level = .05

Data Sources = 1. Police File Review
2. Criminal Justice Information System (CJIS)

Unit of Analysis: Case (victim/occurrence)

Figure 5.11 Decision Model for No Jail/Jail Under Section 151, Edmonton Cases[1]



1 Significance Level = .05

Data Sources = 1. Police File Review
2. Criminal Justice Information System (CJIS)

Unit of Analysis: Case (victim/occurrence)

Figure 5.12 contains the results of the analysis of the potential predictors of incarceration under section 271. The first variable to split was relationship of the offender to the victim. Offenders who were related to the victim had a much higher probability of being jailed than extrafamilial offenders (i.e., 90 percent compared to 42 percent). The extrafamilial offender who perpetrated high levels of sexual intrusion (i.e., vaginal penetration with penis) were significantly more likely to be jailed than extrafamilial offenders who were less intrusive (86 percent compared to 29 percent). Finally, the use of physical force also significantly increased the probability of the extrafamilial offender being jailed (i.e., 100 percent).

5.10.1 Summary: Objective # 10

- The overall rate of conviction under section 271 (Sexual assault) was 81 percent for Calgary and 60 percent for Edmonton. The proportion of guilty pleas was 36 percent (of all charges laid) for Calgary and 28 percent for Edmonton. For Calgary cases, 14 percent of the charges under section 271 were withdrawn, compared to less than two percent in Edmonton.

- The most common disposition for section 151 (Sexual interference for children under 14) was incarceration in both Calgary (60 percent) and Edmonton (48 percent).

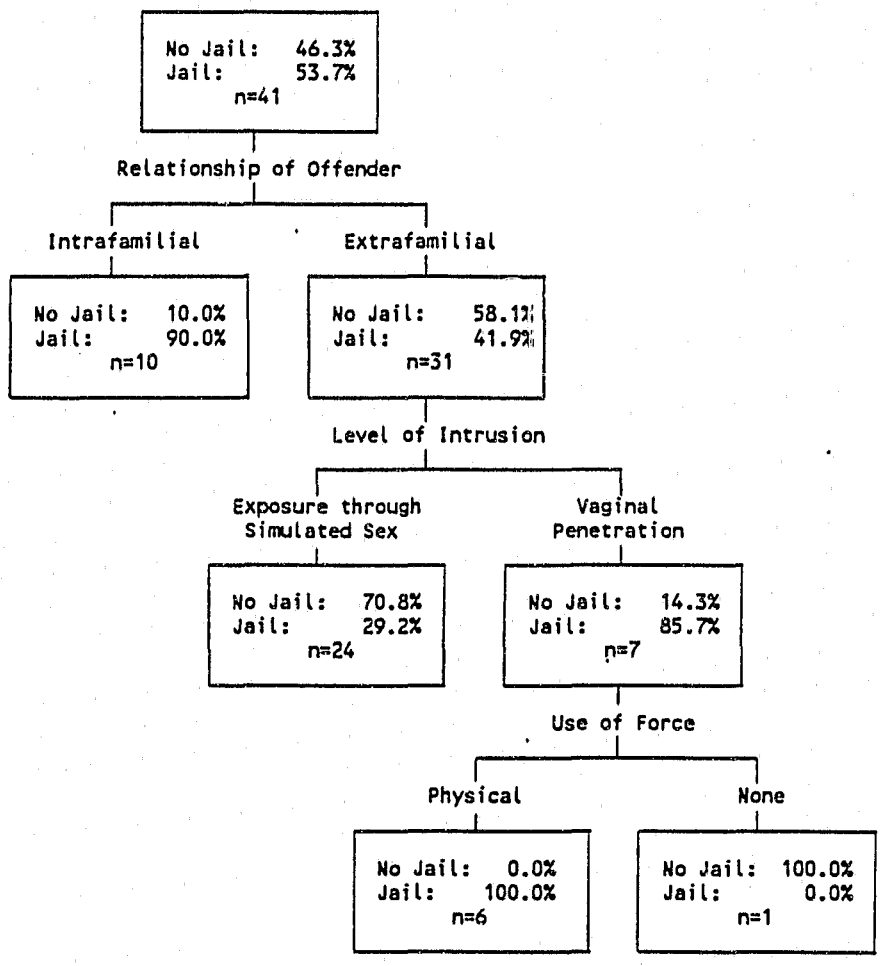
- For section 151 (Sexual interference for children under 14), the most common time period for incarceration was three months or less for Calgary (50 percent), with an average of 6.7 months, and 13 to 18 months for Edmonton (39 percent), with an average of 11.1 months.

- The most common disposition for section 271 was incarceration in both Calgary (62 percent) and Edmonton (50 percent).

- For section 271, the most common time period for incarceration was three months or less (32 percent) for Calgary, with an average of 9.9 months. In comparison, 25 percent of Edmonton incarcerations were for three months or less and 25 percent were for four to six months, with an average of 11.2 months.

- In terms of sentencing under section 151 for Calgary cases, the existence of more than one victim was an important predictor of incarceration. However, in cases involving one victim, the probability of incarceration increased significantly if the offender was related to the victim.

Figure 5.12 Decision Model for No Jail/Jail Under Section 271, Edmonton Cases[1]



1 Significance Level = .05

Data Sources = 1. Police File Review
2. Criminal Justice Information System (CJIS)

Unit of Analysis: Case (victim/occurrence)

- The most important predictors of incarceration under section 151 for Edmonton cases were age of the offender (i.e., young offenders were not incarcerated) and reported emotional injury of the victim.

- In terms of sentencing under section 271 for Calgary cases, age of the offender was the most important predictor of incarceration. Adult offenders tended to be given jail terms. The probability of the adult offender receiving a jail term was further increased if the victim was under 15 years old.

- The most important predictors of incarceration under section 271 for Edmonton cases were: relationship of offender to victim (relatives tended to be incarcerated), level of intrusion (vaginal penetration, as compared to lower levels of intrusion was more likely to result in incarceration), and the use of physical force.

6.0 PERCEPTIONS OF PROFESSIONALS, CHILD VICTIMS AND PARENTS REGARDING BILL C-15, AN ACT TO AMEND THE CRIMINAL CODE AND THE CANADA EVIDENCE ACT

This chapter focusses on the perceptions of social workers, police, crown prosecutors, defence counsel and judges regarding the problems, changes, and effects of the provisions of Bill C-15. These data were collected through the key informants survey described in Section 3.2.5. The information provided is most relevant to the third purpose of the study: to identify the degree to which the goals and objectives of Bill C-15 have been achieved. In addition, this chapter presents information from seven child victims and seven parents who were interviewed after proceedings were completed, using the structured interview schedule (see Appendix C).

The data included in this section are based on perceptions and will be used to augment the quantitative data presented in Chapter 5.0 regarding the impact of Bill C-15. Because of the limited number of respondents who participated in this component of the study, the data from all sites within Alberta are aggregated.

6.1 Perceived Problems With Substantive Sections of Bill C-15

The substantive criminal code sections relevant to Bill C-15 are listed below. General comments are outlined for substantive issues specific to individual charges. The information presented is summarized from the comments on an open-ended question on the survey completed by judges (n=18), crown prosecutors (n=35), defence lawyers (n=24), and police officers (n=45).

Section 151: Sexual Interference

Two crown prosecutors stated that it was difficult to differentiate sexual touching from sexual assault (section 271). Inappropriate sexual touching was believed to be a sexual assault. Four defence lawyers believed a child's perception of a touch being for a sexual purpose may not be accurate. Police individually commented on how difficult it was to prove touching was for a sexual purpose, and how it was too abstract a charge without physical evidence.

Section 152: Sexual Invitation

A defence lawyer commented on a child's possible inaccurate perception of a touch being for a sexual purpose rather than a form of affection.

Section 153: Sexual Exploitation

A crown prosecutor stated it was difficult to prove a person was in a position of authority. A defence lawyer thought this charge could be incorporated into section 271 (Sexual assault).

Section 155: Incest

A defence lawyer and a police officer commented a charge under section 155 discriminated against father/son anal intercourse since the charge is usually only used for vaginal intercourse in father/daughter relationships. A crown prosecutor believed that after several years have passed, even with evidence, some judges will not convict on this specific charge. Another comment made was that it is still difficult to prove intercourse occurred, even with changes in evidentiary procedures.

Section 159: Anal Intercourse

It is believed, by one defence lawyer, that anal intercourse for sons and daughters should be treated the same as section 155 (Incest) if the perpetrator is a biological parent. A crown prosecutor commented that he felt judges did not believe anal intercourse occurred without documented physical injuries.

Section 160: Bestiality

A police officer commented that, for this charge, there was a need for additional evidence besides a victim statement.

Section 171: Householder Permitting Sexual Activity

A police officer stated that it is very difficult to have someone come forward to complain in a manner that would provide evidence that is specific to this charge.

Subsection 173(2): Exposure to a Child Under 14

A crown prosecutor and defence lawyer commented that it was difficult to determine motivation or intention. A police officer stated that this charge should have a statute of limitations, and that it should be a hybrid rather than a summary offence.

Subsection 212(2): Living on Avails of Prostitution

A crown prosecutor and a police officer felt it was difficult to have a victim cooperate with the justice system, mainly as a result of problems with trust issues.

Subsection 212(4): Obtaining a Prostitute Under 18

A defence lawyer commented that it was difficult to defend a person charged with this section due to the resulting publicity that would surround the case. A question was also raised as to whether a moving car is considered a public place in regards to this specific charge. A police officer pointed out the problem of having a witness testify because an undercover operation is necessary to obtain evidence to charge under this section.

Section 271: Sexual Assault

A police officer and a judge felt this charge was too general and needed to be more specific. Four defence lawyers commented on several aspects of this charge. The issues of proving intent on the part of the alleged perpetrator and the perception of consent by the victim were considered difficult to ascertain. The age limit of 14 was considered to be arbitrary and unreasonable in regards to consent by a victim by some defence lawyers. In general, these lawyers felt that it was not the charge itself that was a problem, but rather the changes in rules of evidence.

Section 272: Sexual Assault with Threats of Harm to Another

A police officer stated that it was difficult proving there was a threat in any specific situation.

Section 273: Aggravated Sexual Assault

A defence lawyer commented that the severity of the injuries can be an issue in the appropriate use of this charge.

Additional Comments

Several comments were added that related to the prosecution of cases in general rather than specific charges. A police officer had concerns that crown prosecutors group all behaviours under section 271 (Sexual assault) instead of charging by specific acts and appropriate sections. A crown prosecutor questioned the accuracy of a child's memory when testifying and, as well, raised the possibility of a child's retracting statements once a charge has been laid. A judge

commented that there were no problems with the charges, however, the main issue is still whether the crown has sufficient evidence to prove the accusations. Another judge felt that if the only evidence were the statements of the victim and the accused, it could be difficult to convict on any charges.

6.1.1 Summary: Perceived Problems with Substantive Sections of Bill C-15

- In terms of the substantive components of Bill C-15, the most interesting finding is the lack of consensus and the low frequency of the professional respondents who identified specific problems with the various sections. The small number of respondents who identified problems limits any overall conclusions for these data.

6.2 Reported Experience With Procedural Sections of Bill C-15

Below data are presented and discussed regarding reports of first-hand experience with various procedural items relevant to Bill C-15 by the crown prosecutors, defence lawyers, and judges. Table 6.1 contains information (since Bill C-15 was proclaimed) on whether the crown prosecutor requested an item, whether the defence lawyer objected to the request, and whether the judge allowed the request. The responses of the crown prosecutors, the defence lawyers, and the judges together seem to suggest three different patterns of items. First, there is a group of items which was frequently requested by the crown prosecutor (i.e., more than 94 percent of the time), seldom objected to (i.e., less than 37 percent of the time by crown respondents) and allowed most of the time (i.e., 76 percent to 83 percent of the time by crown respondents). Ban on publication, support adult in court, and witnesses cleared all clearly fall into this group.

The second group of items includes those which were requested moderately, (i.e., 37 percent to 51 percent by crown respondents), objected to frequently (i.e., 61 percent to 88 percent by crown respondents), but were usually allowed (50 percent to 77 percent by crown respondents). These items include videotape, child sits on knee, and adult accompanied child to stand.

A third and final group of items includes those that are moderately requested, not objected to, and usually allowed. These items include the use of booster seats and the child bringing a toy.

Table 6.1 Experience With Procedural Component of Bill C-15, by Professionals

Item Requested[1]	Crown (n=35)						Defence (n=24)						Judges (n=18)					
	Requested		Objection		Allowed		Requested		Objection		Allowed		Requested		Objection		Allowed	
	n	%[2]	n	%[3]	n	%[3]	n	%[2]	n	%[3]	n	%[3]	n	%[2]	n	%[3]	n	%[3]
Videotape	13	37.1	11	84.6	10	76.9	3	12.5	2	66.7	3	100.0	3	16.7	2	66.7	3	100.0
Screens	17	48.6	9	52.9	10	58.8	7	29.2	4	57.1	5	71.4	8	44.4	2	25.0	8	100.0
Booster Seat	14	40.0	-	-	9	64.3	1	4.2	-	-	1	100.0	1	5.6	-	-	1	100.0
Child Bring Toy	13	37.1	-	-	11	84.6	1	4.2	-	-	1	100.0	-	-	-	-	-	-
Child Sit on Knee	8	22.9	7	87.5	4	50.0	-	-	-	-	-	-	1	5.6	-	-	1	100.0
Adult Accompanied to Stand	18	51.4	11	61.1	13	72.2	4	16.7	2	50.0	2	50.0	4	22.2	-	-	3	75.0
Support Adult in Court	33	94.3	12	36.4	25	75.8	16	66.7	2	12.5	14	87.5	14	77.8	2	14.3	10	71.4
Witnesses Cleared	33	94.3	12	36.4	25	75.8	17	70.8	2	11.8	14	82.3	13	72.2	4	30.8	11	84.6
Spectators Cleared	32	91.4	19	59.4	26	81.3	16	66.7	2	12.5	13	81.3	11	61.1	4	36.4	9	81.8
Ban on Publication	35	100.0	9	25.7	29	82.9	22	91.7	2	9.1	20	90.9	16	88.9	1	6.3	13	81.3
Child Testifies Turned Away	9	25.7	2	22.2	7	77.8	4	16.7	1	25.0	3	75.0	4	22.2	1	25.0	4	100.0
Expert as Interpreter	1	2.9	1	100.0	1	100.0	-	-	-	-	-	-	1	5.6	-	-	1	100.0
Expert Testified re Child's Testimony	14	40.0	8	57.1	13	92.9	5	20.8	5	100.0	2	40.0	5	27.8	3	60.0	4	80.0

[1] Please note that the information obtained here measures whether item was ever requested in respondent's experience; 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.

Data Source: Key Informant Survey

Unit of Analysis: Respondent

6.2.1 Summary: Reported Experience with Procedural Sections of Bill C-15

- Three clusters of items were identified: items which were frequently requested by the crown prosecutor, seldom objected to, and allowed most of the time, i.e., ban on publication, support adult in court, and witnesses cleared; items which were moderately requested, objected to frequently, but usually allowed, i.e., videotape, child sits on knee, and adult accompanied child to stand; and finally, the use of a booster seat and child bringing a toy, which were seldom requested, not objected to and usually allowed.

- The findings indicate an openness of the key players to court innovations with the exception of defence lawyers objecting to close contact between the child and a support adult during testimony, and the use of videotape.

6.3 Perceived Changes Due To Bill C-15

Table 6.2 contains information on the changes that social workers, police, crown prosecutors, defence lawyers, and judges perceived were due to Bill C-15. The data for social workers indicate no discernable trend. Less than 40 percent of the total social worker respondents indicated an opinion on this question. A few even asked "What Bill C-15 was."

For the police, the most frequently indicated item was the "increase in the number of children giving evidence" (22 percent). Next, they felt that the number of cases increased (20 percent), followed by children testifying and being sworn younger (16 percent for both changes). Finally, they felt that corroboration was no longer being required (13 percent).

The response of the crown prosecutors focussed first on the perception that corroboration was no longer required (40 percent), followed by an increase in the number of children giving evidence (31 percent), an increase in the number of cases (29 percent), and younger children testifying (29 percent). The crown prosecutors also felt that more weight was being given to unsworn testimony (26 percent).

The defence lawyers also most frequently felt that corroboration was no longer required (25 percent). This change was followed by the perception that giving evidence under the promise to tell the truth was acceptable (21 percent). Four defence lawyers (17 percent) also felt that more weight was being given to unsworn testimony and more hearsay allowed.

Table 6.2 Perceived Changes Due to Bill C-15, by Professionals

Changes	Social Workers n	Social Workers %[1]	Police n	Police %	Crown n	Crown %	Defence n	Defence %	Judges n	Judges %
Number of Cases										
Increased	3	3.6	9	20.0	10	28.6	2	8.3	1	5.6
Number of Children										
Increase in giving evidence	2	2.4	10	22.2	11	31.4	3	12.5	2	11.1
Evidence based on promise to tell the truth	-	-	1	2.2	-	-	-	-	1	5.6
Children's Ages - Testifying										
Younger	1	1.2	7	15.6	10	28.6	2	8.3	4	22.2
Conviction with statement	-	-	2	4.4	-	-	-	-	-	-
Older	1	1.2	-	-	-	-	-	-	-	-
Use of Oath										
Younger children oath	2	2.4	6	13.3	6	17.1	-	-	1	5.6
Promise to tell the truth acceptable	1	1.2	4	8.9	5	14.3	5	20.8	2	11.1
Children's Ages Who Are Sworn										
Younger	3	3.6	7	15.6	6	17.1	3	12.5	5	27.8
Older	-	-	-	-	-	-	1	4.2	-	-
Weighting Sworn v. Unsworn Evidence										
More weight to unsworn	2	2.4	2	4.4	9	25.7	4	16.7	2	11.1
More credibility - child	-	-	2	4.4	-	-	-	-	-	-
Rules on Heresay Use										
More heresay allowed	2	2.4	-	-	2	5.7	4	16.7	-	-
Relax who can give evidence	-	-	2	4.4	-	-	-	-	1	5.6
Less heresay	1	1.2	1	2.2	-	-	-	-	-	-
Out of Court Statements Used										
Use of videotapes	-	-	1	2.2	2	5.7	2	8.3	-	-
More allowed	-	-	-	-	1	2.9	-	-	-	-

Table 6.2 (continued)

Changes	Social Workers n	Social Workers %[1]	Police n	Police %	Crown n	Crown %	Defence n	Defence %	Judges n	Judges %
Corroboration Requirements										
None required	3	3.6	6	13.3	14	40.0	6	25.0	3	16.7
More required	-	-	-	-	-	-	-	-	-	-
Expert Witnesses Used										
More often	1	1.2	1	2.2	8	22.9	-	-	1	5.6
Guilty Plea Proportion - Prior to Preliminary										
Increased	1	1.2	3	6.7	3	8.6	-	-	1	5.6
Guilty Plea Proportion - After Preliminary										
Increased	2	2.4	6	13.3	2	5.7	-	-	-	-
Conviction Proportion										
Increased	1	1.2	2	4.4	5	14.3	2	8.3	1	5.6
Decreased	-	-	-	-	1	2.9	1	4.2	-	-
Sentencing										
Lesser sentences	-	-	-	-	-	-	-	-	-	-
Harsher sentences	1	1.2	1	2.2	2	5.7	2	8.3	1	5.6
Other	-	-	1	2.2	-	-	-	-	-	-
Judges Dealing With Child Witnesses										
Better understanding	1	1.2	6	13.3	9	25.7	3	12.5	3	16.7
Sceptical/Poor understanding	-	-	-	-	1	2.9	-	-	-	-
Appeals										
Decreased	-	-	1	2.2	-	-	-	-	1	5.6
Increased	-	-	2	4.4	2	5.7	-	-	-	-
Total Possible Respondents	84		45		35		24		18	

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

Data Sources: Key Informant Survey

Unit of Analysis: Respondent

A number of judges agreed that younger children were being sworn (28 percent of the total), followed by younger children testifying (22 percent), and corroboration not required (17 percent).

6.3.1 Summary: Perceived Changes Due To Bill C-15

- There was considerable agreement regarding changes due to Bill C-15 by the police, crown prosecutors, judges and defence lawyers that: (1) the number of cases and the number of children giving evidence has increased; (2) the age of the children giving testimony and being sworn was younger; and (3) that corroboration was no longer required.

6.4 Impact Of Testifying On The Child

Table 6.3 contains the responses to the open-ended question: "In your experience, what is the overall impact of the justice system on children who are required to testify in sexual assault cases?" It is very interesting to note that there was considerable consensus among the social workers, police, crown prosecutors, defence lawyers and judges on this item. The most frequent response for all professionals was that "testifying was worse than the abuse itself" (note the response rates were 55 percent, 51 percent, 49 percent, 25 percent and 22 percent respectively for the professionals). However, in contrast, a significant number of the crown prosecutors (26 percent) and judges (17 percent) felt testifying could actually have a positive effect.

6.4.1 Summary: Impact Of Testifying On The Child

- In terms of the impact of the justice system on the child, there was a uniformly expressed belief by all professionals that "testifying was worse than the abuse itself."

6.5 Effect of Bill C-15 On the Professionals

<u>Effect On The Job</u>

Table 6.4 contains the open-ended responses to the perceived effects of Bill C-15 on the professionals' jobs. The most frequently cited effect for social workers and judges was "no difference" (27 percent of the total social worker respondents and 44 percent of the total judge respondents). For police, the most

frequent response was that it was easier to lay charges because the law was more general (13 percent of the total police respondents). The responses of the crown prosecutors indicate an increased work load (29 percent) and more cases going to court (14 percent). The defence lawyers most frequently felt that trials were longer and more complicated (21 percent).

Table 6.3 Impact of Testifying on Child Witness, By Professionals

Impact	Social Workers		Police		Crown		Defence		Judges	
	n	%[1]	n	%	n	%	n	%	n	%
Worse Than Sexual Abuse	46	54.8	23	51.1	17	48.6	6	25.0	4	22.2
Positive Effect	5	6.0	3	6.7	9	25.7	2	8.3	3	16.7
Does Not Understand Technicalities Re: Acquittal	-	-	1	2.2	-	-	-	-	-	-
Depends On The Child	-	-	-	-	3	8.6	-	-	2	11.1
Minimal Impact	-	-	-	-	-	-	5	20.8	-	-
Total Possible Respondents	84		45		35		24		18	

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

Data Source: Key Informant Survey

Unit of Analysis: Respondent

Table 6.4 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 Workload	2	2.4	1	2.2	10	28.6	1	4.2	-	-
More Cases Going To Court	2	2.4	4	8.9	5	14.3	2	8.3	1	5.6
No Difference	23	27.4	2	4.4	6	17.1	2	8.3	8	44.4
More Cases, Less Corroboration	-	-	2	4.4	1	2.9	-	-	-	-
Easier To Prosecute Cases With Younger Children	-	-	2	4.4	2	5.7	-	-	-	-
Trials Longer/More Complicated	-	-	1	2.2	-	-	5	20.8	-	-
Easier/Charges More General	1	1.2	6	13.3	3	8.6	-	-	1	5.6
Easier For Child To Testify	1	1.2	1	2.2	1	2.9	-	-	1	5.6
More Intensive Inquiry re: Child's Ability to Testify	-	-	-	-	-	-	-	-	2	11.1
More Expensive/Cost of Video	2	2.4	2	4.4	-	-	-	-	-	-
Better Treatment Of Child In Court	1	1.2	1	2.2	-	-	-	-	-	-
Easier To Work With Other Agencies	1	1.2	1	2.2	-	-	-	-	-	-
Respondent Unaware of Bill C-15	2	2.4	-	-	-	-	-	-	-	-
Investigate Differently For Court Purposes	2	2.4	-	-	-	-	-	-	-	-
Total Possible Respondents	84		45		35		24		18	

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

Data Source: Key Informant Survey

Unit of Analysis: Respondent

Policy

Table 6.5 contains the data on whether social workers, police, and crown prosecutors were aware of special policies and/or protocols specific to Bill C-15 for dealing with child sexual abuse cases. The results indicate that the police most frequently reported having special policies/protocols (i.e., 40 percent), followed by 29 percent of the crown, and 23 percent of the social workers.

Table 6.5 Special Policies and Protocols Specific to Bill C-15 Have Been Developed at Workplace, By Professionals[1]

Policy	Social Workers		Police		Crown	
	n	%	n	%	n	%
Yes	19	22.6	18	40.0	10	28.6
No	65	77.4	27	60.0	25	71.4
Total	84	100.0	45	100.0	35	100.0

[1] Data Source: Key Informant Survey

Unit of Analysis: Respondent

Training

Table 6.6 contains the information regarding whether the professionals were aware of special training for dealing with child sexual abuse cases specific to Bill C-15, and whether they took the training. The crown prosecutors obtained the highest relative frequencies for being aware of and taking special training. Ten of the crown prosecutors (29 percent of the total) indicated that they were aware of special training, and nine of these (26 percent) took the training.

Next, 21 percent of the social workers indicated that they were aware of special training for Bill C-15 and 72 percent of these (16 percent of the total) attended the training. The police ranked the lowest with only seven (16 percent of the total) being aware of special training and six of these taking the training.

Table 6.7 contains information on the availability and receipt of general training for dealing with child sexual abuse cases. As would be expected, the majority of social workers were aware of (75 percent of the total) and took (66 percent of the total) general training on child sexual abuse. A significant percentage of police (36 percent), crown prosecutors (17 percent) and judges (17 percent) also took general training on child sexual abuse.

6.5.1 Summary: Effect Of Bill C-15 On The Professionals

- In terms of effects on jobs, social workers indicated little change because of Bill C-15. The crown prosecutors, in contrast, perceived the most change.
- The widest use of protocol for dealing with child sexual abuse cases was by the police.
- While only the crown prosecutors seemed to take training specific to Bill C-15, an impressive proportion of social workers, police and even some crown prosecutors and judges took general training on child sexual abuse.

6.6 Perceptions Of Child Victim/Witnesses

Seven children were interviewed after court proceedings were completed. All seven had been to court, and six of these children actually testified in court. Four were from the urban sites, and three were from the rural sites.

Table 6.6 Special Training Available and Received for Dealing with Child Sexual Abuse Cases Specific to Bill C-15, By Professionals[1]

	Social Workers		Police		Crown		Defence		Judges	
	n	%	n	%	n	%	n	%	n	%
Bill C-15 Training Available										
Yes	18	21.4	7	15.6	10	28.6	-	-	3	16.7
No	66	78.6	38	84.4	25	71.4	24	100.0	15	83.3
Bill C-15 Training Received										
Yes	13	15.5	6	13.3	9	25.7	-	-	2	11.1
No	71	84.5	39	86.7	26	74.3	24	100.0	16	88.9
TOTAL	84	100.0	45	100.0	35	100.0	24	100.0	18	100.0

[1] Data Source: Key Informant Survey

Unit of Analysis: Respondent

Table 6.7 Special Training Available and Received for Dealing with Child Sexual Abuse Cases in General, By Professionals[1]

	Social Workers		Police		Crown		Defence		Judges	
	n	%	n	%	n	%	n	%	n	%
General Training Available										
Yes	63	75.0	24	53.3	6	17.1	-	-	3	16.7
No	21	25.0	21	46.7	29	82.9	24	100.0	15	83.3
General Training Received										
Yes	55	65.5	16	35.6	6	17.1	-	-	3	16.7
No	29	34.5	29	64.4	29	82.9	24	100.0	15	83.3
TOTAL	84	100.0	45	100.0	35	100.0	24	100.0	18	100.0

[1] Data Source: Key Informant Survey

Unit of Analysis: Respondent

Court Preparation

Two of the children stated that they had attended scheduled precourt visits, one conducted by the crown prosecutor and a police officer together, and the other conducted by the crown prosecutor and a therapist. The other five children reported no precourt visit. The two children who attended precourt visits thought the visit helped them to know where they were going, and what the court looked like.

The children who described what the crown prosecutor did (n=4) all stated that the crown prosecutor was on their side; one stated that the crown prosecutor protects the innocent; and one stated that the crown prosecutor "protects me." Six of the seven children stated that the crown prosecutor explained what would happen in court. Four of these children remember the crown prosecutor explaining that they should tell the truth and three remember being told to give definite answers. Most of the children (n=4) thought this helped them a little bit, and one thought it helped a lot. These children's responses show an alliance with the crown prosecutors and the importance of precourt meetings with the crown prosecutor in order to help the children feel prepared and supported.

Six of the seven children also had at least one support adult in addition to the crown prosecutor -- either a parent or guardian (in three cases), a social worker (in three cases), or a therapist or other family member. One way support adults helped was by telling the children that it was normal to feel frightened. Three children thought this helped quite a bit, and two thought it helped a little. This suggests the importance of supportive adults in the process and the importance of validating and normalizing the childrens' feelings of fear.

What Victim/Witnesses Would Tell Other Children

When the children were asked how they would help to prepare another child for court, the most common response was that they would advise the child to tell the truth (n=5). Other responses included general encouragement such as: be confident, be brave, don't be afraid, believe in yourself, and it will be fine (n=4). Other advice given by the children included: it's not your fault, ask questions if you don't understand, it will take a long time, the person may not be punished, it gets frustrating but go ahead, don't let them force words in your mouth, even if you lose he will get caught eventually, and it will be scary but you should tell so that it doesn't happen to someone else.

Testimony Experience

The general consensus of the child victim/witnesses was that the judge was there to listen to testimonies and make decisions about the guilt or innocence of the accused. One child stated that "the judge was there to protect you." Most of the children (n=4) felt the judge understood them a little bit. One felt well understood, and another felt not at all understood.[1] The children thought judges could improve their questions by using "normal language," by not being so aggressive, and by listening to their story more closely.

Most of the children felt understood by the crown prosecutor. Of the six that testified, four felt the crown prosecutor understood them quite a bit, one felt well understood and one felt not at all understood. Three children thought the crown prosecutor's questions were confusing or not specific enough. One child did not feel comfortable asking for an explanation when it was needed.

Generally, the children were more negative about the cross-examination. Three of the five children who were cross-examined felt that the defence lawyer did not understand them at all, and two felt a bit understood. The type of comments made were that the defence lawyer was too aggressive (n=2), many questions were confusing and should not be asked twice, and the defence lawyer did not listen to them.

Four children felt that having family members in the courtroom made it easier for them to testify. One child even pretended she was talking to them while testifying. Another child felt more secure with the judge and the police in the courtroom so that the accused could not hurt her. Three children felt that having other people (except family members) in the courtroom made it harder for them to testify. Generally, having family members in the courtroom gave the children a lot of support during the testimony. There is some indication that the presence of authority figures offered the children security, but that the presence of strangers seemed to increase stress.

Two children brought objects (i.e., one wore her favourite pants, and one brought a rosary), which they felt were helpful to have with them. Three of the children thought having a favourite object in court might have been helpful. No screens were used in these cases, but three children thought it might have made the testimony easier. None of the children sat in chairs while testifying -- all

[1] This was a case where the charges were dismissed at the preliminary hearing and the child was extremely angry.

stood. One eight-year old boy said he got very tired standing and would have liked to sit down.

General Comments About the Court Process

The children described a range of feelings about the court process: one child was generally happy; three were neither happy nor sad; and two had sad feelings. It appears these overall feelings about the court process were strongly influenced by the outcome, because the two children who felt very sad were witnesses in cases where the accused was either acquitted or the charges were dismissed. Both of these children described intense feelings of anger and a perception that no one had believed them. Other children made general comments that the whole process took much too long, that they had to tell their story too many times, and that they did not understand what an acquittal was. One child thought it was good for her to be able to tell her father (the accused) what she thought of him in court.

6.6.1 Summary: Perceptions of Child Victim/Witnesses

- Child victim/witnesses felt an alliance with the crown prosecutors and also felt that precourt meetings with the crown prosecutors helped them.
- The importance of supportive adults in the court process was documented, as was the importance of validating and normalizing the children's feelings of fear.
- Most children felt that the judge and crown prosecutor understood them to some extent. In contrast, the children were more negative about the cross-examination.
- Having family members and authority figures in the courtroom gave the children support and a feeling of security during the testimony. However, the presence of strangers seemed to increase stress.
- The child victim/witnesses found that it was helpful to have favourite objects in court, and they also thought that the use of screens and chairs to sit on while testifying would have helped.
- The child victim/witnesses' feelings about the court process seemed to be directly affected by the outcome of the proceedings, i.e., victims were upset if the proceedings did not result in convictions.

6.7 Perceptions of Parents/Guardians

Seven parents or guardians were interviewed after court proceedings using the structured interview schedules. Four were from urban sites and three were from rural sites. Victim/witnesses testified in six of these cases; in one case, the charges were dismissed, so the child, although present in court, did not testify.

Respondents

Two of the respondents were guardians of government wards; the remaining respondents were parents. Four of the respondents had completed high school and one had completed an undergraduate degree. Five of the respondents had annual incomes under $15,000. Four respondents were employed full time, and one respondent was employed part time. Marital statuses represented by this group included single, married, divorced and common law.

Social Workers

Parents/guardians reported that social workers were involved in five of the seven cases. In all five cases, social workers provided such services as: information or referral to other support services; follow-up services after the trial; financial assistance; the opportunity for the children to discuss their feelings about the trial; police liaison; and assistance with further counselling. In a few cases the social worker also provided information about the police investigation and court proceedings and likewise accompanied the child to the trial. Twenty-six of thirty-five specific social work interventions (74 percent) were rated as helpful by responding parents and guardians.

Parents/guardians reported that social workers alone interviewed four of the children about the sexual abuse incident. The other two children were interviewed by police and a social worker together. The interviewers were considered to be sensitive and able to communicate at the child's level in all cases rated by the parents/guardians.

Police

All parents/guardians reported that police provided them with information about the nature of the investigation and the court process. In most cases, police were also reported to have provided support and information about case outcome. In a minority of cases the police reportedly referred victims to agencies or services. The police were found by parents and guardians to be most helpful in the areas of providing support around the sexual abuse, liaising with the crown prosecutor, and providing general information about the court process. The

police were found to be helpful in 69 percent of the rated services they provided (24 of 35 police interventions).

Six respondents answered the remaining questions about police involvement. In all six cases, police interviewed the children within a few days of the report being made. In all six cases, the police were considered to be sensitive and able to communicate at the child's level.

Crown Prosecutors

Of the six reported cases, one parent/guardian respondent found the crown prosecutor helpful; the remaining responses ranged from not helpful to neither helpful nor unhelpful. The crown prosecutors were found to be helpful in 45 percent of the rated services they provided (18 of 42 specific services).

In terms of the specific services provided directly to respondents by the crown prosecutors, those offered most frequently were information about court dates, case status, court roles and process, the meaning of an oath, and the rules of testimony. Only one crown prosecutor conducted a courtroom tour. The crown prosecutors were found to be most helpful when they provided information about the meaning of an oath, the rules of testimony and court dates, appearances and scheduling. The respondents seemed to find the crown prosecutors to be most helpful with regard to the purely legal aspects of the crown prosecutor's role, that is, aspects that could not be provided by other professionals.

Six of the seven respondents felt that they did not have enough contact with the crown prosecutor. Of the five that observed the crown prosecutor's interview with the child, three felt that the communication was at the child's level and two did not. No referrals were made by the crown prosecutor to other services or organizations.

General Impact of Investigation/Reporting

Special techniques were reported to be used to gather evidence in two cases. They included the use of drawings by the child and tape recordings. According to the parents/guardians, the children were required to tell their story about the sexual abuse incident an average of six times (range = four to eight times).

The impact of the reporting and investigation process was reported to be negative on the child in four of the six reported cases. When asked how the reporting and investigation process could be made easier for the child, two respondents felt that the disclosure should have been videotaped. One

respondent felt that there were too many professionals involved, and one respondent felt that the parents should be allowed to sit in on the interviews with the child. One respondent stated that no one in the process addressed the emotional needs of the child, and another thought that the police investigation took too long.

Trial Information

In two of the six cases, there was a special room for the victim and the victim's mother in which to wait prior to court. In another case, where such a room was not available, the family of the accused sat in the same waiting area making "rude remarks," which made the victim feel uncomfortable. Special assistance was given in only one case when the courtroom was closed to the public during the victim's testimony. Three of the respondents were in the room for the child's whole testimony, and three were not in the room for any of the testimony.

In terms of the overall court process, most respondents felt neutral about the questioning of themselves and their child by the police and the crown prosecutors. However, they felt quite uncomfortable with the questioning when it occurred during the court proceedings.

The respondents thought, on the average, that their children responded most favourably to police questioning, taking the oath and talking to the crown prosecutor about the case. In contrast, they felt that their children were very uncomfortable giving evidence at the trial, being cross-examined, recalling the sexual abuse incident, and having the accused present in court.

Three of the seven children later expressed fears to the parents/guardians that the accused would revictimize them. Other concerns expressed by the children included: fear of harassment from family members; wishing that the case had never gone to court; and extreme anger at the judge when charges were dismissed.

In five of the seven cases, the children reportedly experienced health and/or behavioural problems, which the respondents thought were related to the trauma of the court appearance. These included being depressed, anxious, unable to sleep and concentrate, having suicidal thoughts, threatening to run away, and having behavioural problems at school.

Most respondents thought the length of time it took to get to court made the process particularly difficult. Other concerns expressed were: concerns about the community finding out; the accused nonverbal intimidating the victim in court; dealing with acquittals; harshness of the defence lawyer; ongoing harassment by

the accused (who in one case lived across the street); not feeling that they were being kept up-to-date on things; and a lack of coordination between the police and the child welfare workers.

When asked for their general feelings about the whole court process, six of the seven respondents were unhappy about the experience. One respondent felt generally positive about it, and stated that the outcome of the trial was just and fair, and that the professionals involved were understanding and empathic. This respondent thought the experience had a positive effect on the victim because the crown prosecutor had been very gentle and kind. In contrast, the majority of the respondents thought that the court experience had a difficult and painful impact on the victim. They thought this experience might have been improved by such things as the following: the child not having to testify in court; the child not having to look at the accused in court; the use of videotape; the child being able to sit down while testifying; having someone standing beside the child while testifying; a shorter time period between charges being laid and the case coming to court; counselling/support groups; explanation of the acquittal process; and a better understanding of what to expect from the crown prosecutors and defence lawyers.

Post Court

The only other type of assistance the families received was in the form of counselling, which members from four of the seven families received. When asked about other sources of help, respondents stated that they received most emotional support and information from other family members. Family members also provided them with accompaniment to the court proceedings. Other sources of support included agency staff, friends, an employer and a priest.

Four respondents thought the victim could have benefitted from a child victim/witness support program. Such a program, they felt, would help the child to deal with anger about the outcome and to help explain the court process. Two other respondents did not feel such a program was necessary and did not want too many people involved.

6.7.1 Summary: Perceptions of Parents/Guardians

- The parents and guardians who were interviewed (n=7) found both social work and police professionals to be generally helpful, particularly because of the sensitivity which they exhibited when conducting interviews.

- The crown prosecutors were found to be helpful with regard to the purely legal aspects of their role.

- The reporting and investigation process was thought to have some negative effects on the children, especially due to the fact that they were required to tell their story numerous times (an average of six times).

- The respondents thought, on the average, that the victims responded favourably to police questioning, taking the oath, and talking to the crown prosecutors about the case. In contrast, they were uncomfortable giving evidence at the trial, being cross-examined, recalling the sexual abuse incident, and having the accused present in court.

- A common fear which the children expressed was that the accused would revictimize them.

- Most parents reported that the child demonstrated health and behavioural problems, especially immediately prior to the court proceedings.

- Six of the seven respondents were generally unhappy about the experience and thought it was difficult and painful for the victim.

- The most common criticism the respondents had of the process was that the length of time between the laying of charges and the trial was too long.

7.0 CONCLUSIONS

In this report information has been analyzed to reflect on three distinct study purposes, as follows:

(1) To explore the nature of the interrelationship between the child welfare system and the criminal justice system regarding child sexual abuse.

(2) To examine the nature of the child victim/witness experience in the criminal justice system since the proclamation of Bill C-15.

(3) To identify the degree to which the goals and objectives of Bill C-15 have been achieved.

In this chapter the conclusions regarding the above study purposes are presented. These conclusions are based solely on the findings that are presented in Chapters 4.0, 5.0 and 6.0 of this report. The conclusions are presented below specific to each of the specified purposes of the study.

7.1 The Interrelationship Between the Child Welfare System and the Criminal Justice System[1]

Because of the principle of "least intrusiveness" expressed in the Alberta Child Welfare Act (1985), complete investigations of allegations of child sexual abuse are required by Alberta Family and Social Services only when the alleged offender is a family member. When the alleged perpetrator is not known by the family (i.e., extrafamilial abuse), and protective services are not determined to be necessary, the case may be referred directly to a community resource. As expected, there is evidence of considerable inter-agency cooperation between the police and Alberta Family and Social Services for Calgary child sexual abuse cases when the offender lived with the child. Further, child welfare workers were the major source of referral of child sexual abuse cases to the police. A considerable amount of case conferencing occurred, involving social workers and police.

In Edmonton, there was even more inter-agency involvement between the police and Alberta Family and Social Services than in Calgary. The nature of the cases that were involved was also different. Calgary Social Services focussed more on intrafamilial abuse cases, whereas the data suggest that Edmonton Social

[1] See especially Sections 4.1, 4.2 and 4.3 of this report for relevant findings.

Services included a considerable proportion of extrafamilial abuse cases. This seems to reflect a broader interpretation of the Alberta Family and Social Services mandate in Edmonton.

In both Calgary and Edmonton, inter-agency committees with representatives from child welfare, police, and other relevant agencies have developed protocols to guide investigations of both physical and sexual abuse. Further, both Calgary Police Service and Edmonton Police Service have specialized sex crimes/child abuse units. In Edmonton all cases of child sexual abuse are referred directly to this unit; in contrast, complaints received by district offices in Calgary are often concluded by the police officer who answered the call and are never referred to the special child abuse unit which is located at police headquarters.

Issues for Further Research

The findings raise two issues relevant to both Calgary and Edmonton which go beyond the scope of this report:

(1) A significant proportion of cases have been identified by the Child Welfare Information System as having a case outcome of "sexual abuse" but do not seem to have yet been investigated by police (Table 4.1).

(2) Very few offenders (23 percent in Calgary and nine percent in Edmonton) seem to be receiving any treatment.

7.2 The Nature of the Child Victim/Witness Experience in the Criminal Justice System[2]

Number of Cases

The overall reporting rates in both Calgary (90 per 100,000 in 1990) and Edmonton (114 per 100,000 in 1990) are relatively high compared to other provincial and national rates. For example, the reporting rate for all sexual assaults in Alberta in 1988 was approximately 145 per 100,000 (Roberts, 1990b). Unfounded rates, in contrast, are lower (i.e., eight percent for Calgary and seven percent for Edmonton) compared to the 1988 national average rate of 15 percent for sexual assault (Roberts, 1990b). However, it should be pointed out that the case screening process that operates as cases progress through the criminal justice

[2] See especially Sections 4.4, 4.5, 4.6, 4.7, 6.6 and 6.7 of this report for relevant findings.

system results in only a portion of the cases reported leading to charges being laid (44 percent for Calgary and 25 percent for Edmonton), the child giving testimony in court, and subsequent convictions.

Case Profile

The demographic profiles of victims who come into contact with the Calgary and Edmonton special sex crimes investigation units are significantly different. The Calgary unit investigated more cases involving younger victims (over 15 percent under four years old in Calgary compared to only five percent for Edmonton) and intrafamilial offenders reported by social workers. The Calgary cases were also characterized by a large time span from most recent occurrence to report to police (8.1 months compared to 5.1 months for Edmonton). To some extent, differences could be explained by the fact that immediate reports involving teenagers tend to be handled by district officers in Calgary and are not referred to the special investigation unit. In contrast, all Edmonton cases are referred to the sex crimes unit. Thus, the Edmonton file review sample had a high proportion of the cases involving teenage victims who immediately reported incidents involving extrafamilial offenders.

There seems to be more to the differences, however, than the sample selection that occurred because of the Calgary police protocol. For instance, the court observations were arranged directly from the dockets of all cases with victims under 18 years old. Despite the fact that the same procedure was followed in Calgary and Edmonton, and was totally independent of the police file review and police information systems, significant differences were still apparent. Edmonton had a higher proportion of cases involving relatively older children who were victimized by non-related offenders.

Duration

The time frame for cases which proceed to court is considerable (i.e., average time for report to police to trial was nine months for Calgary and 8.2 months for Edmonton). This would be especially problematic for young children. In the R. v. Beauchamp and Beauchamp case, for example, the child witness was victimized at the age of four years and her disclosure was videotaped when she was five years old. By the time the trial took place she was seven years old. By this time she could not recall the actual incidents but did remember doing the videotape and testified that she knew what she said was true.

Performance as a Witness

There is little question that testifying about a sexual violation is traumatic for an adult or a child. Overall, however, the court observers were impressed with how well the children actually handled the situation. The multivariate analysis, however, suggests a number of things that affected the child on the stand.

- Children who were physically harmed during the incident had more difficulty presenting evidence.
- Children had difficulty "telling the story" if a long period of time had passed.
- The fewer strangers in the courtroom and the more supportive adults, the easier it was for the child to give evidence.
- Cross-examination by defence counsel was significantly the most stressful part of the court process.
- Child victim/witnesses' feelings about the court process (from post-court interviews) seemed to be directly affected by the outcome of the proceedings, i.e., victim/witnesses were more upset if the proceedings did not result in conviction.

7.3 Impact of Bill C-15[3]

The conclusions below are presented as they pertain to the impact of specific sections of Bill C-15.

Section 150.1: Consent No Defence

Consent as a defence continued to be raised by defence in Calgary (48 percent of the cases) and Edmonton (18 percent). Although consent was raised, there was no evidence regarding whether or not it was accepted by the courts. Mistaken age was hardly ever raised as a defence.

[3] See especially Chapter 5.0, as well as Sections 6.1 through 6.5 of this report.

Subsection 150.1(2): Consent and Age Difference

This section was relevant in a small number of cases (n=6). The conviction rate for these cases was 50 percent, which compares favourably with overall conviction rates.

Section 151: Sexual Interference

After section 271 (Sexual assault), section 151 was the section under which charges were most frequently laid. Charges under this section have tended to increase in both Calgary and Edmonton from 1988 to 1990.

Section 151 was used to cover a broad range of conduct with intercourse occurring in only approximately 16 percent of the cases. The most frequently reported behaviour was fondling. While Calgary police have tended, particularly in 1988 and 1989, to lay more charges under section 151 than Edmonton police, a significant number of these charges were withdrawn by crown prosecutors in Calgary. This could be an indication of plea negotiation or, alternatively, the Calgary crown prosecutors may have preferred to proceed under the more tested section 271, which was most frequently laid in conjunction with section 151. However, the crown prosecutors did not tend to withdraw charges under section 271.[4]

Aside from the high proportion of charges withdrawn in Calgary, the conviction rates for section 151 (Calgary = 52 percent and Edmonton = 62 percent) were quite high and compare favourably to conviction rates reported in studies of adult sexual assault. Loh (1980), for example, reports conviction rates of 57 percent for sexual assault and 59 percent for rape. It should be pointed out, however, that these high conviction rates were due to a significant degree to guilty pleas. This could in fact be considered desirable since the victim then does not necessarily have to testify.

Section 152: Sexual Invitation

Section 152 was also used to cover a broad range of conduct, including invitation to touch and exposure, as well as fondling of the offender by the victim. This would be expected given that this section focusses on rather specific offences compared to section 151 or section 271. Conviction rates for section 152 were

[4] During the duration of the study, 92 cases (29 per cent of the total charges) in Calgary involved one or more charges under both sections 151 and 271 compared to 31 cases (seven per cent of the total charges) in Edmonton. Calgary police had also laid 49 single charges of section 151 compared to 41 charges in Edmonton.

even higher than for section 151, however, one must be cautious in interpreting this given the low frequencies of charges under this section. Guilty pleas were also a probable outcome for section 152.

Section 153: Sexual Exploitation

Charges under section 153 were not laid very often. Further, in Calgary when charges were laid, the crown prosecutor tended to withdraw the charges.

Section 155: Incest; Section 159: Anal Intercourse; Section 160: Bestiality; Section 170: Parent/Guardian Procuring; Section 171: Householder Permitting Sexual Activity; Section 172: Corrupting Children

The frequency of these offences was too low for any meaningful analysis.

Subsection 173(2): Exposure to Children Under 14 Years of Age

It appears that Edmonton police used this section more than the Calgary police, however, the data are limited by the way in which charges were coded by the two police agencies. In Edmonton, charges were laid under this section when exposure was the only behaviour that occurred. When exposure occurred with other behaviour, which it often did, Edmonton police laid charges under the more serious hybrid and indictable offences. Thus, although the frequency of usage seems low, subsection 173(2) does seem to be useful for the "exposure only" summary offences.

Subsection 212(2) and (4): Living Off The Avails and Obtaining for Sexual Purpose Persons Under 18 years Old

During 1989, nine charges were laid under section 212 in Calgary. In 1990, the number decreased to five charges (see Table 5.1). In Edmonton, ten charges were laid under section 212 in 1989 and five in 1990 (see Table 5.2).

The number of charges under section 212 do not seem to reflect the real level of the problem of juvenile prostitution. The Calgary Police Commission Prostitution Report (1991) provides a probable explanation. This report documents that in 1988, 52 charges were laid under section 195.1 (Soliciting), against female prostitutes under 18 years old. In 1989, there were 57 charges under section 195.1 and this rose to 79 charges in 1990. The age of the female prostitute charged under this section was as low as 13 years old.

Unfortunately, comparable data were not available for the Edmonton Police Service when this report was written, however, it is reasonable to assume

that the trend of using section 195.1 to deal with female prostitution under 18 years of age would also hold.

The lack of use of subsections 212(2) and (4) and the continued use of section 195.1 is not consistent with the spirit of Bill C-15, i.e., the protection of the young. However, the objective of the use of section 195.1, according to the Calgary Police report, was to prevent the young person continuing to work as a prostitute (Calgary Police Commission Prostitution Report, 1991). With the help of the Justice of the Peace and the youth court judges, the youth have often been barred from the "stroll" areas of Calgary as a condition of release. Thus, the police seem to be applying the solicitation legislation simply because it is enforceable.

In contrast, anecdotal information obtained during the study suggests that subsection 212(2) (Living off the avails) is only enforceable when a prostitute "turns" against a pimp. Likewise, charges under subsection 212(4) (Obtaining a person under 18 years of age for sexual purposes) could only be enforced if the "John" was caught in the act. Thus, traditional policing methods do not seem to be appropriate for enforcement of subsections 212(2) and (4).

Subsection 271: Sexual Assault

As indicated in the discussion of section 151, section 271 is most often used in combination with section 151. The impact of the use of section 271 in this study was impressive and thus was included in the analysis even though it was not part of Bill C-15. The conviction rate was very high at 81 percent for Calgary and 60 percent for Edmonton. Further, rates of charges withdrawn were relatively low (14 percent for Calgary and less than two percent for Edmonton). The incarceration rates were also high (62 percent for Calgary and 50 percent for Edmonton). Overall, the results of this study indicated that section 271 is being used quite effectively to deal with child sexual assault in the criminal justice system.

Section 272: Sexual Assault, Level II, Sexual Assault, Level III

The low frequency of these charges prohibit analysis.

Section 274: Corroboration Not Required

Corroboration, as indicated by the presence of more than one victim, is an important predictor in the decision by police to lay charges. Interestingly, in cases

which go to trial, multiple victims is also associated with acquittal.[5] One explanation for this could be that having several victims giving "similar fact" evidence raises the probability that at least one witness will give poor and/or contradictory evidence which then affects the credibility of the entire case.

The presence of witnesses in Calgary was also an important predictor of clearance by charge.[6] However, it was not an important predictor of conviction as a trial outcome in Calgary or Edmonton. This finding seems to support the interpretation that the courts are considering section 274 seriously since a considerable number of cases that did not involve a witness resulted in conviction.

Section 275: Recent Complaint Abrogated

In the past, courts were permitted to allow into evidence statements made to a third party by the victim. Section 275 abrogating this rule of recent complaint in sexual offences, which was first enacted in 1982 (Bill C-127), was extended to the new Bill C-15 sexual offences. No data were directly relevant to the abrogation of recent complaint.

Section 276(1): Sexual Activities

Past sexual activities was very seldom raised as a defence in either Calgary or Edmonton. Thus, it would seem the section has been effective.

Section 277: Reputation Evidence

Reputation as a defence was never raised in the Calgary cases studied. However, it was raised in Edmonton for a number of cases (18 percent). Possibly the older age of the victim in Edmonton may account for this difference.

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[5] For the most part we are referring here to cases of multiple victims in a "series" as opposed to simultaneous multiple victims. Multiple series victims have a common offender but not a common incident Multiple simultaneous victims have a common offender and incident. Thus, technically, evidence given by multiple series victims is "similar fact" evidence rather than corroboration. Here, however, we are interpreting it in the broadest sense.

[6] "Witness" does not imply someone who directly observed the alleged incident.

Subsection 486(2.1): Testimony Outside The Courtroom

Screens were used in less than ten percent of the cases in Calgary and less than four percent of cases in Edmonton. Closed-circuit television was not used. The infrequency of use of the screen prohibits any detailed analysis. However, anecdotal information from the court observations and the post-court interviews with victims does suggest that it is a useful mechanism for cases where the child witness is highly anxious and easily intimidated. Far more common than the screens was the use of support people in the courtroom, which has a direct positive effect on the child victim/witness.

Subsection 486(3): Order Restricting Publication

Requests for ban on publication were made in over 50 percent of the cases, and were almost always ordered. This new section seems to have been readily adopted.

Section 715.1: Videotaped Evidence

During the time period of the study, videotapes of the victim were made for 119 (18 percent) of the cases investigated. However, very few were used in evidence and these are briefly discussed below.

The first case considering the use of videotaped evidence was R. v. Meddoui.[7] The trial judge was required to address two major issues: (1) what constituted "a reasonable time after the offence" for the making of the videotape and (2) what was required before the child could be said to have "adopted" the contents of the videotape. The trial judge held that the tape had been made within a reasonable time (two days after the offence date) and that the child had adopted its contents. This opinion was upheld on appeal.[8]

The constitutional validity of section 715.1 was challenged in Alberta, as it was in other provinces. On February 27, 1989, in R. v. Thompson[9] McKenzie, J., ruled that the section violated the accused's rights under the Charter of Rights and Freedoms. While only binding on the Provincial Court of Alberta, this decision appears to have effectively halted further attempts to use the videotape

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[7] R. v. Meddoui (unreported), Edmonton Registry, Nov. 1, 1988, Sinclair, J. (Alta.Q.B.).

[8] R. v. Meddoui (1991) 61 C.C.C. (3d) 345, 2 C.R. (4th) 316, 111 A.R. 295 (C.A.), Kerans, Harradence and Girgulis, JJ.A. A new trial was ordered for different reasons.

[9] R. v. Thompson (1989), 68 C.R. (3d) 328, 97 A.R. 157 (Alta, Q.B.).

provisions at the Queen's Bench level until R. v. Beauchamp and Beauchamp.[10] In that case, the defence raised the same Charter issues as had been raised in Thompson. The argument was unsuccessful, the videotape was admitted and the accused were convicted on June 28, 1990. As neither of these cases were appealed, there are now conflicting opinions in the Alberta Court of Queen's Bench about the constitution validity of the videotaped evidence section.

The only case to reach the Alberta Court of Appeal was the appeal from conviction in Meddoui.[11] The Court of Appeal did not discuss the constitutional validity of the section and made only passing reference to the concerns raised by McKenzie, J., in Thompson. It is not clear whether the Court rejected the ruling in Thompson or whether, because the trial decision in Meddoui was rendered prior to Thompson, when validity of the section had not yet been challenged, the Court saw no reason to consider the issue.

Subsection 16(3) Canada Evidence Act: Oath

The majority of the children who gave evidence at court proceedings were sworn, usually after questioning. To our knowledge, all children not sworn were permitted to give evidence under promise to tell the truth. When questioning the child most judges asked questions regarding the child's knowledge of truth and lies, however, some judges also asked questions regarding Sunday school and church.

Additional Issue: Time Limitation

Prior to Bill C-15, section 141 provided that certain enumerated sexual offences could not be prosecuted if more than one year had elapsed from the time the alleged offence had occurred. This limitation was repealed by Bill C-15.

This clause was meant to protect children in situations where disclosure was delayed. For a small number of cases in this study, (i.e., six percent of the relevant cases in Calgary and two percent in Edmonton), the section was applied and resulted in a 60 percent conviction rate in Calgary. A very high number of the relevant charges (77 percent) were also withdrawn in Calgary. However, problems prosecuting such cases could be due to difficulties the child might have had in remembering details of the offences.

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[10] R. v. Beauchamp (unreported), Calgary No. 8901-0707-CO, June 28, 1990, Power, J. (Alta. Q.B.).

[11] Supra, n.23.

Additional Issue: Gender of the Offender

The small number of cases involving female offenders which went to disposition was somewhat unexpected since five percent of the cases investigated by police in Calgary and two percent of the cases investigated in Edmonton involved female suspects. However, most of these cases seem to be screened out prior to laying charges. If we consider only cases where the police have cleared by charge this proportion drops to less than two percent (n=6) in Calgary and (n=9) in Edmonton.

Overview of Impact

Perhaps an overview of the impact of Bill C-15 is well summarized by the perception of the professionals. First, in terms of the substantive components of Bill C-15, there was a lack of consensus and a low frequency of professional respondents who identified specific problems with the various sections, indicating, perhaps, a general acceptance of these components. Second, the experiences of the professionals indicated an openness of the key players to court innovations with the exception of defence lawyers objecting to close contact between the child and a support adult during testimony, and the use of videotape. Third, in the perceptions of the professionals, the number of child victims giving testimony increased, younger child victim/witnesses were being sworn, and corroboration was no longer important.

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