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Around The World:
Testimony Aids for Children in Canada

By: Matthew Gilbert

As compared to many other nations, including the United States, Canada is progressive in its use of aids for children's testimonies as shown in its development of policies prescribing their use throughout the country. These aids include the utilization of a support person during testimony, witness screens to shield testifying children from seeing accused persons in the courtroom, and closed circuit television testimony. A 2006 amendment to the Canadian Criminal Code requires these aids to be offered to witnesses under eighteen years of age unless the judge believes the aid will interfere with the proper administration of justice. Further evidencing their progressiveness, the Canadian Justice Department sponsored the creation of pamphlets that instruct court officials to tailor the aforementioned child testimony strategies to the individual child witness' needs. Officials are instructed to consider multiple factors, including age, relationship to defendant, and emotional makeup in making their determination. These individualized assessments serve to not only gain convictions but also to put conditions in place where each child will testify to the best of their ability without unnecessary distress.

Canada has urged other nations to follow their lead and adopt these progressive aids, as evidenced by their sponsoring of the United Nations' "Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime". This document urges other countries to utilize protective aids in children's testimonies and follow a set of principles when administering justice for children. Canadian law reflects the belief that child victims and witnesses are especially vulnerable while giving testimony and must be guaranteed the right to testimonial aids in order for justice to be served and other nations should heavily consider following suit to secure these rights for a vulnerable population.

Support Person

A support person is someone permitted by the judge to sit or stand close to a witness under eighteen years of age while they testify. Canadian law requires the prosecution or witness to apply to the court for this concession and the judge is obligated to accommodate unless they believe it would interfere with the administration of justice. Support persons are used to reduce testimony related stress and yield higher quality evidence from child witnesses, simultaneously serving both the needs of the witness and the court. Child victim specialists and appropriate family members may serve as support persons for the child witness. However, the support person cannot be a witness in the same trial unless the judge grants a special exemption. A judge may order that the support person and the child do not communicate during the testimony, in which case the support person is there to merely serve as a comforting physical presence. Support persons are now a common testimonial aid for child witnesses in Canada. For example, in Edmonton, support persons were requested in 88% of child abuse cases and permitted in 86% of trials. In Toronto, children utilized a support person for 64% of their testimonies.

Witness Screens

A witness screen is an aid to shield a testifying child from seeing the accused in the courtroom. The most common device is a one-way screen where the witness sees only the screen itself. Other arrangements include configuring the courtroom so there is a physical barrier to block the child's view of the accused during their testimony or using a screened off area designed for sensitive testimonies. Canadian child witnesses were first allowed to use witness screens in 1988. This authorization was expanded by the 1993 decision of *R. v. Levogiannis*, in which the Supreme Court of Canada ruled that the use of witness screens was constitutional and did not *per se* interfere with the administration of justice. In some instances, witnesses said that the mere knowledge that the accused could see them was upsetting and that other means of testifying were desired. The witness screen thus shields testifying children from seeing the accused, including their facial expressions and movements, while they are testifying and avoids many visual related issues.

Closed Circuit Television and Video Recorded Testimony

Legislatively available since 1988, Canadian courthouses also utilize closed circuit television ("CCTV") for child witness testimony. CCTV is utilized in one of three forms: (1) a CCTV system integrated into the infrastructure of the building at the time of design and construction; (2) a CCTV system retrofitted into the building or; (3) portable systems brought in as needed. Advances in technology have led to improved CCTV systems that are more user friendly with decreased costs. The availability of portable systems means this aid may be used from nearly anywhere in Canada.

Video recorded testimony, that is, testimony videotaped earlier and played at trial without the child taking the stand, is used more regularly in Canada today. Technological advances such as the Internet, intranet systems, video-conferencing, and satellite transmission, have made video recorded testimony a popular option for Canadian courts. Despite some opposition, supporters of video recorded testimony maintain that a child's testimony is not more or less likely to infer guilt because of testimony via video instead of in person. Although less popular in Edmonton, with a usage rate of 25%, video recorded testimony seems to be very popular in Toronto, with a usage rate of 91%.

UN Model Law

United Nations ("U.N.") model laws are a set of standards and norms promulgated by the U.N. that are internationally recognized and represent best practices based on the consensus of contemporary knowledge and relevant international and regional norms, standards and principles.

Canada's progressive policies for handling children testimony allowed them to be integral in the adoption of the United Nations' "Guidelines on Justice in Matters Involving Child Victims and Witnesses of Crime" ("U.N. Child Witness Model Law") in 2009. This model law has been adopted by progressive nations like Canada, Sweden, Italy, and Austria, yet has not been adopted by the United States. The U.N. Child Witness Model Law was adopted with the aim of, amongst other things, assisting in the design and review of national laws to ensure full respect for the rights of child victims and witnesses. The U.N. Child Witness Model Law is geared to a varied audience of stakeholders in children's rights, including governments, international organizations, public agencies and community based organizations.

Further, the U.N. Child Witness Model Law recognizes that from the very beginning of an investigation, child victim protection takes precedent over the protections required for adult victims. The law provides a copious set of rights for child victims and witnesses, including the right to be protected from hardship during the justice process, the right to safety, and the right to special preventive measures. Modeling Canada's progressive laws, the U.N. Child Witness Model Law recommends the use of a support person for child witnesses and advises that the support person be allowed to accompany the witness throughout their participation in the court proceedings. Similarly, the U.N. Child Witness Model Law recommends the use of an opaque shield or closed circuit television for delivering the testimony.

Conclusion

Canada is progressive in its use of aids for child witnesses to testify, which includes support persons, witness screens, and video recorded testimony. Canada is an exemplary role model with regards to how they treat the needs of their most vulnerable citizens with such great care and respect. The use of aids in child testimony is of incomparable value as it allows a susceptible mind to find comfort and strength when recounting potentially harrowing moments. Canada has taken extraordinary steps including supporting the drafting of international model laws to support children around the world. Canada has gone above and beyond other nations, including the United States, and their example should be admired and emulated throughout the world.

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