



Witness Protection Programs in Selected Countries

BUILDING A SAFE AND RESILIENT CANADA

Effective witness protection is a cornerstone of the criminal justice system in the fight against organized crime. Traditional witness protection focuses on the safety of the witness. Experience shows, however, that individuals are not willing unless they have confidence that the State will protect their rights and safety as well as those of their immediate family.

Witness protection programs serve many purposes. They provide opportunities for victims and witnesses to participate in a criminal process with the expectation that they and their families will not be put in danger. They offer the hope of accountability and give threatened witnesses a way to seek shelter from the scene of victimization. Witness protection provides a space in which individual traumas may be treated and enables a victim/witness to regain more control over their life. It can also lead to a serious disruption of the lifestyle of the witness and any persons accompanying them into the program. It may even have implications for third parties. For these reasons, witness protection programs must have a good foundation in legislation or policy.

This paper reviews the practices and outcomes of witness protection programs using open source literature on the legislation and practices followed in Australia, the United Kingdom (UK) and the United States (US) and compares them with both federal and provincial programs in Canada.

Each country reviewed has established legislation and criteria for acceptance and retention of protected witnesses. The paper also reviews approaches to witness protection adopted in international fora, such as the International Criminal Court, the United Nations, and the Council of Europe.

Each reviewed country has established special measures to assist vulnerable and intimidated witnesses. Effective protection of witnesses, victims,

and collaborators with justice includes legislative and practical measures to ensure that witnesses can testify freely and without intimidation: the criminalization of acts of intimidation, the use of alternative methods of providing evidence, physical protection, relocation programs prior to and during the criminal proceedings, permitting limitations on the disclosure of information concerning the identity or whereabouts, and in exceptional situations, protecting the anonymity of the individual giving evidence.

The US Federal Witness Security Program (WITSEC) was the first witness protection program, and has served as a model for other countries. For over 30 years, the US Marshals Service has been operating the WITSEC program. Its core feature is the secret and permanent relocation, often coupled with an identity change, offered to witnesses and their immediate families.^{1,2} WITSEC has become a model for many jurisdictions, including Canada and Australia. Both of these countries operate similar federal programs, coexisting with those set up by individual provinces or states.

In Europe, several countries, including the UK, have relied on the use of Crown witnesses to fight organized crime. Specific concerns have been raised in Europe about the legitimacy of measures to assist witnesses in the context of the European Convention of Human Rights (ECHR) concerning the guarantee of a fair trial (Article 6).

UN conventions, the practice of international criminal tribunals, the Council of Europe recommendations and the case law of the European Court of Human Rights (ECtHR) are among other sources of inspiration for countries developing their own witness protection programs. For example, the UN Conventions against Transnational Organized Crime and against Corruption required Contracting Parties to take appropriate measures within their

means to effectively protect witnesses in criminal proceedings who give information and testimony concerning offences covered by the Conventions.

Each country reviewed considers alternate methods of protecting the witness without their admission to the witness protection program (WPP). Although all witnesses should receive assistance and support, the WPPs are reserved for those important cases where the threat against the witness is so serious that protection and support cannot be ensured by other means.³

Highlights

- Witness protection programs are capital intensive and most countries do not have the resources needed to sustain such programs.
- For small countries, it is difficult or almost impossible to relocate witnesses within the country.
- A challenge of some witness protection programs is the absence of international and regional agreements or treaties with other countries. When it is difficult to relocate witnesses within a country, it is then not possible to relocate them outside the country. Lack of an agreement can also result in no effective cooperation in investigation of crime and control of criminals.
- In each country reviewed, witness protection is seen primarily as a police responsibility to ensure effective measures to secure protection and cooperation of witnesses.
- All countries consider it important to balance witness safety and the defendant's constitutional rights to a fair hearing or trial. For example, all countries permit: cross-examination of witnesses; the presence of the defence lawyer at all stages of the process and allow the witness an accompanying supportive person during the trial; and disclosure of relevant information to the defendant's counsel.
- Each country reviewed has measures to limit witnesses' exposure to the public or psychological stress and many countries have measures to reduce fear through avoidance of

face-to-face confrontation with the defendant and measures to make it difficult or impossible for the defendant to trace the identity of the witness. Existing legislation in the UK permits the giving of evidence via video link/conferencing, and use of pre-trial statements instead of in-court testimony. The legislation also provides for the likelihood of witnesses being accompanied in court, and separate waiting rooms for witnesses. It also prevents disclosure, provides financial assistance and psychological support, and there is coordination among relevant government agencies.

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¹ Earley, P. and Shur, G. *WITSEC: Inside the Federal Witness Protection Program*, Bantam Books, February 2002:359:5.

² 18 US Code, Section 3521. Although the foundation for the Witness Security Program was authorized by the *Organized Crime Control Act of 1970*, the program was established under Part F of Chapter XII of Public Law 98-473, enacting provisions under this section, may be cited as the '*Witness Security Reform Act of 1984*.'

³ United Nations Office on Drugs and Crime. *Good Practices for the Protection of Witnesses in Criminal Proceedings Involving Organized Crime*, United Nations Office on Drugs and Crime, Vienna, January 2008:124:23, [accessed 2013-12-19] from: <http://www.unodc.org/documents/organized-crime/Witness-protection-manual-Feb08.pdf>

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