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# **A HISTORICAL REVIEW OF THE EVOLUTION OF POLICE PRACTICES, POLICIES AND TRAINING REGARDING CHILD SEXUAL ABUSE**

Submitted to:

Cornwall Public Inquiry

Submitted by:

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The Cornwall Public Inquiry or the  
Canadian Research Institute for Law and the Family.

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# EXECUTIVE SUMMARY

## Purpose of the Review

In July 2006, the Cornwall Public Inquiry contracted with the Canadian Research Institute for Law and the Family (CRILF) to conduct a selective review of the development and evolution of Canadian police practices and policies in respect to the response to complaints of child sexual abuse and complaints by adults of historical abuse. In order to provide a comprehensive review of all aspects of child sexual abuse cases, the process and practices regarding investigations over time were examined. The specific objectives of this review were to:

- examine the evolution of police practices and policies in respect to police response to complaints of child sexual abuse from 1960 to 2006;
- examine any differences related to community size; and
- examine practices with respect to police officers reporting suspected abuse or reporting issues and handling of complaints.

## Research Design and Methods

The historical nature of this project required a multi-component research design which involved the review and analysis of a number of sources of data. This included the following:

1. A selective review of published research information on child sexual abuse from 1960 to the present, including a search of websites across North America and internationally with emphasis on Canada and the United Kingdom.
2. A historical review of the development of Canadian legislation related to child sexual abuse, specifically, the *Criminal Code* and the *Canada Evidence Act*.
3. An analysis of data from a survey of front-line police regarding their experience and training in investigating child abuse cases which was conducted in early 1991 for the Canadian Police College (CPC) and the Canadian Association of Chiefs of Police (CACCP) by O'Sullivan and Roberts (1992).
4. A case study review of four police organization's documents, including policies, directives, and training materials from 1960 to 2006 regarding investigation of reports of child sexual abuse.
5. Interviews with police officers (n=11) who had experience with investigating cases of child sexual abuse from 1960 to the present and key informants (n=2).

## Organization of the Report

The report is organized by the different sources of data. Chapter 2.0 contains a selective historical review of the literature regarding milestones in research, knowledge and the Canadian government's response to child sexual abuse from 1960 to 2006. Chapter 3.0 contains a documentation of the changes and developments of the *Criminal Code of Canada* provisions relating to child sexual abuse and the testimony of child witnesses. Chapter 4.0 contains the results of a re-analysis of data from a survey of police conducted in 1991 regarding their training needs for investigating reports of child sexual abuse. Chapter 5.0 contains four historical case studies of police experiences, training and organizational support for investigating child sexual abuse. Finally, Chapter 6.0 contains a summary of findings and discussion.

## Conclusions

The conclusions of this report are summarized below by specific objective.

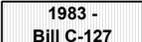
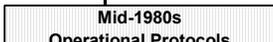
### Objective #1: The Evolution of Police Practice and Policies

Figure 6.1 graphically summarizes the overall evolution of the recognition and response to the problem of child sexual abuse from 1960 to the present. As can be seen from an overview of Figure 6.1, the onset for most relevant activities occurred in the mid-1980s. Prior to the late 1970s and early 1980s, there was little recognition of the nature and scope of the problem of child sexual abuse in Canada or internationally and there was virtually no systematic response. After the 1980s, however, there has been continued development up to the current date. Sporadic research knowledge and advocacy, especially by feminist organizations, slightly preceded and interacted with government activities. This resulted in legislative change which subsequently resulted in the increase in training and specialization.

More specifically, the Badgley Report published in 1984 was a major milestone. This Report documented in detail that the scope of the problem of sexual abuse and sexual exploitation of children was a very serious social problem that required a comprehensive targeted response. Bill C-15, which to a significant degree was based on the recommendations of the Badgley Report, provided police with new "legal tools" to deal with child sexual abuse and heightened public awareness of child sexual abuse. The coming into force of this legislation in 1988 proved to be another major milestone in the evolution of the police response to the problem of child sexual abuse.

The early 1990s became a period characterized by an extremely high level of activity in response to the problem of child sexual abuse on the part of the federal government, provincial/territorial governments, and police organizations, especially the Canadian Association of Chiefs of Police (CACP) and the RCMP. By 1991, over two-thirds of police who dealt with child abuse and child sexual abuse cases had received special formal training. In addition, it was recognized that partnering and collaboration was the best way to deal with child sexual abuse and the implementation of the amendments of Bill C-15. Further, all parties soon realized that child sexual abuse was not just a child protection issue or a police issue. It was a complex social issue that

**Figure 6.1**  
**Summary of Milestones in Recognition of and Response to Child Sexual Abuse in Canada**

Milestones	1960	1970	1980	1990	2000	2006
Research Knowledge				 <b>1984 - Badgley Report</b>		
Government Action				 <b>Committee on Sexual Offences Against Children and Youth</b>		
Development of Legislation				 <b>1988 - Bill C-15</b>		
Special Courses/Training				 <b>1988 - Most After Bill C-15</b>		<b>Adequacy Standards</b>
Special Police Units					 <b>Response to Bill C-127 and Bill C-15</b>	
Special Training Materials/Manuals					 <b>Most After Mid-1990s</b>	
Inter-Agency Protocols					 <b>Late 1990's - Formal Protocols</b>	

 = Sporadic, individual activity.  
 = Constant, systematic activity.

required a multiagency team approach, and these teams were formed in many communities across Canada.

Initially, in the mid-1980s, written operational protocols were developed and used by police and child protection workers to guide and coordinate their response to reports of child sexual abuse. Over the years, these protocols became more comprehensive as new information was gained. In addition, over the years, these operational agreements evolved into formal signed interagency agreements between several organizations. The Toronto Police Service appears to be one of the first police organizations to sign a formal interagency protocol in 1983 – which was exceptional at that time. Other formal interagency protocols tended to occur after the late 1990s.

While the early to mid-1990s marked the most rapid growth in the provision of services and legislation to respond to child sexual abuse, growth has continued to present day with the support of the federal and provincial governments, in collaboration with the police and child protection agencies. Further, the experience of the late 80s and early 90s also prepared these organizations to develop responses to new forms of sexual abuse and child exploitation such as “Internet luring” and child pornography.

Training of police for investigating child sexual abuse cases has also evolved considerably and police now have more specialized training and tools to use in their response to child sexual abuse. In the 1980s, some courses were offered mainly by non-government agencies (NGOs) such as the Institute for the Prevention of Child Abuse (IPCA); however, special courses soon became a part of standard training for police organizations’ training units such as the Ontario Police College and Toronto Police College. More recently, these courses have been expanded and standardized, and in certain jurisdictions like Ontario are now required under the *Police Adequacy and Effective Standards Regulations*, commonly referred to as the “Adequacy Standards” for police who investigate child sexual abuse cases.

#### Objective #2: Differences in Evolution Related to Community Size

The analysis of the questionnaire data from the 1991 national survey of police training needs regarding child abuse and child sexual abuse contained in Chapter 4.0 of this report, as well as case study data contained in Chapter 5.0 of this report, clearly indicate that community size was positively related to training opportunities for the police. As well, it appears that larger communities had more resources for such things as videotaping equipment, which facilitated decreasing the number of interviews that a child victim/witness was subject to.

#### Objective #3: Issues Reported by Police Officers in the Handling of Complaints

The lack of information regarding the police response to reports of child sexual abuse prior to the late 1970s and early 1980s is somewhat surprising given that Section 31 of the *Child Welfare Act* of Ontario in 1965 required “every person having information of the abandonment, desertion, physical ill-treatment or need for protection of a child” to report the information to the Children’s Aid Society or Crown Attorney. However, while it could be argued that sexual abuse would fall under the broad concept of physical ill-

treatment, there was no explicit mention of child sexual abuse. The concept of “sexual molestation” was added to the *Act* when it was amended in 1978. Thus, consistent with the other findings of this report, it appears child sexual abuse was not broadly recognized prior to the late 1970s.

Given the lack of recognition and knowledge regarding child sexual abuse prior to the 1980s, the response to a complaint of child sexual abuse as indicated by those police officers that we interviewed, apparently depended almost solely on the attitudes, beliefs, and experience of the individual police officer who answered the call. It appears that there was little if any direction from superiors within the police organizations regarding how to handle these complaints. During this time, most of the police officers who dealt with these cases were either self-taught or had taken the initiative to identify a mentor and/or “shadowed” someone who appeared to have knowledge and experience in these investigations. In the late 1980s and early 1990s this changed very rapidly as is indicated by Figure 6.1 above. Further, the survey data in Chapter 4.0 indicate that, by 1991, almost all police agencies had written protocols for dealing with child protection agencies, and over half had established multiagency committees.



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We would also like to express our gratitude to the police organizations that participated in this project, specifically, Timmins Police Service, London Police Service, Toronto Police Service and the Royal Canadian Mounted Police (RCMP). In addition, we would like to thank the numerous individuals who facilitated collecting information from the various police organizations including: Chief Superintendent F.G. Macaulay, Superintendent Dale Sheehan and Corporal Lee Anne Doiron of the RCMP; Staff Sergeant Sandy MacKinnon, Timmins Police Service; and Detective Laurence Ratchford, Toronto Police Service. Further, we would like to express tremendous gratitude toward all of those who made themselves available for an interview including: Detective David Staines and Staff Sergeant Rick Harriss, London Police Service; Sergeant Jim O'Sullivan, Sergeant Martin Wallingford, Sergeant Guy Allen (Ret.) and Constable Suzanne Bouffard, Timmins Police Service; Staff Sergeant Wendy Ward-Brohman (Ret.), Detective Doug Burns, Detective Constable Valerie Colwell, and Staff Inspector Jane Wilcox, Toronto Police Service; and Professor Graham David (Ret.), University of Leicester.

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# 1.0 INTRODUCTION

## 1.1 Purpose of the Review

In July 2006, the Cornwall Public Inquiry contracted with the Canadian Research Institute for Law and the Family (CRILF) to conduct a selective review of the development and evolution of Canadian police practices and policies in respect to the response to complaints of child sexual abuse and complaints by adults of historical abuse. In order to provide a comprehensive review of all aspects of child sexual abuse cases, the process and practices regarding investigations over time were examined. The specific objectives of this review were to:

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4. A case study review of four police organization's documents, including policies, directives, and training materials from 1960 to 2006 regarding investigation of reports of child sexual abuse.
5. Interviews with police officers (n=11) who had experience with investigating cases of child sexual abuse from 1960 to the present and key informants (n=2).

### 1.2.1 Selective Review of Historical Research Information

This historical review of published information documents the development of social science research in the area of child sexual abuse. Published academic articles, as well as federal government and Commission documents such as research and policy reports, provide the data for this review. Due to the limitations of this report in terms of time and resources, only selected and significant information, i.e., milestones, in this area are discussed. Further, as indicated above, we have focused primarily on federal government initiatives and did not have the time or the resources to conduct an analysis of the many initiatives and activities such as conferences that various provincial governments were involved with during this time period. Finally, emphasis is placed on historical development as opposed to the current state of the art of research in this area. This review provides an overview of the knowledge base in the area of child sexual abuse over time and thus provides an important context in terms of what the knowledge base was at different points in history for this report.

### 1.2.2 Historical Review of Canadian Legislation

This review of the Canadian *Criminal Code* and the *Canada Evidence Act* focuses on the development of legislation related to child sexual abuse cases from before the 1960s to 2006 and documents how legislation developed in response to knowledge regarding the scope and nature of the problem of child sexual abuse. This current review examines the legislation in the *Criminal Code* and the *Canada Evidence Act* as it evolved over time, but does not examine case law that was interpreted and applied the legislation.

### 1.2.3 Survey Data Regarding Police Experience and Training Needs in 1991

We were very fortunate in being able to identify and retrieve the original questionnaire data from a survey of front-line police regarding their experience and training in investigating child abuse cases which was conducted in early 1991 for the Canadian Police College (CPC) and the Canadian Association of Chiefs of Police (CACP) by O'Sullivan and Roberts (1992).

The sampling procedure used by O'Sullivan and Roberts was designed to attract as broad a sample of respondents as possible and to ensure that all kinds of policing in Canada were covered. A total of 106 police agencies were identified as the target population for the survey. A questionnaire was sent to the Chief of each police agency with a cover letter asking that the questionnaire be forwarded to one of the department's front-line investigators to be filled out. In total, 85 completed questionnaires were returned resulting in an 80% response rate, which is extremely good.

The questionnaire consisted of two major parts. The first part was an eight-page document containing approximately 50 questions dealing with the respondents' training, experience and perception of processing of child abuse cases. The second part of the questionnaire contained a series of questions at the specific request of the Department of Justice which focused on the legislative amendments pertaining to child sexual abuse introduced in 1988 by Bill C-15. The data specific to Bill C-15 were not available for

reanalysis. While the overall strategy for analyzing the data paralleled the original report by O'Sullivan and Roberts (1992), the major difference is that the current analysis included an examination of the data by community size to identify whether there were systematic differences between large and small communities (see Chapter 4.0 for more details).

#### 1.2.4 A Case Study of Selected Police Organizations

Originally, we proposed collecting data in the form of documents, policies, and directives, as well as training materials from 1960 to present regarding the investigation of reports of child sexual abuse from the following police organizations: the RCMP; three large municipal police services; and five small police organizations and communities similar to Cornwall. We were successful at involving the RCMP and two large municipal police services, i.e., Toronto Police Services and London Police Service. In addition, Timmins Police Service also agreed to be involved in the study. Timmins Police Service was chosen as one of a number of possible sources of data because the community profile of Timmins is very similar to Cornwall in terms of community size, distribution of French and English speaking people, religion, education, earnings, and unemployment rates. Most of the communities that did not become involved in the study indicated that they felt the timeline was too tight and they did not have the resources to commit to collecting the necessary historical information for the study.

#### 1.2.5 Interviews with Police Officers

Interviews with police officers (n=11) who had experience in investigating child sexual abuse cases were also conducted with officers from the participating police organizations above. These interviews, although few in number, are critical to the study since they give us a picture of what the actual police practice was as opposed to official policy and protocol. An interview protocol was developed which obtained information on the following: the officer's experience in child sexual abuse cases; the officer's training; and resources and characteristics of the police organization (see Appendix A).

### **1.3 Limitations**

There are a number of factors which limit the focus and depth of this review. These are outlined briefly below.

#### 1.3.1 Definition of Child Sexual Abuse

The term "child sexual abuse" did not come into use by mental health and Child Welfare professionals until the mid-1970s. Prior to this, very little research focused on child sexual abuse specifically, although it was sometimes included under the broader heading of child abuse or was categorized as incest when the abuse was perpetrated by a relative. Not surprisingly, legal definitions of child sexual abuse in Canada were likewise not well defined until 1988 when the federal government enacted new legislation which identified a number of new criminal offences related to child sexual abuse.

### 1.3.2 Definition of Historical Child Sexual Abuse

The concept of historical child sexual abuse has not been consistently well defined. In this report, we define it broadly as an adult (over 18) reporting being sexually abused as a child.

### 1.3.3 Development of General Investigative Techniques

During the time period covered by this study there have been a number of developments and changes to the basic case management of investigations which could affect the investigation of any major crime. These changes included the implementation of the Violent Crime Linkage Analysis System (ViCLAS) by the RCMP in 1994 and the continuing developments in DNA analysis. A detailed analysis of these new tools is beyond the scope of this current study.

### 1.3.4 Historical Data

Given that this study covers a period of over 40 years, we experienced considerable difficulty in obtaining reliable and valid information for the full timeframe.

### 1.3.5 Study Timeframe

This study began in July 2006 and initially was to be completed by early December 2006. This timeframe limited the scope of the study and, as well, increased the reluctance of potential police organizations to become involved in the study. When this issue was reported to the funder they generously agreed to extend the study.

### 1.3.6 Lack of Case Law Review

While Chapter 3.0 of this report contains a review of the development of Canadian legislation in areas related to child sexual abuse cases, time and resources were not available to conduct a detailed examination of case law that has interpreted and applied the legislation. Thus, a full understanding of the impact of this legislation is limited.

### 1.3.7 Limited Case Study Data

The case study analysis in Chapter 5.0 was also limited by the availability of historical information and key informants (i.e., police officers who investigated child abuse cases). For example, London Police Service provided us with only the most recent protocol between London Police Service and The Children's Aid Society which was signed in 2006. Further, in terms of the RCMP, we were only able to conduct one interview with a key informant who had no direct experience in investigating child sexual abuse cases but was involved in the development of child sexual abuse related training and information.

## 1.4 Organization of the Report

As indicated above, this report relies on a number of sources of data to accomplish the study objectives. The report is organized by the different sources of data. Chapter 2.0 contains a selective historical review of the literature regarding milestones in research, knowledge and the Canadian government's response to child sexual abuse from 1960 to 2006. Chapter 3.0 contains a documentation of the changes and developments of the *Criminal Code of Canada* provisions relating to child sexual abuse and the testimony of child witnesses. Chapter 4.0 contains the results of a re-analysis of data from a survey of police conducted in 1991 regarding their training needs for investigating reports of child sexual abuse. Chapter 5.0 contains four historical case studies of police experiences, training and organizational support for investigating child sexual abuse. Finally, Chapter 6.0 contains a summary of findings and discussion.



## **2.0 MILESTONES IN RESEARCH, KNOWLEDGE AND GOVERNMENT RESPONSE TO CHILD SEXUAL ABUSE FROM 1960 TO PRESENT DAY**

### **2.1 Introduction**

The purpose of this section is to provide a context within which to view police response to child sexual abuse allegations by reflecting on the general climate of society<sup>1</sup> from the 1960s to present day based on developments in social science research, government response and public awareness of child sexual abuse in Canada. For more than half of the 20<sup>th</sup> century the issue of child sexual abuse laid dormant, even though its existence can be traced back to medieval times (Finkelhor, 1984). It was not until the mid-1970s that the topic appeared on the agenda of mental health and child welfare professionals (Finkelhor, 1986) and not until the late 1970s that the issue of child sexual abuse was raised to the level of societal consciousness (Gomes-Schwartz, Horowitz & Cardelli, 1990). The 1980s brought an increasing number of prevalence studies attempting to estimate the true extent of the problem (Finkelhor, 1986) and significant federal government initiatives in the area of child sexual abuse. The Committee on Sexual Offences Against Children and Youth, later known as the Badgley Committee, was established in 1981 by the federal government with a mandate to examine laws and other community resources protecting children against sexual offences and to suggest ways to improve child protection from sexual abuse. In 1984 the Committee issued what is commonly known as the Badgley Report recognizing child sexual abuse as a serious problem in Canada. In the last twenty years there continues to be a constant interaction between research, government response and societal awareness uncovering new concerns and creating new ways to deal with child sexual abuse issues. Due to the limited nature of this section as mentioned above, only significant and select milestones in these areas will be discussed.

#### **2.1.1 Definition of Child Sexual Abuse**

To begin with, it is important to point out that “child sexual abuse” as a research concept has yet to be consistently operationally defined. Varied definitions of a concept have been used throughout the literature and, in fact, many researchers have recently issued a call for consistency in definition when discussing child abuse issues (Hunter, 2006). This problem is especially pervasive in the earlier statistical studies which attempted to estimate the extent of child sexual abuse that had occurred in a particular population (Finkelhor, 1986). It has been difficult to create meaningful estimates of the occurrence of child sexual abuse when studies operationally define this type of abuse differently.

When defined, child sexual abuse is often given broad meaning (i.e., sexual contact between a child and adult or older child) leaving questions as to the types of

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<sup>1</sup> When referring to “society” in the 1960s and 1970s the references used were books that focused on the development in the United States. It can only be assumed given our proximity and commonalities of culture that such movements were occurring in Canada as well. Information about societal movements in Canada specifically could not be found.

activities that constitute child sexual abuse. The *Criminal Code of Canada* has provided some guidance on this matter since 1988 with the introduction of child-centred sexual offences in the *Code*.

## **2.2 Child Sexual Abuse Prior to the 1970s**

Child sexual abuse was a largely unspoken and misunderstood problem in the 1960s and before. Although the first recorded prevalence study focused on child molestation dates back to 1929, there were only four such studies on child sexual abuse prior to 1960 and few thereafter until the 1980s (Finkelhor, 1984). The lack of these types of studies coupled with the hesitancy to report this type of abuse left an unclear picture of the true scope of child sexual abuse prior to the 1970s.

Public and professional knowledge of child sexual abuse was extremely limited and largely misleading during this time period. The work of notable early scholars such as Sigmund Freud and Alfred Kinsey, conclusions which undoubtedly permeated through to society in general, produced results that cast doubt as to the existence and seriousness of child sexual abuse (Brecher, 1969).

During Freud's study of what he termed "adult hysterics" in the late 1800s, he theorized that hysterical behaviour in adults was the manifestation of childhood sexual abuse. Freud obtained disclosures of childhood sexual abuse during therapy sessions with his patients through the use of hypnosis or free association, a technique where his patients were instructed to report whatever came to mind, often creating a chain of associations back to childhood. In every case of adult hysteria he reported, Freud's patients recalled being seduced or sexually assaulted during their childhood. Despite his theorizing and early case studies, Freud later discredited his own findings by stating that the seductions recounted by his patients were self-created or provoked by him (Brecher, 1969).

Kinsey's work, "Sexual Behaviour in the Human Female," published in 1953, provided the first large-scale empirical research regarding child-adult sexual contact (Brecher, 1969). Although it was not a specific study objective to uncover child sexual abuse, Kinsey's research provided statistics regarding the frequency of "child-adult contacts." In a sample size of 4,441, he found that nearly one in four of the women surveyed recalled sexual contact before adolescence with a male at least 15 years of age and at least five years her senior. This "contact" was, in more than half of the cases, described as exhibition of the male genitals to the child. The older male was, in slightly more than half the cases, identified as a stranger and in 32% of the cases described as a friend or acquaintance.

Kinsey's analysis and interpretation of the findings suggested that not all child-adult sexual contact was necessarily psychologically damaging to the child. He found that in 5% of the contacts, the little girls were erotically aroused and that the "contacts" had often involved considerable affection. Kinsey also reported that some of the older females in the sample had stated that these preadolescent experiences contributed favourably to their socio-sexual development. However, 80% of the girls who had "contacts" reported that they had been emotionally upset or frightened by the

experiences but this upset was equated with the level of fright caused by seeing a spider.

Kinsey further noted that children were “ready to become hysterical” when approached by an older person, even if the adult had no sexual intention, because their parents and teachers constantly warned them against adult contact, failing to distinguish the types of forbidden contact. He went on to argue that many who study juvenile problems believe the reaction to disclosure of child sexual abuse is more disturbing to the child than the abuse itself and posited that the “current hysteria” over sex offenders may cause sexual maladjustment in many children later in life.

Other early research findings about the characteristics of the offender emerging from psychological and medical studies were inconsistent (Gomes-Schwartz, Horowitz & Cardelli, 1990). Incest offenders were described as “mentally retarded, senile or psychotic” and also, in stark contrast, “as a diverse group with a wide range of character structures, social backgrounds and levels of psychological functioning” (p.17).

Theories and research findings of the time produced a muddled description of child sexual abuse. Its existence and severity were questioned and confusing images of child abuse offenders and the role of the child in sexual abuse emerged from study. There were few prevalence studies to determine the extent of the problem. Finkelhor (1986) suggested that the results of the prevalence studies that had been completed were not given wide public notice for reasons including the scepticism of psychoanalysts and the caution of sex reformers. Child sexual abuse was not recognized at that time as a significant societal issue and, based on the availability of social science research at the time, there was little understanding of the problem.

In the United States, the response to the broader issue of child abuse<sup>2</sup> began at a state level in the early 1960s (Gomes-Schwartz, Horowitz & Cardelli, 1990). Within a four-year span from 1962–1966, statutes were passed in all 50 states against the sexual abuse of children by caretakers. However, government response specific to the problem of child sexual abuse did not occur in Canada until the 1970s.

## **2.3 Child Sexual Abuse is “Discovered” in the 1970s**

Child sexual abuse was elevated to the level of societal awareness in the late 1970s. The influence of the women’s movement, which was of growing political importance in the Canadian political landscape of justice, brought attention to the issue of child abuse, including child sexual abuse, and the government responded.

### **2.3.1 Research Information**

Statistics on the occurrence of child sexual abuse gathered in Canada were collected during the 1970s largely as a by-product of studies with other purposes; however they did reflect a growing recognition of child sexual abuse in Canada

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<sup>2</sup> At the time, child sexual abuse and child abuse were not often distinguished as separate and unique problems. Child sexual abuse often fell under the rubric of child abuse.

(Badgley, 1984). Annual Reports of provincial child protection services made noteworthy reference to statistics on child sexual abuse beginning in the late 1970s. There was a significant increase in the reporting of child sexual abuse beginning in 1977 and rising yearly thereafter for the remainder of the decade.

Psychological and sociological study of child sexual abuse continued in the 1970s. Among the topics explored were typologies of offenders and the relationship between family environment and child sexual abuse (Gomes-Schwartz, Horowitz & Cardelli, 1990). In 1978, Summit and Kryso provided a hierarchical organization of incest offenders based on severity of character pathology. In 1979, Groth characterized offenders as “fixated” or “regressed,” distinguishing between the offender with a persistent pattern of sexual attraction for children and the offender whose behaviour represented changes from past sexual behaviour. With respect to the link between social environment and abuse, theories varied from the idea that sexual abuse occurred disproportionately amongst the lowest socio-economic strata to linking disruption of the family unit with abuse. By the late 1970s child sexual abuse had been “discovered” as a social problem that required immediate and effective attention (Gomes-Schwartz, Horowitz & Cardelli, 1990).

### 2.3.2 Government Response

Although the government began to address the problems of child sexual abuse in the 1970s, the issue was often secondary to many government reviews and reports that emphasized the status of women or the broader topic of child abuse and neglect (Badgley, 1984). Notable Canadian government initiatives of the time included the following:

- In 1974 an Order of Reference was issued for the Commons Standing Committee on Health, Welfare and Social Affairs requesting that the Committee make recommendations with respect to “appropriate measures for the prevention, identification and treatment of child abuse and neglect, and for such other ancillary measures in the same matter as the Committee may consider desirable” (Canada, 1976, p. 6).
- In 1975, an Order of Reference was again issued, this time to the Senate Standing Committee on Health, Welfare and Science proposing that the committee consider the feasibility of a Senate investigation on “Early Childhood Experiences as Causes of Criminal Behaviour.” An initial investigation found that available information was scant, highly technical and mostly American. The report, eventually tabled by the Committee in 1980, recommended, among other things, that a review be made of the offences specified in the *Criminal Code* pertaining to all forms of child abuse.
- During the aforementioned decade, the Advisory Council on the Status of Women made several recommendations regarding changes to the sexual offences in the *Criminal Code*. Certain of these related specifically to children (i.e., that existing sections be altered to include sexual intercourse with children). These were contained in the Advisory Council’s brief on Bill C-71 in 1975.

- The decade spanning 1976–1985 was proclaimed the International Decade of Women. As part of Canada’s commitment to this decade, the Department of National Health and Welfare established the Advisory Committee on the Status of Women. A consideration of violence in the family was on **its** agenda.
- The Advisory Council on the Status of Women expanded on these proposals in 1976 recommending amendments to the *Criminal Code* including the creation of four degrees of sexual assault. The Council also recommended that protection from sexual intercourse be provided to male and female children under age 14 under the *Criminal Code*. Additionally, the Council suggested that certain sections of the *Criminal Code* be deleted including sexual intercourse with a female under 14 years of age and seduction under promise of marriage because of their discriminatory basis.
- In 1978, the government approved the creation of a federal desk for a Child Abuse Information Program (which was later incorporated into the mandate of the National Clearinghouse on Family Violence in 1982).
- The Canadian Commission for the International Year of the Child was established, also in 1978, with the objective of identifying support activities designed to advance children’s rights, interests and well-being. Among its many recommendations was a call to the federal government to enact legislation protecting children from sexual exploitation and to reform sex crime laws.
- In 1978, the Department of National Health and Welfare undertook a review of child abuse as part of its commitment to the International Year of the Child which would ultimately result in the release of two discussion papers in the early 1980s relating to child protection in Canada.
- Also in 1978, the Law Reform Commission of Canada issued a working paper on Sexual Offences calling for a sweeping reform of some of the sections relating to sexual offences in the *Criminal Code* recommending, among other things, absolute protection under the law for children under the age of 14, qualified protection for youths between the ages of 14 and 18 and the enactment of a new offence based on sexual interference due to dependency, intended to replace a number of existing sections of the *Code* including the offence of incest. These were considered in the drafting of Bill C-53 tabled in Parliament on December 19, 1980.
- In 1979, the Advisory Committee on the Status of Women reiterated its position recommending that young persons be protected from sexual exploitation by creating offences protecting victims of sexual offences under 14 years of age and prohibiting the sexual coercion of young persons under 18 years of age by someone in a position of authority over them. Many of the Council’s recommendations relating to sexual offences against adults in the *Criminal Code* were incorporated in Bill C-127 which resulted in significant changes to the *Criminal Code* on January 4, 1984.

## 2.4 Child Sexual Abuse: Growth of Awareness and Response in the 1980s

During the 1980s, societal awareness of child sexual abuse grew tremendously and the response to child sexual abuse became more focused as research documented both the scope and nature of the problem, as well as its long-term effects on the victims. The first two major milestones regarding child sexual abuse in Canada were accomplished during this decade and are listed below.

- The first major milestone was the Badgley Report released in 1984. This detailed research report documented for Canadians the scope and nature of the problem of child sexual abuse, as well as the many problems in criminal and other laws and policies related to the protection of children and adolescents from sexual abuse and exploitation.
- The second major milestone was Bill C-15, *An Act to Amend the Criminal Code and the Canada Evidence Act*, which came into force on January 1, 1988. This Bill marked the first focused effort by the federal government of Canada to reform law to protect children and adolescents from sexual abuse and exploitation and was the first major legal milestone for Canada in this area (Bala, 1990).

### 2.4.1 Research Information

Prior to the 1980s, child sexual abuse prevalence studies were mainly conducted in the United States where there was an explosion in the number of studies, academic articles, and books written on the topic of child sexual abuse. However, as mentioned above, the first real milestone for Canada was the Badgley Report (1984) which, with a random sample of 1,006 females and 1,002 males from 210 communities, thoroughly examined the prevalence of child sexual abuse and exploitation in Canada. During this timeframe, Bagley and Ramsay (1986) also collected data from a random sample of 401 women in Calgary on unwanted sexual acts before 18 (including exposure) and serious sexual abuse in childhood prior to the age of 16.

Research also became more focused on specific legal issues during this time. For example, research was conducted which focused on the reliability of child witnesses, suggestibility, and interviewing techniques, such as the work of Dr. Gail Goodman in the United States, Dr. John Yuille in Canada, and Professor Graham Davies in the United Kingdom.

While research in this area became more focused the specific topics for research were extensive. By the end of this decade a significant body of research knowledge and informative literature had been accumulated in numerous areas ranging from interviewing techniques for police and professionals, and the long-term effects of child sexual abuse on victims, to characteristics and typologies of offenders.

#### 2.4.2 Government Response

The government response to the problem of child sexual abuse in the 1980s became focused and deliberate. Notable government initiatives during this time included the following:

- In 1980 an intradepartmental committee established in relation to the International Decade of Women published its first annual report. This report recommended that the Department of National Health and Welfare create a national clearinghouse for legal, research and service information and technical assistance to victims of family violence and rape.
- In 1980 the Minister of Justice and the Minister of National Health and Welfare announced the establishment of the Committee on Sexual Offences Against Children and Youth. In 1981 members were appointed to this committee and it became known as the Badgley Commission. The mandate of this committee was to determine the adequacy of the laws and other means used by the community to provide action for children against sexual offences, and to make recommendations for improving their protection. The committee implemented a twofold approach to this investigation. They reviewed Canadian law on sexual offences and also embarked on a fact-finding assessment regarding the present situation of sexually abused children.
- In 1982 the National Clearinghouse on Family Violence was established and incorporated the federal desk for the Child Abuse Information Program. During its initial period of operation it focused on the collation and distribution of general sources of information on family violence and child abuse.
- In 1984 a report entitled, *Sexual Offences Against Children*, commonly known as the Badgley Report was released by the Committee on Sexual Offences Against Children and Youth. This report documented many of the problems in criminal law, other laws and policies related to the protection of children and adolescents from sexual abuse and exploitation. The report contained 52 recommendations, many of which related to improvements in the substantive, evidentiary, and procedural laws relating to sexual abuse and exploitation of children and adolescents.
- On October 15, 1986, the Minister of Justice introduced Bill C-15 entitled *An Act to Amend the Criminal Code and the Canada Evidence Act* to Parliament. This Bill received Royal Assent in June 1987.
- In 1986, the federal government announced a five-year, \$25 million Child Sexual Abuse Initiative in the departments of Justice and Health and Welfare with the Department of the Solicitor General also undertaking activities in this area.

- In 1986 the Family Violence Prevention Division was established as part of the Department of Health and Welfare to coordinate a variety of efforts around child sexual abuse within the Department of National Health and Welfare and among other federal departments.
- In 1987 Rix Rogers was named as the Special Advisor to the Minister of National Health and Welfare and was given the mandate to prepare a report on the long-range direction of the federal child sexual abuse initiatives, their implementation and coordination. His major report entitled *Reaching for Solutions* was completed in 1990.
- On January 1, 1988 Bill C-15 was proclaimed. By the proclamation of this bill, the federal government sent a clear message that the protection of children and youth was a priority in Canada and that sexual abuse of children was unacceptable and would not be tolerated. In addition to responding to the recommendations of the Badgley Report, the 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. These goals indicated that the amendments to the *Criminal Code* should: (1) provide better protection to child sexual abuse victims/witnesses; (2) enhance successful prosecution of child sexual abuse cases; (3) improve the experience of the child victims/witnesses; and (4) bring sentencing in line with the severity of the offence. The overall strategy for accomplishing these goals involved: overall simplification of the law regarding sexual offences; creation of new offences specific to acts of child sexual abuse; changes regarding procedure and evidence; and changes to the *Canada Evidence Act* regarding the testimony of child witnesses (these changes are discussed in detail in Chapter 4.0 of this report).
- In 1988 the four-year, \$40 million Family Violence Initiative was announced. This initiative involved six federally funded departments and included child sexual abuse within its mandate.

## **2.5 Child Sexual Abuse, 1990 to Present: Continued Development of a More Comprehensive Response**

Overall, this period is characterized by increased public awareness of the problem of child sexual abuse and its effects on victims, as well as a corresponding increase in the development of targeted responses to new emerging types of sexual abuse. At the beginning of the period the emergence of a number of historical institutional child sex abuse cases involving multi-victims and multi-offenders (MVMO cases) had a significant impact on the extent to which child abuse was perceived as a serious problem. Such cases as Mount Cashel in Newfoundland which resulted in the 1991 Royal Commission Report by Justice Hughes, the Prescott case in Ontario (Galey, 1995), and Project “Guardian” in London, Ontario (Sas & Hurley, 1997) were all very well documented cases of historical institutional child abuse which received much media attention and increased public awareness regarding child sexual abuse.

More recently, sexual abuse has evolved into the computer age with the advent of the Internet and the use of chat rooms by sexual predators to target and pursue children for the purposes of sexual exploitation. This relatively new form of child sex abuse and exploitation has required yet another innovative response by police and policymakers.

Given the rapid and continued development regarding the recognition and response to child sexual abuse and family violence during this period, it is difficult to point to specific major milestones as was the case in the previous decade. This period is more characterized by continual development of a number of smaller but significant milestones. It may be more appropriate to refer to significant trends that occurred during this period as opposed to specific milestones. In terms of trends, the following can be identified:

- A significant increase in federal government funding for research and development in the area of family violence and child sexual abuse;
- Continued development of a legislative response to child sexual abuse and exploitation;
- Provision of support services for children and other vulnerable witnesses in the criminal court process;
- Development and publication of specific training materials for police regarding the investigation of child sexual abuse cases;
- Increased training for prosecutors and judges on “abuse” issues related to child sexual abuse and child witnesses; and
- The expansion of the response to child sexual abuse and exploitation to an international level.

#### 2.5.1 Research Information

By the beginning of the 1990s, a significant body of research knowledge had been published in the United States and to a lesser extent in Canada regarding child sexual abuse. The state-of-the-art in this area of research was well represented in a special journal of The Center for the Future of Children published in 1994. The primary purpose of The Future of Children was to disseminate timely information on major issues related to children’s well-being, with special emphasis on providing objective analysis and evaluation, translating existing knowledge into effective programs and policies, and promoting constructive institutional change. The editor of this special edition of the journal entitled *Sexual Abuse of Children* indicated in the statement of purpose that “There is a pressing need to address this problem more effectively than has been done up to now. The subject also highlights the need for improving coordination between the judicial and child welfare systems in dealing with these children, their families, and the perpetrators.”

The topics covered in this special edition of the journal represent a good depiction of the state-of-the-art of research in this area up to 1994. They include the following: the scope and nature of child sexual abuse; immediate and long-term impacts of child sexual abuse; reporting and investigating; adjudication of child sexual abuse cases; doing justice to doing-good; the role of physicians in reporting; the need for balanced response; the effects of treatment for victims; offender characteristics and treatment; prevention; awareness and backlash; and child indicators.

At the beginning of this time period in Canada, there was also a considerable number of research activities in the area of child sexual abuse. However, much of the research, which was funded under the federal government's Family Violence Initiative, focused on the implementation and/or evaluation of various components of the new child sexual abuse legislation contained in Bill C-15. For example, see Hornick and Bolitho, *A Review of the Implementation of the Child Sexual Abuse Legislation in Selected Sites: Studies on the Sexual Abuse of Children in Canada* published by Department of Justice Canada in 1992.

Towards the end of the 1990s, Canadian research focused more and more on the broader issues of family violence but also included child sexual abuse under the umbrella of family violence. In addition, a major Canadian milestone in research in this area was achieved in 2001 with the publication of the *Canadian Incidence Study of Reported Child Abuse and Neglect* by Trocmé, et al. (2001). This study was funded by Health Canada and the publication of the report constitutes a foundation for the national surveillance system on child maltreatment including child sexual abuse. This incidence study on child maltreatment has since been replicated in 2003.

#### Police-Specific Research Activities

The early 1990s also marked the emergence of a number of publications which dealt specifically with the role of police in investigating child sexual abuse cases. The earliest publications that we found in this area specific to police were: *Guidelines for the Investigation of Child Physical Abuse and Neglect, Child Sexual Abuse and Exploitation* by Commission on Police Officer Standards and Training in Sacramento, California (1986); and the first Canadian publication, *Sexual Abuse: Interviewing Techniques for Police and Other Professionals* by Halliday (1986).

In terms of comprehensive training/reference manuals, the earliest manual that we found was *Investigation and Prosecution of Child Abuse*, edited by Toth and Whalen (1987) and produced by American Prosecutors Research Institute, National Center for Prosecution of Child Abuse. While this manual focused primarily upon the legal issues of charging plea negotiations and trial issues, it also had a section on the victim as well as a detailed section on investigation. The second revised edition of this manual was produced in 1993.

The US Department of Justice through the Office of Juvenile Justice and Delinquency Prevention also produced a manual in 1990 entitled *Child Abuse and Exploitation: Investigative Techniques* by Shepherd et al. (1990). This appears to be

the first manual for police which included a full chapter on child sexual exploitation. A second edition of this manual was produced in 1992.

In Canada, the first comprehensive manual on child sexual abuse was published in 1995. This manual, edited by Hornick and Paetsch (1995) and entitled, *A Police Reference Manual for Cases of Child Sexual Abuse*, was funded by Solicitor General Canada with funds from the Brighter Futures program mentioned later in this section. This appears to be the first police reference manual focused specifically on child sexual abuse. It included the following sections: understanding the child; victim/offender profile; legal response; investigation; victim support; publication of information; and prevention. The Solicitor General Canada distributed 2,550 copies of this manual to police agencies across Canada.

The RCMP also produced a comprehensive guide for investigating sexual offences in 1997 for in-service training of officers in the field. This manual (Szabo et al. 1997), entitled *An Investigative Guide for Sexual Offences*, contained a series of modules which covered such issues as: basic case management; child complaint; acquaintance sexual assault; stranger sexual assault; historical sexual offences; and adolescent suspects. A second edition of this guide was produced in 2000 and was also made available on CD for broader distribution; however, statistics are not available on the number of copies distributed.

### 2.5.2 Government Activities at the National Level

From 1990 to present, the federal government of Canada became far more proactive in the protection of children from child sexual abuse and exploitation. Select government initiatives and activities during this time frame are briefly listed below.

- In 1990, the report of the Special Advisor to the Minister of National Health and Welfare entitled *Reaching for Solutions* was published. The objective of this report was to provide an assessment of the long-range direction of the federal child sexual abuse initiative, and its implementation and coordination. This report focused on the following broad issues: the dimensions of child sexual abuse; public awareness and primary prevention; the justice system and child abuse; healing and treatment; the need for education, training and research; aboriginal communities; and emerging concerns. This report also contained a comprehensive list of 74 recommendations and, as well, included an overview of the federal government's response to the Badgley report (1984). This report has particular relevance for this current report because Recommendation 61 dealt specifically with police training. As a result of this recommendation, a survey of police experience and training in child abuse investigations (that is the subject of Chapter 4.0 of this report) was conducted and a report was prepared by O'Sullivan and Roberts (1992).
- In 1991 the federal government announced a four-year \$136 million Family Violence Initiative involving seven federal departments and agencies. Child sexual abuse was one of the primary subject areas under the mandate of this funding initiative. Further, under this initiative, the National Clearinghouse on

Family Violence was also given responsibility for tracking all the funded activities by the seven federal departments and agencies. By October 1993 the National Clearinghouse on Family Violence published a document entitled *Completed Activities Funded by the Federal Government Through the Family Violence Initiative* (1993). This document listed projects completed to date. Overall almost 600 projects including primary research, evaluation research, and program development were completed in all areas of family violence. The vast majority of these were completed in the provincial and territorial jurisdictions of Canada with federal funding. Over 60 of the projects at this time were categorized under the primary subject area of child sexual abuse.

- Also in 1991 The Children's Bureau was created to operate as a coordinating body within the federal government to ensure consistency and integration of all federal policies and programs relating to children. The Children's Bureau had primary responsibility for the integration of the federal government's most comprehensive program for children – Brighter Futures, which was a multi-departmental initiative that included over 30 different programs to address the well-being of children, particularly young children at risk and their families.
- In 1992 the Federal Justice Department began a series of amendments and refinements of the child sexual abuse and child witness legislation which was proclaimed in 1988 with Bill C-15. These amendments began with Bill C-49 and continued to date. They are discussed in detail in Chapter 3.0 of this report.
- In 1994 the federal government announced the establishment of a national system to help organizations screen out child sexual abuse offenders applying to work with children. The screening system was recommended by the Federal ad hoc Interdepartmental Working Group on Information Systems on Child Sex Offenders, comprised of members from Health Canada, Justice Canada, and Solicitor General Canada.
- In 1994 the RCMP and the Ontario Provincial Police began the implementation of an innovative information system called the Violent Crime Linkage Analysis System (ViCLAS) which was designed to break down the jurisdictional boundaries that permitted mobile serial offenders to move from jurisdiction to jurisdiction and remain undetected.
- In 1997 Justice Minister Anne McLellan asked the Law Commission of Canada to prepare a report on the means for addressing harm caused by physical and sexual abuse of children in institutions operated, funded or sponsored by the government. The final report, *Restoring Dignity: Responding to Child Abuse and Canadian Institutions* was released in 2000 and contained a number of recommendations relating to the improvement of existing processes of redress, the creation of the new process for responding to survivors of the institution of child abuse, and the promotion of approaches to prevention. Some of the recommendations related to police and police training. For example, one recommendation indicated that people bringing complaints to the police should be fully informed at the onset how the criminal justice process works and their

role in it. Further, the report recommended that those involved in investigating, prosecuting, defending and judging allegations of institutional abuse should have special training, expertise or experience and should have access to survivor-sensitive protocols that have been developed for this purpose (Law Commission of Canada, 2000, p.15).

### 2.5.3 Government Activities at an International Level

From 1990 until present, the Federal Government of Canada also became more involved internationally in promoting international cooperation to address the sexual abuse and exploitation of children and youth:

- **1991** — The Government of Canada ratified the *United Nations Convention on the Rights of the Child* on December 13, 1991. The Convention recognizes that children by reason of their physical and mental development need special safeguards and care.
- **2001** — The Government of Canada signed the *Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography* on November 19, 2001. Canada actively participated in the development of this protocol, which expands on Articles 34 and 35 (protection of children from sexual exploitation and abuse, abduction, sale and trafficking) of the *United Nations Convention on the Rights of the Child*.
- **2002** — The Government of Canada played a leading role in the development of the *United Nations (UN) Convention against Transnational Organized Crime* and its two supplementing protocols, the *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children*, and the *Protocol Against the Smuggling of Migrants by Land, Sea and Air*.
- **2005** — The Department of Justice Canada continues to work internationally and domestically to combat the trafficking in persons (which includes trafficking in children and youth for forced labour, prostitution or other forms of servitude) <http://www.justice.gc.ca/en/fs/ht/index.htm>. The Departments of Justice and Foreign Affairs co-chair the Interdepartmental Working Group on Trafficking in Persons (IWGTIP), which coordinates federal efforts related to trafficking in persons.
- **2005** — The Department of Justice Canada has also been actively involved in the United Nations General Assembly Session on Children (<http://www.unicef.org/specialsession>) as well as in the World Congress Against Sexual Exploitation of Children (<http://www.unicef.org/events/yokohama>)



### **3.0 LEGISLATIVE CHANGES IN THE DEVELOPMENT OF THE CRIMINAL CODE PROVISIONS RELATING TO CHILD SEXUAL ABUSE AND THE TESTIMONY OF CHILD WITNESSES**

This section of the report provides a historical overview of the development of Canadian legislation related to child sexual abuse, specifically, the *Criminal Code* and *Canada Evidence Act*. The current review only examines the legislation and does not examine the case law that has interpreted and applied the legislation. In order to have a full understanding of the impact of this legislation, it would be necessary to conduct a comprehensive review of case law.

#### **3.1 Introduction**

To a significant extent, the authority of the police to investigate cases of child sexual abuse and the prosecution of these cases is guided and constrained by legislation. There are several pieces of legislation that must be considered during a child sexual abuse investigation. The *Criminal Code* is the most significant legislation in terms of its influence on the conduct of a child sexual abuse investigation; defining the types of behaviour for which offenders can be charged and dealing with important evidentiary issues. Provincial legislation regulating police conduct and provincial child welfare including acts regulating police conduct and provincial child welfare legislation also play a role. The discussion in this section is limited to the analysis of changes over time in the Canadian *Criminal Code* and, to a lesser extent, the *Canada Evidence Act*.

The date of commission of an offence is also important to the investigation of child sexual abuse cases. The alleged offender can only be charged with a *Criminal Code* offence in existence at the time the alleged offence occurred, despite that it may be reported and investigated several years later, although the current procedural and evidentiary rules apply to the prosecution (Hornick & Paetsch, 1995).<sup>3</sup>

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<sup>3</sup> It is not widely appreciated that for historical sexual offences, a person must be charged under the *Criminal Code* provision as it existed at the time of the alleged offence. Thus, that a person can only be charged with offences in existence at the time of the alleged offence, has not been well understood. However, current procedural and evidentiary rules apply to the prosecution of historic offences. The distinction between the current evidentiary and procedural rules and the historic offence provisions was, for example, recognized in *R. v. Bickford* (1989) 51 C.C.C. (3d) 181 (Ont. C.A.). The accused was charged with sexual assault contrary to s. 246.1 of the *Criminal Code*, based on alleged abuse of a child who was four years old at the time of the alleged offence. The information alleging the offence was sworn on August 26, 1987, and the trial was set to commence on April 8, 1988. On January 1, 1988, an *Act to Amend the Criminal Code and Canada Evidence Act*, S.C. 1987, C. 24, was proclaimed in force. The effect of ss. 15 and 18 of this *Act* was to repeal s. 586 of the *Criminal Code* and amend s. 16 of the *Canada Evidence Act*, R.S.C. 1970, C. E-10, so that the unsworn evidence of a child did not need to be corroborated. At the accused's trial in 1988, the victim testified and gave unsworn evidence. There was, however, no corroboration of her evidence and the accused was acquitted, the trial judge holding that the amendments to the *Criminal Code* and the *Canada Evidence Act* did not apply to this trial notwithstanding that the trial took place after January 1, 1988. The Ontario Court of Appeal held that the trial judge erred in not applying the evidentiary provisions that were in effect on the date of the trial, even though the previous substantive provisions applied, and ordered a new trial. The Court observed: The presumption against retrospective operation of amendments does not apply to enactments which relate only to procedural or evidentiary matters.

If a historical case of child sexual abuse that occurred in 1983 is disclosed today, the investigating officer would be limited to charging the alleged offender with sexual offences in the *Criminal Code* at the time (i.e., rape or indecent assault) as opposed to under one of the many sexual offences in the *Code* today.

Since 1892, the *Criminal Code of Canada* has included sexual offences amongst its provisions, with the Canadian statutory definition of rape in its provisions (Badgley, 1984). Only modest consideration was given to child sexual abuse in the *Code* until the legislative changes of 1988, with the enactment of Bill C-15.

The Badgley Report of 1984 characterized the *Criminal Code* offences related to child sexual abuse as “general” and “vague” and lacking in the ability to adequately deal with the wide range and different types of child sexual abuse. Since the legislative changes of 1988, amendments continue to be made to the *Criminal Code* and related Acts to deal with the changing understanding and realities of child sexual abuse.

### **3.2 The *Criminal Code* Prior to January 4, 1983**

Until 1988, most cases involving sexual offences against children could only be charged under one of the general sexual offence provisions of the *Code*. Accordingly, until 1988, the changes over time in the general sexual offence provisions were the major legislative changes that affected charging of sexual offenders of children. There were, however, prior to 1988 also some age-specific offences in the *Criminal Code* that were applicable to some cases, including: sexual intercourse with female under 14 (or 14-16) and seduction of female 16-18 years. The *Code* offences for incest, seduction under promise of marriage, sexual intercourse with step-daughter or female employee and the defilement offences (householder permitting and parent or guardian procuring) were also applicable to some cases of sexual abuse of children.

#### **3.2.1 Sexual Offences of the *Criminal Code***

Prior to January 4, 1983, the primary sexual offences in the *Criminal Code* were found in Part IV (Sexual Offences, Public Morals and Disorderly Conduct), with the most frequently invoked provisions being rape, attempt to commit rape, and indecent assault (Baril, Bettez & Viau, 1988).

Rape was defined in section 143 of the *Criminal Code* as being committed by a male upon having sexual intercourse with a female person, not his wife and without consent or with consent that, because of the circumstances in which it was obtained, was considered “invalid.” In order to obtain a conviction under this section, a prosecutor would have to prove (1) that there had been penetration of the vagina by the penis, even slightly; and (2) that the complainant had not consented to the intercourse or that her consent was not valid. Acts not considered to be “sexual intercourse” included oral and anal penetration, and vaginal penetration with a finger or other object, thus limiting the applicability of the section.

The Indecent Assault provisions of the *Code* (s. 149 for indecent assault on female and s. 156 for indecent assault on male) were vague. The offence of “indecent assault on female” was, by definition, committed when a person “indecently assaulted” a female. Commentary in the 1982 *Martin’s Criminal Code* provides some guidance as to the characteristics of the offence, suggesting that the act in question did not need to be “indecent in nature,” but rather, it was the act, in the circumstance, that made the situation “indecent” (*Martin’s Annual Criminal Code*, 1982). In cases of sexual abuse involving a male victim and a male perpetrator, the only offence that the abuser could be charged with was “indecent assault on male;” this provision created two criminal acts, indecently assaulting another male or committing buggery.

Other sexual offences in the *Criminal Code* prior to the changes of January 4, 1983, included a male having sexual intercourse with female under 14, not his wife,<sup>4</sup> and if the female was of previously chaste character it was also an offence if the female was 14-16 years of age, sexual intercourse by a male with feeble-minded female, incest, seduction by a male of female between 16-18, seduction by a male of female under promise of marriage, sexual intercourse by a male with step-daughter, or female employee, seduction by a male of female passengers on vessels, “buggery” (unless in private between a husband and wife or two consenting adults over 21), gross indecency and bestiality.

The *Code* limited the time during which an accused could be charged with certain sexual offences to one year after the alleged occurrence of the offence.

#### Child Specific Provisions – Pre-1983

The *Code* contained specific provisions for children aged 14 and under regarding consent and commission of offences. Consent of a child under 14 was not a defence to sexual intercourse with a female under 14 years (or 14-16 if of previously chaste character), or indecent assault of a male or female under 14 years of age. Males under 14 were immune from prosecution for rape, attempted rape, sexual intercourse with female under 14 (or 14-16) and incest.

As previously mentioned, there were some age-specific offences in the *Code*, such as sexual intercourse with female under 14 years (or 14-16 years and of previously chaste character), and seduction of female 16-18 years. Other offences, such as incest or sexual intercourse with step-daughter, although not age-specific, were applicable in some cases of child sexual abuse.

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<sup>4</sup> A husband experienced a certain level of immunity when the alleged act that constituted a sexual offence was committed against his wife. By definition, he could not be charged with sexual intercourse with female under 14 years (or 14-16), sexual intercourse with feeble-minded, etc. or rape if married to the complainant. Subsequent marriage to a female following the commission of certain other offences (seduction of female passengers on vessels, seduction under promise of marriage or sexual intercourse with female employee) enabled the newlywed husband to be immune from the charge (s. 139(2)).

### 3.2.2 Evidentiary Provisions

The laws of evidence in force *at the time of trial* also had an impact on child sexual abuse investigations and charging practices. Prior to January 4, 1983 the following were among the evidentiary issues likely to have had the most significant impact on child sexual abuse investigations: requirements for corroboration of a victim's testimony, unsworn evidence, the recent complaint doctrine; and the ability to question a victim on past sexual behaviour (Baril et al., 1988).

#### Corroboration

Corroboration is evidence that is separate from the testimony of a victim that supports or confirms the testimony of the victim in a material way. As most sexual offences occur in private, there is often not any corroborative evidence. Prior to reforms of the late 1970s and 1980s, corroboration of a victim's testimony about sexual abuse was required to obtain a conviction for many but not all sexual offences, often making it impossible to obtain a conviction, and making the prosecution reluctant to lay charges. A 1976 amendment to s. 142 of the *Criminal Code* permitted a guilty verdict for certain offences, including rape and indecent assault, in the absence of evidence corroborating a victim's statement. In practice, however, some judges still expected corroboration in order to obtain a conviction and warned juries of the frailty of a guilty verdict in the absence of corroborative evidence.

Corroborative evidence was mandatory for a conviction on certain other sexual offences (e.g., sexual intercourse with a feeble-minded person or incest) pursuant to s. 139 of the *Code*.

#### Unsworn Evidence

All children were asked questions about the nature of an oath before being permitted to testify. The *Canada Evidence Act* s. 16 allowed a child of "tender years" (under 14 years of age) who did not understand the nature of an oath to give unsworn testimony if, in the opinion of the judge, the child was "possessed of sufficient intelligence to justify the reception of the evidence," and understood the "duty of speaking the truth." Both the *Criminal Code* and *Canada Evidence Act* provided that a person could not be convicted upon the unsworn evidence of a child unless the evidence was corroborated by independent evidence.

#### Recent Complaint

The common law "recent complaint" rule provided that evidence of a "recent complaint" or disclosure of a sexual assault made by the victim to a third party at "the first reasonable opportunity" following an assault, was admissible in court if obtained independent of leading questions. This type of evidence could add credibility to the victim's version of events. However, the fact that a complaint was not made immediately could lead to a presumption that there had been consent; since many victims of sexual assault do not disclose their victimization at "the first reasonable

opportunity,” the recent complaint rule made it more difficult to prosecute sexual assault cases.

### Past Sexual Behaviour

At common law, there was substantial scope for an accused in a sexual offence case to ask a complainant about her previous sexual history, especially if she was a woman of “unchaste” or “promiscuous character.” The effect of this law was to make it more difficult for the prosecution of sexual assault cases, as victims’ credibility was often unfairly undermined, and to make victims reluctant to even report to the police, as they were unwilling to go to court, fearing that their entire sexual history would be the subject of humiliating, public scrutiny. In 1976, the *Criminal Code* was amended so that an accused seeking to ask such questions was required to (1) give written notice to this effect; and (2) an initial in-camera hearing was held in the absence of a jury where a judge<sup>5</sup> would determine whether the questions would be permitted. This section was interpreted as making a complainant a compellable witness at the in-camera hearing. Even after the 1976 rules were enacted, evidence of a victim’s past sexual behaviour was often used to undermine the complainant’s credibility, rather than decide whether or not there had been consent (Bowland, 1994).

#### 3.2.3 Summary of Sexual Offences

Prior to January 4, 1983, the primary sexual offences of the *Criminal Code* were as follows (Roberts & Mohr, 1994):

- Rape (s. 143);
- Attempted Rape (s. 145);
- Indecent Assault on a Female (s. 149);
- Indecent Assault on a Male (s. 156);
- Buggery/Bestiality (s. 155);
- Acts of gross indecency (s. 157);
- Incest (s. 150);
- Sexual intercourse with female under 14;
- Sexual intercourse with female 14 – 16 years (s. 146);
- Sexual Intercourse with Feeble Minded (s. 148);
- Seduction of a female 16 – 18 years (s. 151);
- Seduction under promise of marriage (s. 152);
- Sexual intercourse with stepdaughter or female employee (s. 153);
- Seduction of female passengers on vessels (s. 154);
- Parent or guardian procuring defilement (s. 166); and
- Householder permitting defilement (s. 167).

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<sup>5</sup> For simplification purposes, throughout the text, the term “judge” will be used to connote the decision making body of the court when referring to certain sections of the *Criminal Code* or *Canada Evidence Act* despite that the actual section in question may refer to more than just a judge (i.e., magistrate, justice or provincial court judge).

### **3.3 The *Criminal Code* Following the Amendments of Bill C-127 as of January 4, 1983**

The sexual offence provisions of the *Criminal Code* were substantially altered on January 4, 1983 with the coming into force of Bill C-127. Existing sections of the *Code* were modified, some were repealed and new offences were created (Baril et al., 1988). This wide-sweeping reform to the *Criminal Code* was based upon the following principles: (1) the protection of the integrity of the person; (2) the upholding of public decency; and (3) the elimination of sexual discrimination (Justice Canada, 1980). Bill C-127 has been described as directed mainly at the treatment of female adult victims of sexual assault (Bowland, 1994).

#### 3.3.1 Sexual Offences of the *Criminal Code*

##### New Offences

The 1983 reforms abolished the offence of “rape” and created the broader, more inclusive offence of “sexual assault.” The offences of sexual assault (s. 246.1), sexual assault with a weapon, threats to a third party or causing bodily harm (s. 246.2) and aggravated sexual assault (s. 246.3), were introduced through Bill C-127 and could be found and to this day remain under Part IV of the *Criminal Code*, “Offences Against the Person and Reputation.” The new sexual assault offences mirrored the structure of the general assault provisions of the *Code*. The gravity of the offence was now based on the degree of violence involved in the commission of the offence, and less emphasis was placed on the specific sexual conduct involved. The previous law had placed great emphasis on whether or not there had been a “rape” – penetration of the vagina by the penis.

Amendments did not include a definition for sexual assault, the meaning of which was ultimately left for judicial interpretation. The offence of sexual assault does not require proof of intercourse, but occurs if there is any unwanted touching of a sexual nature; of course vaginal or anal intercourse without consent is a sexual assault. Sexual assault is also distinguishable from the offence of rape as the sexual assault offences were (and continue to be) gender neutral and provide no special immunity for husbands (or spouses) of the complainant.

##### Offences Repealed

Rape (s. 143), attempted rape (s. 145) and the indecent assault sections (s. 149 and s. 156) of the *Code* were repealed, though these provisions are still used for historic offences that occurred prior to repeal and are only the subject of later prosecution.

##### Child Specific Offences

Consent was no defence to the new sexual assault provisions of the *Code* if the complainant was under 14 unless the accused was less than 3 years older than the complainant (*Martin's Annual Criminal Code*, 1985, s. 246.1(2)).

The balance of the pre-Bill C-127 sexual offences of the *Criminal Code* remained largely unchanged, including the age-specific offences of sexual intercourse with a female under 14 years (or 14-16) for which consent was no defence, and seduction of female 16-18 years.

### 3.3.2 Evidentiary Provisions

With Bill C-127, changes were made to certain evidentiary provisions of the *Criminal Code* reflecting a general movement towards protecting the complainant from inappropriate questioning during the trial, and abolishing many of the legal rules based on discredited stereotypes about victims of sexual assault (Baril et al., 1988).

#### Corroboration

It was made clear in s. 246.4 of the *Code* that corroboration was not required to obtain a guilty verdict under the new sexual assault provisions (as well as for incest and gross indecency) and that the trial judge was not required to warn the jury about the absence of corroboration. It became possible to obtain a conviction on the complainant's testimony alone in a sexual assault case. Corroboration was, however, still required for the unsworn testimony of a child under 14 years.

#### Recent Complaint

The rules relating to evidence of recent complaint in sexual assault cases were abolished with the introduction of s. 246.5, so that the failure to report a sexual assault at the "first reasonable opportunity" could not be used to undermine the credibility of the victim.

#### Past Sexual Behaviour

With the introduction of s. 246.6, it became more difficult for the accused to question a complainant about her previous sexual history. The 1983 restrictions on questioning a complainant about her previous sexual history were ruled unconstitutional by the Supreme Court of Canada in 1991.<sup>6</sup> In 1992, the present ss. 276-277 of the *Code* were enacted, which establish a clearer and fairer procedure and basis for restricting questioning about previous sexual history; this provision has been held to be constitutionally valid.<sup>7</sup>

### 3.3.3 Young Offenders

Until the *Young Offenders Act* came into force in 1984, the minimum age of criminal responsibility in Canada was 7, and there was a rebuttable presumption that children between the ages of 7 and 13 were incapable of crime. The *Young Offenders Act* (YOA) set 12 as the minimum age of youth court jurisdiction, and 17 years as the

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<sup>6</sup> *Seaboyer v R.*, [1991] 2 S.C.R. 577.

<sup>7</sup> *R. v Darrach*, [2000] 2 S.C.R. 443.

maximum, an age jurisdiction continued under the *Youth Criminal Justice Act*, which came into effect in 2003.

### 3.3.4 Summary of Sexual Offences

Following the amendments introduced with Bill C-127 on January 4, 1983, the primary sexual offences in the *Criminal Code* were as follows (Bowland, 1994) (with the numbering at that time in brackets, the sections have since been renumbered):

- Sexual Assault I (s. 246.1);
- Sexual Assault II (s. 246.2);
- Sexual Assault III (s. 246.3);
- Buggery/Bestiality (s. 155);
- Acts of Gross Indecency (s. 157);
- Incest (s. 150);
- Sexual intercourse with female under 14 (s. 146 (1));
- Sexual intercourse with female 14 – 16 (s. 146 (2));
- Seduction of female 16 – 18 (s. 151);
- Seduction under promise of marriage (s. 152);
- Sexual intercourse with stepdaughter or female employee (s. 153);
- Seduction of female passengers on vessels (s. 154);
- Parent or guardian procuring defilement (if under 14, higher maximum penalty) (s. 166);
- Householder permitting defilement (s. 167);
- Indecent Acts (s. 169);
- Nudity (s. 170); and
- Causing disturbance, indecent exhibition (s. 171).

### 3.3.5 Limitations of the Sexual Offence Provisions in the *Criminal Code*

Even after the 1983 amendments to the *Criminal Code*, there were still serious deficiencies in the provisions relating to the sexual abuse and exploitation of children and adolescents. The following were recognized as limitations (Hornick & Bolitho, 1992):

- (1) Gender Bias – Girls and boys were given different protection under the law. Many offences required by definition a female victim and a male accused;
- (2) Limited Range of Sexual Activity – There was a failure to encompass the range of activities that could constitute child abuse such as the fondling, masturbation and oral intercourse performed by a child on an adult perpetrator. Some offences prohibited only vaginal intercourse;
- (3) Requirement of Previous Chaste Character – Adolescent girls who had been sexually active and/or sexually abused in the past might not be considered of “previously chaste character” and lacked some legal protections;

- (4) Victim's Sexual Reputation and Activity Used as Defence – It was permissible to cross-examine victims on their sexual reputation and past sexual activity as a means of establishing certain defences;
- (5) Presumption that a Male Under 14 was Incapable of Intercourse – Males 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;
- (6) Issues Regarding Age and Consent – The age of legal consent varied depending on the sex of the participant and the sexual act at issue. Under the law, males could consent to sexual intercourse at any age. Females could consent to vaginal intercourse from the age of 14 and thereafter 21 was the specified age for consent of either sex to acts of gross indecency or anal intercourse with the exception that at age 16 a female could marry and then consent to these acts with her husband;
- (7) Invitation to Sexual Touching – There was no offence relating to the invitation to a child to touch a person in a sexual way;
- (8) Time Restrictions – Certain offences were limited to prosecution within a year after being committed; and
- (9) Child Witnesses – There were no special accommodations for child witnesses, and corroboration was required for the unsworn testimony of a child under 14 years of age.

### **3.4 The *Criminal Code* Following the 1988 Legislative Amendments of Bill C-15**

The Badgley Report was released in 1984, documenting many of the problems in criminal and other laws and policies related to the protection of children and adolescents from sexual abuse and exploitation. The Report contained 52 recommendations, many of these relating to improvements in the substantive, evidentiary and procedural laws relating to the sexual abuse and exploitation of children and adolescents. On October 15, 1986, the federal government introduced Bill C-15, *An Act to Amend the Criminal Code and the Canada Evidence Act*. Bill C-15 ultimately came into force on January 1, 1988.

This Bill marked the first focused effort to reform the *Criminal Code of Canada* to protect children and adolescents from child sexual abuse and exploitation, and the first real recognition that child and adolescent witnesses should be treated differently from adults (Hornick & Bolitho, 1992). The objectives of the Bill C-15 amendments were as follows: (1) to provide better protection to child sexual abuse victim/witnesses; (2) to enhance successful prosecution of child sexual abuse cases; (3) to improve the experience of the child victim/witness in court; and (4) to bring sentencing in line with the severity of the offence. The strategy to implement these objectives involved: (1) overall simplification of the law relating to sexual offences; (2) creation of new offences specific to acts of child sexual abuse; (3) changes regarding procedure and evidence of

child witnesses; and (4) changes to the *Canada Evidence Act* regarding the testimony of child witnesses.

### 3.4.1 Sexual Offences of the *Criminal Code*

Bill C-15 effectively restructured the sexual offence provisions of the *Criminal Code* (present section numbering in brackets) (Schmolka, 1992).

#### New Offences/Child Specific Offences

Sexual Offences Relating to Children - Three offences with a child-centred focus were introduced, sexual interference (s. 151), invitation to sexual touching (s. 152) and sexual exploitation (s. 153).<sup>8</sup> The offence of sexual interference makes it a crime to touch a person under the age of 14 for a sexual purpose. Invitation to sexual touching is the encouragement of a child under 14 to touch his/her body or someone else's body for a sexual purpose. Section 153 makes it an offence for a person in a position of trust or authority over a child, or a person upon whom a child is dependent, to engage in sexual activity with a person over 14 but under 18. These offences are gender neutral.

Consent - New rules with respect to consent were introduced in s. 150.1 (1-5). They are gender neutral, applying to boys and girls under 18.

#### (a) Regarding the Complainant

- Children under 12 can never consent to sexual activity.
- In general, children under 14 cannot consent to sexual activity with older persons.

#### (b) Regarding the Accused

- Mistake of age is not a valid defence to an age-dependent sexual offence or sexual assault offence unless the accused took all reasonable steps to ascertain the age of the complainant.
- An accused aged 12 or 13 cannot be tried for sexual interference, invitation to sexual touching or exposure of genital organs to persons under 14, unless he/she is in a position of trust or authority towards the complainant or is a person with whom the complainant is in a relationship of dependency.

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<sup>8</sup> Although described as "new offences," these offences are also meant to replace certain provisions that were repealed with the change in legislation. S. 151 was meant to replace a number of crimes that focused on non-consensual male intercourse with young or vulnerable females. S. 152 replaced the crime of gross indecency. S. 153 replaced the former sections of the *Code* that made it a crime for a male over 14 to have sexual intercourse with a girl who was between 14 and 16 and of "previously chaste character."

- The defence of consent is available to an accused between the ages of 12-15 charged with certain sexual offences (sexual interference, invitation to sexual touching, exposure of genital organs to persons under 14 and the sexual assault offences) if the complainant is less than two years younger than the accused and at least 12 years old. The accused cannot be in a position of trust or authority over the complainant nor someone on whom the complainant is dependent.

### Offences Replaced or Amended

Buggery and Bestiality - Sections 159 and 160 were introduced to deal with buggery and bestiality separately. Section 159, titled “anal intercourse,” provided that, even if both parties consent, it is still considered an offence if one person involved is under 18 years old; unless they are husband and wife. With respect to bestiality (s. 160), two new offences were added concerning children, those being, inciting a child under 14 to commit bestiality and engaging in bestiality in front of a child under 14.

Parent or Guardian Procuring Sexual Activity - The former provision provided protection for females of any age against being “procured” for sexual activity. The new provision (s. 170) extends this protection to girls and boys, but limits the protection to those under 18 years of age.

Householder Permitting Sexual Activity - The new section 171 is gender neutral, protecting both girls and boys from both male or female persons (who have some form of control, direct or indirect, over a premises) who knowingly permit persons under 18 to be a party to a prohibited sexual offence.

Exposure - Section 173(2) was added to create the new offence of exposing one’s genitals for a sexual purpose to a child under 14.

Vagrancy - S. 179(1)(b): The amended vagrancy subsection provided that someone convicted of a sexual abuse or sexual assault offence, bestiality or exposure when the complainant was under 14 committed the offence of “vagrancy” by loitering near school grounds, playgrounds, public parks or bathing areas. Prior to 1988, this provision did not include the new sexual assault, bestiality and exposure offences. This provision was ruled unconstitutional by the Supreme Court in 1994,<sup>9</sup> though in 1993 provisions were enacted that allow for significant restrictions to be placed on the contact of known sexual offenders with children in the community (s. 161), as well as permitting restrictions to be placed on those reasonably believed to pose a risk of sexually offending against children (s. 810.1).

Offences Relating to Child Prostitution - New subsections were added to s. 212 making it an offence to act as a pimp or a customer of a prostitute who is under 18. The former provision had no specific section relating to juvenile prostitution.

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<sup>9</sup> *R. v. Heywood*, [1994] 3 S.C.R. 761.

## Limitation Period Repealed

The former s. 141 which provided that no charges could be laid for certain sexual offences more than one year after the offence was alleged to have been committed was repealed. There is now no limitation period for indictable sexual offences.<sup>10</sup>

### 3.4.2 Evidentiary Provisions

Procedural and evidentiary reforms introduced in Bill C-15 had a very significant impact on the investigation and prosecution of child sexual abuse cases. Among the most important were amendments: changing the rules about the admissibility of certain types of evidence; providing accommodation for children and adolescents who were witnesses, for example, through such devices as providing testimony via closed circuit television; and changing the rules about the competence of child witnesses to testify (Schmolka, 1992; Bala, 1990).

## Admissibility of Evidence

Corroboration - Following the 1988 amendments, corroborating evidence was not required to obtain a conviction on most sex related offences<sup>11</sup> in the *Code* (s. 274).

This provision, along with the removal of some of the restrictions on the admissibility of the unsworn evidence of children in s. 586, made it possible to convict a person accused of sexual abuse or a sexual assault crime on the basis of the child complainant's testimony alone.

Recent Complaint - The recent complaint rule was abolished with respect to some sexual offences in 1983. In 1988, this "abolishment" was extended to most of the sexual offences<sup>12</sup> of the *Code* through s. 275.

Evidence of a Complainant's Sexual Activity - Bill C-15 added listed child and adolescent sexual offences to the provisions enacted in 1983 to prohibit the questioning of complainants in court about sexual activity with someone other than the accused, except in a few limited circumstances that were usually irrelevant of cases involving children (s. 276 (1)).

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<sup>10</sup> Charges relating to summary conviction offences must be laid within 6 months of the date the offence was alleged to have occurred.

<sup>11</sup> Specifically, the offences that did not require corroboration for conviction following the Bill C-15 amendments were: sexual interference; invitation to sexual touching; sexual exploitation; incest; anal intercourse; bestiality; parent or guardian procuring sexual activity; householder permitting sexual activity; corrupting children; indecent acts; procuring; sexual assault; sexual assault with a weapon; threats to a third party or causing bodily harm; and aggravated sexual assault.

<sup>12</sup> The offences for which the recent complaint doctrine was not applicable at the time included: sexual interference; invitation to sexual touching; sexual exploitation; incest; anal intercourse; compelling bestiality; committing bestiality in presence of under 14; parent or guardian procuring sexual activity; householder permitting sexual activity; corrupting children; indecent acts; and the sexual assault offences.

Reputation Evidence - Bill C-15 added listed child and adolescent sexual offences to the provisions enacted in 1983 to prohibit the introduction of evidence about a complainant's "sexual reputation" (s. 277).

### Manner of Providing Evidence

Testimony Outside of Courtroom - The new subsections of 486(2.1) and 486(2.2) enabled a complainant under 18 at the time of the court hearing to testify in sexual assault or sexual abuse cases without having to see the accused. The judge was given the power to permit the complainant to testify behind a screen or other device, or through a closed-circuit television system if the judge believed that these devices were necessary for the complainant to be able to give a "full and candid account" of the acts complained of. The judge (and jury if there is one) as well as the accused must be able to fully observe the child's testimony. The accused must be able to communicate with his/her counsel while watching the testimony in order to provide counsel with instructions.

Evidence of Complainant by Videotape - Section 715.1, first introduced to the *Criminal Code* through Bill C-15, allows the court to accept as evidence a videotape in which the complainant describes the alleged sexual abuse that occurred. In order to do so, the videotape must have been made within a reasonable time after the alleged offence and, when in court, the complainant must "adopt the contents" of the video statement as true.

### Who May Provide Evidence

Subsection 4(2) of the *Canada Evidence Act*, which limits the common law doctrine of "spousal privilege" (a common law rule that prevented one spouse from testifying against the other), was expanded through the 1988 legislative reforms. This section adds the new Bill C-15 offences to the specific cases where a spouse is a competent and compellable witness for the prosecution at trial, in order to facilitate testimony by one spouse (invariably the wife) against the other (invariably the husband) in cases involving child sexual abuse.

### Evidence of Children under 14 years of Age

Bill C-15 made significant changes to the ability of children under 14 years of age to testify in court by repealing and amending certain provisions of the *Criminal Code* and *Canada Evidence Act*.

S. 586, which required the corroboration of unsworn evidence of a child before a conviction could be entered, was repealed.

Section 16 of the *Canada Evidence Act* was amended to permit children under 14 to testify if (1) they could understand the nature of an oath or solemn affirmation; and (2) could communicate the evidence.

A child under the age of 14 who could not understand the nature of an oath or solemn affirmation but who could communicate the evidence could testify upon his/her promise to tell the truth.

Prior to these amendments, a “child of tender years” who did not understand the “nature of an oath” could only be a witness if the judge found the child to be “of significant intelligence” to justify the reception of evidence and understood the “duty to speak the truth.” Until the coming into force of Bill C-2 in 2006, children were still required to answer questions to demonstrate their understanding of the concept of the “promise to tell the truth” if they were to testify.

### 3.4.3 Summary of Sexual Offences

Immediately following the amendments to the *Criminal Code* of Bill C-15 in 1988, the main sexual offences in the *Code* relevant to child sexual abuse were as follows (present section numbering in brackets):

- Sexual Interference (s. 151);
- Invitation to Sexual Touching (s. 152);
- Sexual Exploitation (s. 153(1));
- Sexual Assault (s. 271 (1));
- Sexual Assault with a weapon (s. 272 (1)(a));
- Sexual Assault by threats to a third party (s. 272 (1)(b));
- Sexual Assault with bodily harm (s. 272(1)(c);
- Party with another to sexual assault (s. 272(1)(d);
- Aggravated sexual assault (s. 273(2));
- Incest (s. 155(2));
- Anal intercourse (s. 159(1);
- Bestiality (s. 160(1));
- Compelling commission of bestiality (s. 160(1));
- Bestiality in the presence of child or by child (s. 160(3));
- Parent or guardian procuring sexual activity of a person (s. 170);
- Householder permitting sexual activity (s. 171);
- Corrupting Children (s. 172(1));
- Indecent Acts (s. 173(1));
- Exposure (s. 173(2));
- Living off avails of prostitution under 18 (s. 212(2); and
- Obtaining/Attempting to Obtain under 18 for sexual services (s. 212(4)).

See Tables B1 and B2 in Appendix B for a comparative overview of changes to the primary sexual offence provisions and related evidentiary provisions of the *Criminal Code of Canada* and *Canada Evidence Act* following the legislative amendments of Bill C-127 on January 4, 1983 and Bill C-15 on January 1, 1988.

### **3.5 Reforms to the *Criminal Code* and Related Acts and Developments in Other Resources for Child Sexual Abuse Investigations after 1988**

#### Bill C-49

Bill C-49, otherwise known as the “rape shield legislation,” came into force in 1992. Its focus was three-fold: (1) to establish a new test to be used by judges in order to determine whether a complainant’s sexual history could be admitted at trial; (2) to provide a definition of consent for the sexual assault offences; and (3) to restrict the defence of mistaken belief in consent as concerning sexual assault offences (Bowland, 1994). This Bill mainly had an effect on cases involving adult female victims.

#### Bill C-126: Criminal Harassment, Removing a Child from Canada and Child Testimony

This Bill, in force in 1993, altered the *Criminal Code* by, among other things, creating two new offences, adding a provision with respect to judicial power and effecting certain evidentiary changes (Hornick & Paetsch, 1995).

The offence of criminal harassment (stalking) was created as was the offence of removing a child from Canada for the purpose of committing an act that would be an offence under specified provisions of the *Criminal Code*, including sexual offences and assault provisions. This made it a crime to take a child or adolescent out of Canada for the purpose of performing acts that would be crimes in Canada, even if not crimes or prosecuted in the country where they occurred.

Judges were given the ability to prohibit sex offenders from frequenting places where children congregate and from being employed in positions of trust over children.

Changes were also made to facilitate child testimony including prohibiting the cross-examination of a child by the accused personally unless required for the proper administration of justice, and permitting a support person to accompany a child to the witness stand during the child’s testimony.

#### Bill C-128 (Child Pornography and Corrupting Morals)

Bill C-128 created three new offences in the *Criminal Code* relating to child pornography: possession, production and distribution (Hornick & Paetsch, 1995).

#### Information Systems on Child Sex Offenders

In 1994, the Canadian Government announced the establishment of a national system to help organizations screen out sex offenders applying to work with children (Hornick & Paetsch, 1995).

## Violent Crime Linkage Analysis (ViCLAS)

The ViCLAS system, jointly implemented by the RCMP, the OPP and police forces across Canada in 1994, was designed to share information and make it easier to apprehend sex offenders who committed crimes against victims in more than one police jurisdiction (Hornick & Paetsch, 1995). It is an automatic case linkage information system designed to capture, collate and compare crimes of violence through analysis and victimology, suspect description, *modus operandi* and forensic behavioural data. Solved and unsolved sexual assaults are included on the system which is particularly suited to dealing with serial sex offenders.

## DNA Provisions Introduced in the *Criminal Code*

On July 13, 1995, sections 487.04 to 487.09 of the *Criminal Code* came into force, creating legislation for obtaining a search warrant to seize bodily substances (by plucking hair, swabbing skin cells, or drawing blood), for the purpose of forensic DNA analysis (Hornick & Paetsch, 1995). These warrants can only be used in relation to specific offences which generally involve personal injury or sexual abuse.

## Bill C-41: Sentencing

In force on September 3, 1996, this Bill substantially revised sentencing provisions, with the repeal and replacement of sections 716 - 751.1 of the *Criminal Code* (Hornick & Paetsch, 1995). The court must now take into account “aggravating factors” for the purpose of sentencing including whether, in committing the offence, the offender abused his/her spouse, common-law partner or child, or abused a position of trust or authority in relation to the victim (Department of Justice, 2006). This change was intended to increase sentences and accountability for those who sexually abuse or exploit children and adolescents.

## Bill C-72: Self-Induced Intoxication

On September 15, 1995, Bill C-72 came into force, enacting s. 33.1 of the *Criminal Code*. This provision eliminated intoxication as a defence to a general intent offence, such as sexual assault (Hornick & Paetsch, 1995).

## Bill C-15A

In force in July 2002, this Bill created new *Criminal Code* offences and enforcement measures to deal with certain situations involving the sexual exploitation of children, particularly in relation to internet child pornography and child luring (Department of Justice, 2006). Amendments to the *Code* were also made to facilitate prosecution of individuals involved in sex tourism and to better protect children from sexual predators.

Following the 1988 Bill C-15 amendments, the 2002 changes permitted persons with a disability who are the victims of sexual exploitation receive the same evidentiary protection afforded to other victims of sexual offences.

## Bill C-2: Expanding Child Protection Through the *Criminal Code*

Bill C-2, the most recent Bill passed relating to child sexual abuse, was implemented in two parts (LEGIS, 2006). On November 1, 2005, ss. 1-12, 24 and 25 came into force. Sections 13 - 23 and 26 - 27.1 later followed, coming into force on January 2, 2006.

Bill C-2 was enacted with the objective of increasing the protection of “children and other vulnerable persons from sexual exploitation, violence, abuse and neglect” and providing increased access to “testimonial aids for vulnerable victims” (MacKay, 2006, p.1). The approach of the Bill was three-fold: (1) to expand the scope of some existing offences, narrow availability of statutory defences and/or increase penalties following conviction; (2) to create the new offence of “voyeurism”; and (3) to provide procedural reforms to facilitate testimony by children and to broaden the courts’ ability to accommodate the needs of children and other vulnerable witnesses in a variety of criminal proceedings.

Bill C-2 was the largest revisiting of the *Criminal Code* sections relating to the sexual abuse of children and child witnesses since Bill C-15 in 1988. Bill C-2 also reflects amendments of societal developments in technology (i.e., the internet) that could be used to commit an offence. In addition, the scope of evidentiary protections once primarily afforded to child sexual abuse victims (i.e., the ability to have a support person accompany the child while testifying, the ability to testify outside the courtroom, preventing the cross-examination of a witness by the accused and the possible use of video recorded evidence) is extended to other vulnerable witnesses.

Among Bill C-2’s most relevant amendments to child sexual abuse offences (excluding amendments to maximum and minimum penalties and sentencing) were the following (MacKay, 2006):

### Sexual Exploitation (s. 153)

- The offence of Sexual Exploitation was expanded. Prior to the Bill C-2 amendments, it was an offence for an adult to engage in sexual activity with anyone over 14 but under 18 where the adult was “in a position of trust or authority” towards the young person or someone with whom the young person was in a “relationship of dependency.” As a result of the reform, sexual exploitation may now also be found where the relationship between the adult and youth is “exploitative of the young person.”

### Prohibition Order

- Indecent exposure and specified historical sexual offences were added to the list of offences for which a sentencing court could grant a Prohibition Order under s. 161 restricting contact of convicted offenders with children.

### Voyeurism (s. 162)

- The offence of voyeurism was created. This offence prohibits the behaviour of “peeping toms,” by recognizing that this type of exploitative conduct is increasingly carried out using modern technology. This provision offers protection to people in places where there is an expectation of privacy from being observed (whether by mechanical or electronic means) or being filmed while being nude, or exposing their genital organs, anal region or breasts, or while being engaged in sexual activity. The “observation” must be done for the purpose of observing or recording a person in such a state or for an otherwise sexual purpose.<sup>13</sup>
- A related offence was created making it an offence to distribute, circulate, print, copy, publish, sell, advertise or make available the recording of information (or possession for the purpose of doing so) obtained by the commission of the offence of voyeurism.

### Child Pornography (s. 163.1)

- The definition of child pornography was extended to include “an audio recording that advocates or counsels sexual activity with a person under 18 and that would be an offence under the *Criminal Code*.” The scope of the offence was broadened by eliminating the need to show that written material advocates or counsels illegal sexual activity with children. Instead, it only needs to be shown that the “dominant characteristic” of any written material is the description, for a sexual purpose, of sexual activity involving a person under 18 that would be an offence under the *Criminal Code*. A similar provision was created relating to audio recording.
- The former defence of artistic merit or educational, scientific or medical purposes was replaced by the defence of legitimate purpose relating to the administration of justice, science, medicine, education or art. To be convicted of a child pornography offence, the act must be found to pose an undue risk of harm to persons under 18.

### Changes to the *Canada Evidence Act* (s. 16.1)

- Significant changes were made to the rules respecting the admission of testimony of children under 14.

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<sup>13</sup> The precise definition is as follows: Defined by surreptitiously observing (including by mechanical or electronic means) or making a video tape of a person who is in circumstances that give rise to a reasonable expectation of privacy if: (1) the person is in a place in which a person can reasonably be expected to be nude; to expose his or her genital organs or anal region or her breasts or to be engaged in sexual activity; (2) the person is nude, is exposing his or her genital organs or anal region or her breasts or is engaged in explicit sexual activity and the observation or recording is done for the purpose of observing or recording a person in such a state or engaged in such an activity; or (3) the observation or recording is done for a sexual purpose (s. 162(1)).

- There is now a presumption that persons under fourteen have the capacity to testify. If a witness under 14 is able to understand and respond to questions, his/her evidence should be received. The witness is not to take an oath or make a solemn affirmation, but rather, is to promise to tell the truth before giving evidence. Children are not to be asked any questions about their understanding of the concept of “promising to tell the truth” before being permitted to testify. Any evidence given by a child under a promise to tell the truth is to have the same effect as if it were taken under oath (Bala et al., 2006).

#### Bill C-22: Age of Consent (pending)

Bill C-22, *An Act to amend the Criminal Code (age of protection) and to make consequential amendments to the Criminal Records Act*, was given first reading in the House of Commons on June 22, 2006. If enacted, this Bill would amend the *Criminal Code* to raise the age of consent to non-exploitative sexual activity from 14 to 16 years of age. It would also create an exception for an accused engaged in sexual activity with a youth of 14 or 15 years of age when the alleged offender is less than five years older than the youth.

#### The Criminal Code Today

The *Criminal Code* provisions currently in force that may apply in cases of child sexual abuse and exploitation include:

- Sexual Interference (s. 151);
- Invitation to Sexual Touching (s. 152);
- Sexual Exploitation (s. 153(1.1));
- Sexual Assault (s. 271(1));
- Sexual Assault with a weapon (s. 272(1)(a));
- Sexual Assault by threats to a third party (s. 272(1)(b));
- Sexual Assault with bodily harm (s. 272(1)(c));
- Party with another to sexual assault (s. 272(1)(d));
- Aggravated sexual assault (s. 273(2));
- Incest (s. 155(2));
- Bestiality (s. 160(1));
- Compelling commission of bestiality (s. 160(2));
- Bestiality in presence of or by child (s. 160(3));
- Order of Prohibition (s. 161(1));
- Voyeurism (s. 162(1));
- Printing, publication, etc., of voyeuristic recordings (s. 162(4));
- Making Child Pornography (s. 163.1(2));
- Distribution, etc., of child pornography (s. 163.1(3));
- Possession of child pornography (s. 163.1(4));
- Accessing child pornography (s. 163.1(4.1));
- Parent or guardian procuring sexual activity (s. 170);
- Householder permitting sexual activity (s. 171);
- Corrupting children (s. 172);

- Luring a child (s. 172.1(1));
- Indecent acts (s. 173(1));
- Exposure (s. 173(2));
- Vagrancy (s. 179(2));
- Living on avails of prostitution of under 18 (s. 212(2));
- Aggravated offence in relation to living on avails of prostitutions of under 18 (s. 212(2.1));
- Obtaining for consideration, or communicating to obtain the sexual services of under 18(s. 212(4)); and
- Do anything to remove under 18 from Canada with intent to commit certain sexual offences of the *Criminal Code* (s. 273.3 (1)).

## 4.0 A SURVEY OF POLICE EXPERIENCE AND TRAINING IN CHILD ABUSE INVESTIGATIONS IN 1991

### 4.1 Introduction

This chapter of the report presents the analysis of data from a survey of front-line police regarding their experience and training in investigating child abuse cases which was conducted in early 1991 for the Canadian Police College (CPC) and the Canadian Association of Chiefs of Police (CACP) by O'Sullivan and Roberts. As noted in the final report, (O'Sullivan and Roberts, 1992, page 1) the impetus for the survey arose when CACP was asked to respond to the report entitled, *Reaching for Solutions* (1990), authored by Rix Rogers, the Special Advisor to the Minister of National Health and Welfare on Child Sexual Abuse in Canada.

The recommendations that were particularly relevant to the CACP and the CPC at the time and are also relevant to the current Cornwall Public Inquiry study of police practices were as follows:

That the Canadian Association of Chiefs of Police and the RCMP review police policy and practice related to the investigation of child sexual abuse and the necessary levels of expertise required by police officers in this area;

That police departments support policies to ensure that there are front-line specialists available for child abuse cases; and

That, through the Canadian Police College senior police officials be required to take an orientation program dealing with the area of child abuse. (Rogers, 1990.)

#### 4.1.1 Methodology<sup>14</sup>

The general aim of the sampling procedure used by O'Sullivan and Roberts (1992) was to obtain as broad a sample of respondents as possible to ensure a degree of coverage of all kinds of policing in Canada. First a list was drawn up of all police agencies across the country, including municipal, provincial, and federal. Then, a sample was drawn selecting units at all levels of size across the country. This resulted in a list of 106 police agencies which provided the target population for the survey. In early 1991, a questionnaire was sent to the Chief of each police agency with a cover letter asking that the attached questionnaire be forwarded to one of the department's front-line investigators to be filled out.

The questionnaire consisted of two major parts. The first part was an eight-page document containing approximately 50 questions dealing with the respondents' training

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<sup>14</sup> Please see O'Sullivan and Roberts (1992) for a detailed discussion of methodology, sampling and response rates.

experience and perceptions of processing of child abuse cases. The second part of the questionnaire contained a series of questions at the specific request of the Department of Justice Canada which focused on the legislative amendments pertaining to child sexual abuse introduced in 1988 by Bill C-15. In total, 85 completed questionnaires were returned resulting in an 80% response rate, which is extremely good. CRILF was very fortunate to be able to obtain the original part one questionnaires for this current study. The data from the questionnaires were coded and an SPSS file was created. While our strategy for analyzing the data paralleled the original report by O'Sullivan and Roberts (1992), the major difference is that the current analysis included an examination of the data by community size to identify whether there were any systematic differences. While we obtained questionnaires for 80 cases, the current analysis by community size includes 74 cases since some cases were eliminated due to missing data.

One limitation of the current analysis is that many of the questions tended to group child sexual abuse with child abuse in general, and thus we could not always distinguish the two. We do know from our interviewing experience, however, that police investigators had a difficult time distinguishing the specific number or percentage of cases of child sexual abuse they investigated compared with other forms of child abuse historically. The findings of the O'Sullivan and Roberts (1992) study however, suggests that from 1988 to 1991 approximately half of the cases investigated by the respondents were child sexual abuse cases.

Another limitation of the survey data was that only a few questions were time specific. For example, respondents were asked when they started investigating child sexual abuse cases and the date when they took specific courses or workshops. However, other questions regarding whether their agency had specific facilities and equipment or had regular interagency child sexual abuse committee meetings focussed on the present (i.e., 1991) and did not request a "start date."

## **4.2 Officer Profile and Experience**

Overall, as was expected, approximately half of the 80 respondents in the 1991 study were from Ontario or Québec. The next largest group (n=13) came from British Columbia. Over two thirds (70%) worked for municipal police organizations, 20% worked for federal police organizations, and approximately 9% worked for provincial police organizations. Community size ranged from a low of 135 to a high of 2,500,000. Community size was grouped and recoded into five categories for the purposes of analysis.

In terms of experience as a police officer, the respondents reported a considerable range in the numbers of years of service as a police officer, from a low of 3 years to a high of 30 years. Analysis by community size indicates that the respondents from the smallest category of communities (i.e., 135-18,000 population) had the lowest experience at an average of 12 years compared to an average of 20 years for the highest group which was communities 21,500 through 60,000 population. The average for the other three categories of communities was from 15 to 17 years experience (see Table C1, Appendix C).

In terms of experience investigating child abuse cases, the respondents reported a range from under 1 year to 16 years experience. Analysis by community size suggests that police officers from the smallest communities reported the highest average number years experience at an average of 7 years. Interestingly, investigators from the two largest categories of communities reported the lowest average number of years experience in investigating child abuse cases with the means being 3 and 4. This could suggest that investigators in the larger departments tended to stay fewer years in special units like child abuse and investigators in smaller organizations tended not to change positions as quickly (see Table C1, Appendix C).

Analysis by community size also demonstrated that there was a broad range in the number of child abuse cases ever investigated by the officers, i.e. from 2 to 700 in 1991. Further, the average number of child abuse cases ever investigated ranged from a low of 44 for investigators from the smallest communities to a high of 167 for investigators from communities sized 62,000-89,000. Investigators from the three largest community categories all averaged over 160 cases (see Table C1, Appendix C).

In terms of gender of the investigating officer, overall approximately 87% of the investigators were male and 13% were female. However, analysis by community size indicated that the proportion of female investigators was much higher in the largest community category (177,000-2,500,000) with one-third of the investigating officers being female. The lowest proportion of female investigators was found in the second largest community category (90,000-170,000) with just under 6% reported as female (see Table C2, Appendix C).

#### 4.3 Officer's Level of Training

As Table 4.1 indicates, overall approximately two-thirds of the police officers (68.9%) reported in 1991 that they had received formal training in child abuse investigations. In terms of analysis by community size, Table 4.1 clearly indicates that the percentage of officers having received formal training increased as the size of the community increased. Note for example that 53% of the investigators from the smallest category of communities (135-18,000 population) reported receiving training compared to 87% of the investigators from the largest population category of community size.

**TABLE 4.1**  
**Received Formal Training in Child Abuse Investigations by Community Size (1991)**

	Community Population					Total
	135 - 18,000	21,500 - 60,000	62,000 - 89,000	90,000 - 170,000	177,000 - 2,500,000	
<b>Yes</b>						
n	8	9	8	13	13	51
%	53.3	60.0	66.7	76.5	86.7	68.9
<b>No</b>						
n	7	6	4	4	2	23
%	46.7	40.0	33.3	23.5	13.3	31.1
<b>Total</b>						
n	15	15	12	17	15	74
%	100.0	100.0	100.0	100.0	100.0	100.0

The types of courses taken by investigating officers varied considerably with over 70 specific courses being mentioned. In order to facilitate data analysis, the specific courses were grouped into 11 more general categories which provided the basis for comparison by community size. Overall, the most commonly reported type of course was General Investigation with 18%. Courses in this category may or may not have included child abuse and child sex abuse as an area of study. The next most common category was Child-Abuse Courses which accounted for 17% of the 117 courses that were taken by the 51 officers who reported receiving courses. Analysis by community size demonstrated some interesting findings.

First, in terms of child abuse courses, officers from the smallest communities (135-18,000) and midsized communities (62,000-89,000) reported the smallest proportion of this type of course at approximately 5%, compared to over 17% and 27% for the two largest categories of communities. In terms of child sexual abuse courses, a similar pattern was also found. Note that just over 5% of the officers from the smallest community reported receiving courses specific to child sexual abuse compared to over 24% and 15% respectively for officers from the two largest communities. In contrast, it is interesting to note that investigators from the smallest communities more commonly reported receiving formal courses in the area of family violence (11.8%) and victims (17.6%) in comparison with communities of larger sizes (see Table C3, Appendix C).

The sponsors of the courses taken parallel the jurisdictional representation of the respondents of this survey discussed above under officer's profile. The highest proportion of courses (over 28%) were offered by the provincial police colleges in Ontario, Québec, and British Columbia. The next largest group of sponsors was NGOs with over 14% sponsoring courses. In terms of analysis by community size, it appears that investigators from the smallest communities tended to take courses offered by provincial governments and RCMP. Investigators from midsized communities (62,000-89,000) took most of their courses from provincial police colleges and Children's Aid Societies, whereas investigators from the largest population communities took courses sponsored by provincial police colleges, municipal police, and other NGOs (see Table C4, Appendix C).

A case-by-case examination of the courses reported by the respondents indicates that the earliest course which appears to be specific to child sexual abuse ("sexual abuse workshop") was offered by the Ministry of Social Services and Health (MSSH) in British Columbia in 1982. The number of courses specific to child sexual abuse increased significantly in 1988 in conjunction with the proclamation and coming into force of child sexual abuse legislation under Bill C-15 with courses being offered by the Federal Department of Justice, the Institute for the Prevention of Child Abuse (IPCA), as well as the Ontario Police College. It should be noted that it is probable that the topic of child sexual abuse was introduced within the framework of broader courses on child abuse investigation. Regardless, there is no question that training around Bill C-15 highlighted the issue of child sexual abuse and expanded the number of specialty courses such as "interviewing children" and "videotaping evidence."

The questionnaire also collected information on whether the respondents had received training at any time prior to 1991 in specific areas relevant to investigating child

abuse and child sexual abuse. The first specific area was training for videotaping interviews. The analysis of data indicated that overall approximately 53% of all the investigators received training in this area. In terms of community size, investigators from the largest communities (177,000-2,500,000) were much more likely to receive training in this area with over 73% reporting they had received training on videotaping interviews compared to 47% of those from the smaller communities. The second specific area was techniques for interviewing children. Overall, approximately 69% of the respondents indicated they had received training in this area. Analysis by community size indicated that investigators from the largest category of communities were much more likely to receive training in this area with approximately 87% reporting having received training compared to 53% to 75% for communities of other sizes.

The third area involved training in the use of aids for interviewing children. Overall 55% of the total sample indicated they had received some training in this area and the distribution between various communities ranged from 40% for moderately sized communities (21,500-60,000) to approximately 67% for midsize communities (62,000-89,000) and the largest communities.

In terms of training in the use of sexual assault kits, analysis indicated that there was less variation in this area with 50 to 60% of investigators from all the communities reporting having received training some time prior to 1991. Next, investigators from the largest communities and the smallest communities reported the highest level of training regarding court preparation at 53%, compared to approximately one third of the officers for the rest of the communities. Analysis of whether the investigators received training on multi-victim investigations clearly indicated that investigators from the largest communities were much more likely to receive training in this area with 40% indicating they had received training compared to 17% to 27% of the investigators from the other sized communities reporting having received training in this area. A similar pattern was also determined for training in ritual abuse. Over half of the investigating officers from the largest communities reported receiving training in this area compared to 24% to 27% of the investigators from other communities (see Table C5, Appendix C).

#### **4.4 Special Child Abuse Investigation Unit**

As Table 4.2 indicates, overall just over one-half of the respondents indicated that their police agency had a separate child abuse investigation unit by 1991. In terms of analysis by community size, the data indicate that only 20% of police agencies in the smallest communities (135-18,000) had separate child abuse investigation units compared with approximately 50% for communities ranging from 21,500 to 89,000 in population. The two largest categories of communities reported that 75% and 60% of the police agencies, respectively, had separate child abuse investigation units.

**TABLE 4.2**  
**Separate Child Abuse Investigation Units by Community Size (1991)**

	Community Population					
	135 - 18,000	21,500 - 60,000	62,000 - 89,000	90,000 - 170,000	177,000 - 2,500,000	Total
<b>Yes</b>						
n	3	8	6	12	9	38
%	20.0	63.3	50.0	75.0	60.0	52.1
<b>No</b>						
n	12	7	6	4	6	35
%	80.0	46.7	50.0	25.0	40.0	47.9
<b>Total</b>						
n	15	15	12	16	15	73
%	100.0	100.0	100.0	100.0	100.0	100.0

The respondents were also asked if they had access to front-line specialists in the child abuse area. The results indicated that almost all of the police organizations represented in the study had access to specialists by 1991; however, again the lowest proportion of police agencies having access to front-line specialists was found in the smallest community category where 80% reported having this resource. In the three largest community categories, all (100%) reported having access to front-line specialists (see Table C6, Appendix C).

#### **4.5 Organization Policies and Protocols**

Respondents were also asked questions about their organization's policies and protocols that were in place in 1991. Overall, over three-quarters of the respondents indicated that by 1991 their agencies had written policies for dealing with child abuse cases. Interestingly, the group with the lowest proportion was agencies in the largest community group, where only 60% reported having written policies, in comparison with 80% for agencies in the two smallest community categories (see Table C7, Appendix C).

In terms of written protocols for police dealing with child protection agencies, overall almost 90% of the agencies reported having such protocols in 1991. Agencies from the midsized communities (62,000-89,000), which were mainly small municipal police forces, recorded the lowest percentage having protocols for dealing with child protection agencies (i.e., 75%). All of the agencies in the largest community group reported having written protocols by 1991 (see Table C8, Appendix C).

The respondents were also asked whether they, as child abuse investigators, had a good working relationship with other professional groups. Overall, most respondents reported on average that they had good working relationships with medical professionals, child protection workers, community workers, and Crown attorneys. Further, there was little variation among communities (see Table C9, Appendix C).

Respondents were also asked whether their organizations had inter-agency child abuse committee meetings in 1991. As Table 4.3 indicates, overall just over 50% reported having interagency child abuse committee meetings. There was, however, considerable variation by community size. Respondents from the smallest communities

reported that only 40% of their agencies had such committee meetings, and respondents from the second smallest communities (21,500-60,000) indicated only 27% had interagency child abuse committee meetings, compared to 73% for the respondents from the largest community category. Interestingly, however, in the second largest community category (90,000-170,000), respondents indicated that just over 40% of their agencies have these meetings.

**TABLE 4.3**  
**Interagency Child Abuse Committee Meetings by Community Size (1991)**

	Community Population					Total
	135 - 18,000	21,500 - 60,000	62,000 - 89,000	90,000 - 170,000	177,000 - 2,500,000	
<b>Yes</b>						
n	6	4	10	7	11	38
%	40.0	26.7	83.3	41.2	73.3	51.4
<b>No</b>						
n	9	11	2	10	4	36
%	60.0	73.3	16.7	58.8	26.7	48.6
<b>Total</b>						
n	15	15	12	17	15	74
%	100.0	100.0	100.0	100.0	100.0	100.0

Those respondents from police forces that had inter-agency committee meetings (n=38) were also asked a series of questions about who attended the interagency meetings. Overall, over 70% reported having Crown attorneys at these meetings. In terms of community size the smallest communities reported only 50% had Crown attorneys attend compared to 100% for communities 21,500-60,000 in population and communities 90,000-170,000 in population. The second group of professionals the respondents were asked about was child protection workers. Overall, over 97% of the meetings involved child protection workers. Respondents from the four larger community groups indicated that 100% of the meetings involved child protection workers, while the respondents from the smallest community group indicated that child protection workers were present in over 80% of the meetings. The investigators also indicated that community workers frequently attended these meetings. Overall, they were reported as having attended over 80% of the meetings. In terms of variation by community size, respondents from the largest community group reported that community workers attended 100% of these meetings compared to a low of 57% reported by investigators from communities 90,000-170,000. Medical professionals attended these meetings less frequently. Overall 63% of the respondents indicated that medical professionals attended these meetings. Attendance of medical professionals varied from a high of 100% for communities 21,500-60,000 to a low of 40% for communities 62,000-89,000 (see Table C10, Appendix C).

#### **4.6 Investigative Techniques and Facilities**

The questionnaire also contained a series of questions about what investigative techniques were currently being used in 1991 by the respondents' police agency, as well as a series of questions about what facilities and equipment were available at the agency. In terms of investigative techniques overall, 58% of the respondents indicated

that they used videotaping of interviews of child sexual abuse victims. The proportion of police agencies using videotaped interviews varied only slightly with respondents from four of the community groups indicating that it was used in approximately two-thirds of the departments. Only respondents from communities 62,000-89,000, which were mainly small municipal police forces, indicated lower use at 33%. Audiotaping the initial interview of the child victim was used less frequently. Overall, just over 50% of the respondents indicated using this technique which ranged from a low of 40% for the largest community group to a high of over 66% for communities 21,500-60,000. Respondents were also asked about the use of audiotape in the initial interview of the non-offending parent. The findings indicate that overall this was seldom used in comparison with the other techniques since only slightly over 12% indicated they used this technique. The lowest use of this technique (approximately 6%) was in the two largest community groups and only respondents from midsized communities (62,000-89,000) reported significantly higher use at 33% (see Table C11, Appendix C).

Results from the questions regarding the facilities available to the police agency, contained in Table 4.4, indicate that overall approximately 38% of the agencies had a special room for interviewing children in 1991. The availability of this facility varied considerably, however, for agencies in communities of different size. In general, agencies in larger communities were more likely to have this facility than agencies in smaller communities. Only 20% of the agencies in the smallest category of community reported having this facility compared to 47% the agencies in the two largest categories of communities. Further, as Table 4.4 also indicates, police agencies overall were more likely to have videotape equipment than a special room, since almost 50% of the respondents reported their agencies had this facility in 1991. However, again there was considerable variation by community size and police agencies in the largest communities were much more likely to have access to videotaping equipment, with 80% reporting having the equipment, than police agencies in the smallest communities which reported only approximately 27% had videotaping equipment at that time.

**TABLE 4.4**  
**Police Facilities for Interviewing Children by Community Size (1991)**

		Community Population					
		135 - 18,000	21,500 - 60,000	62,000 - 89,000	90,000 - 170,000	177,000 - 2,500,000	Total
<b>Room for Interviewing Children</b>							
<b>Yes</b>	n	3	5	5	8	7	28
	%	20.0	33.3	41.7	47.1	46.7	37.8
<b>No</b>	n	12	10	7	9	8	46
	%	80.0	66.7	58.3	52.9	53.3	62.2
<b>Total</b>	n	15	15	12	17	15	74
	%	100.0	100.0	100.0	100.0	100.0	100.0
<b>Videotape Equipment</b>							
<b>Yes</b>	n	4	5	5	10	12	36
	%	26.7	33.3	41.7	58.8	80.0	48.6
<b>No</b>	n	11	10	7	7	3	38
	%	73.3	66.7	58.3	41.2	20.0	51.4
<b>Total</b>	n	15	15	12	17	15	74
	%	100.0	100.0	100.0	100.0	100.0	100.0

## 4.7 Summary

This chapter of the report presents an analysis of data from a survey of front-line police (n=80) regarding their experience and training in investigating child abuse cases which was conducted in early 1991 for the Canadian Police College (CPC) and the Canadian Association of Chiefs of Police (CACCP) by O'Sullivan and Roberts. Analysis of the data was somewhat limited because many of the questions tended to group child sexual abuse with child abuse in general rather than distinguishing between the two. The findings, however, suggest that approximately half of the cases involving children investigated by the respondents were child sexual abuse cases. The data were analyzed by community size in order to see if there were any systematic differences. The findings of this data analysis provided a detailed picture of the state-of-the-art of child abuse and child sexual abuse investigation by police up to 1991. Findings are summarized below.

### Officer Experience

- Police investigators from the smallest communities tended to report the highest average number of years experience in investigating child abuse cases (7 years).
- Police investigators from the two largest categories of communities reported the lowest average number of years experience in investigating child abuse cases (3 and 4 years).
- There was a broad range in the total number of child abuse cases ever investigated by the police officers, ranging from 2 to 700. The average number of child abuse cases ranged from a low of 44 for investigators from the smallest

communities to a high of over 160 for investigators from the larger communities up to 1991.

### Officer Training

- Overall, approximately two-thirds of the police officers reported in 1991 that they had received formal training in child abuse investigation.
- The percentage of officers having received formal training increased as the size of the community increased: 53% of the investigators from the smallest communities received training compared to 87% of the investigators from the largest communities.
- Overall, 51 investigators reported having taken 117 courses prior to 1991.
- Approximately 17% of the courses were general child abuse courses and the percentage of investigators receiving these courses increased with community size. The two smaller community categories recorded approximately 5% having taken courses in this area compared to 27% for the second largest category of community.
- Approximately 15% of the total courses mentioned were categorized specifically as child sexual abuse courses. The breakdown by community size indicated that the percentage of investigators who reported receiving child sexual abuse courses increased with community size ranging from a low of 5% for the smaller communities up to 24% for the second largest community.
- An examination of the courses reported by the respondents indicated that the earliest sexual abuse course/workshop was reportedly offered by the British Columbia Ministry of Social Services and Health (MSSH) in 1982. The number of courses specific to child sexual abuse increased significantly in 1988 in conjunction with the child sexual abuse legislation Bill C-15 coming into force. Training concerning Bill C-15 highlighted the issue of child sexual abuse and expanded the number of specialty courses such as interviewing children and videotaping evidence.
- Investigators from the largest communities were much more likely to receive training in the area of videotaping interviews (73% reported receiving training) than investigators from the smaller communities who reported that 47% received training in this area.
- Approximately, 87% of the investigators from the largest communities reported having received training in the area of techniques for interviewing children compared to 53% to 75% for communities of other sizes.
- Overall, 55% of the total sample of investigators indicated they received some training in the use of aids for interviewing children; however, there was not a great deal of variation by community size.

- Overall, 50% to 60% of all investigators from the various communities reported receiving training in the use of sexual assault kits.
- Although the overall percentage of investigators who reported receiving some training on multi-victim investigations was not high (25.7%), investigators from the largest communities were much more likely to receive training in this area since 40% indicated they had compared to 16% to 26% of investigators from smaller communities.

### Special Child Abuse Investigation Unit

- By 1991, only 20% of police agencies in the smallest communities had separate child abuse investigation units compared to 75% and 60% of the police agencies from the two largest categories of communities.
- Generally, front-line specialists were available to most of the investigators in 1991; however, the three largest community categories all reported that they had access to specialists compared to 80% of those investigators working in the smallest communities.

### Organization Protocols

- Overall, almost 90% of the agencies reported having written operational protocols for dealing with child protection agencies by 1991. Agencies from the midsize communities (62,000-89,000) with mainly small municipal police forces, recorded the lowest percentage having protocols for dealing with child abuse agencies at 75%.
- 40% of the investigators from the smallest communities reported that they had inter-agency child abuse committee meetings by 1991 compared to 73% of the respondents from the largest community category.
- For those who had inter-agency meetings, most involved child protection workers (97%), Crown attorneys (70%) and community workers (80%); however, medical professionals were less frequently involved (63%). There was little variation by community size except for involvement of community workers and medical professionals.

### Investigative Techniques and Facilities

- The use of video interviews varied only slightly with police respondents from four of the groups indicating that it was used in approximately 60% of the departments. Only investigators from communities with populations of 62,000-89,000 with mainly small municipal police forces indicated lower use at 33%.

- Overall, just over 50% of the investigators indicated use of audiotaping of the initial interview with child victims. This use ranged from a low of 40% for the largest community group to a high of over 66% for communities 21,500-60,000.
- Audiotaping the initial interview of the non-offending parent was used seldom in comparison with the other techniques since only slightly over 12% of respondents indicated use of this technique.
- Police forces in the larger communities were more likely to have special rooms for interviewing children than departments in smaller communities. Only 20% of the police agencies in the smallest category of communities reported having this facility compared to 47% of the agencies in the two largest categories of communities.
- Police agencies overall were more likely to have videotaping equipment than a special room since almost 50% of the respondents reported their agencies had this facility by 1991. However, there was considerable variation by community size and police agencies in the largest communities were much more likely to have access to video equipment (80%) than police agencies in the smallest communities (27%).

## **5.0 CASE STUDIES OF POLICE EXPERIENCES, TRAINING AND ORGANIZATIONAL SUPPORT FOR INVESTIGATING CHILD SEXUAL ABUSE**

### **5.1 Introduction**

This section of the report presents an analysis of interview data from police officers (n=11) who had experience investigating cases of child sexual abuse, as well as an analysis of documents, policies, directives, and training materials regarding the investigation of reports of child sexual abuse from four police organizations: RCMP; Toronto Police Service; London Police Service; and Timmins Police Service. Unfortunately, this analysis is limited by both the small number of organizations that agreed to participate in the study and the number of police officers with historical experience whom we were able to contact and interview. Thus, a case study approach was employed.

#### **5.1.1 Methodology**

Initially, the RCMP, three large municipal police forces, and five small police agencies were asked by a letter to the Chief to become involved in the study. As indicated above, the RCMP, two of the three large municipal police organizations and one of the five small police organizations agreed to participate. In most cases, the organizations that did not become involved indicated that the timeline was too tight and/or they did not have the resources to commit to collecting the necessary historical information.

The police officers who were interviewed were all referred by three of the four police agencies that chose to become involved with the study. An interview protocol was developed which collected information on: the officer's experience in child sexual abuse cases; training; and characteristics of their police organization (see Appendix A). The interview data are critical in providing a picture of what the actual practice of police was in comparison with official organization policy. Below, both the analysis of interview data and the analysis of documents are presented by specific police agency.

### **5.2 Case Study #1: Toronto Police Service**

Toronto Police Service provided CRILF with a binder of documents including written protocols and policies, as well as contact information on four police officers (including one retired) who had historical experiences in the investigation of child abuse and child sexual abuse cases. All of these individuals were interviewed.

## 5.2.1 Police Experience and Practice (Interview Data)

### Experience

In terms of experience investigating child abuse and child sexual abuse cases, the officers interviewed all began investigating these types of cases in the 1980s, ranging from 1980 to 1989 and they spent at least five years conducting these types of investigations. As a group, they were responsible for investigating over 1,300 cases of child abuse during this time period and well over half of these cases were child sexual abuse cases. Less than 10% of the cases they investigated would be categorized as historical child abuse cases. Multi-victim/multi-offender (MVMO) cases were very rare (i.e., most officers could remember one or two cases) and the officers described them as being very difficult.

### Training

In terms of training, all of the police officers reported having received at least one formal course which at a minimum included topics relevant to child sexual abuse within the year that they first began investigating child sexual abuse cases. The earliest course reported was a child sexual abuse workshop offered by the Toronto Police College in the early 1980s. This was followed by a detailed child abuse/child sexual abuse investigation course (designed by one of the respondents) and offered by the Toronto Police College in 1987. This course soon became a prerequisite for officers conducting child sexual abuse investigations and in the early 1990s the number of courses and seminars available expanded considerably.

In terms of the areas in which the respondents reported having received some type of formal training, all (except the officers who moved out of this area prior to 1990) reported having received training in the area of videotaping, sexual assault kits, court preparation, multi-victim investigations, and ritual abuse. All the respondents reported receiving training in techniques for interviewing children and the use of anatomically correct dolls.

### Organizational Support

In terms of organizational support, there were more than 17 different divisions of the Toronto Police Service during the timeframe of the study and resources, as well as names for special units, varied by divisions over time. Thus, differences between the respondents may be a result of where they were stationed.

The first special unit whose mandate included child sexual abuse appears to have been set up in the mid-1970s to early 1980s (depending on the division and respondent) and was called the "Youth Bureau" initially and later was called the "Family Services Division." More recently, in the mid-1980s, a centralized "Sexual Assault Squad" was established which did not replace the division-based "Family Services Division," but rather provided a centralized resource (of approximately 25 members) to investigate the more complex cases.

The first use of interagency committees was identified as being in 1989 and the respondent indicated that the following professionals are now involved in interagency committees: police investigators and supervisors; crown prosecutors; child protection workers; medical professionals; community workers; school boards; victim advocates; and women's centres.

In terms of resources and techniques, respondents indicated that videotaping interviews of young sexual abuse victims began in the late 1980s to the early 1990s. Audiotaping was used earlier from 1980 to the mid-1980s. Two of the respondents used audiotaping of non-offending parents (two did not) beginning as early as the mid-1980s. A room suitable for interviewing children was made available either at the police division and/or by the Children's Aid Society in the late 1980s to early 1990s.

### Milestones

The respondents were asked to indicate any "milestones" that they recognized as being important to the development of child sexual abuse investigations and prosecutions. Most referred to the following:

- The establishment of a special committee on child abuse in 1981 and the subsequent interagency protocol in 1983;
- The importance of the child sexual abuse legislation brought into force with Bill C-15 in 1988; and
- The use of videotaping interviews with child victims (part of Bill C-15).

#### 5.2.2 Formal Protocols and Training Requirements

The documents provided by the Toronto Police Service can be grouped under three types: formal interagency protocols; internal agency procedures; and training requirements.

### Interagency Protocol (1983)

The first interagency protocol was the "Child Sexual Abuse Protocol" developed by the Metropolitan Chairman's Special Committee on Child Abuse and was signed in November 1983 between: Metro Toronto Police Department; Children's Aid Society of Metro Toronto; Catholic Children's Aid Society of Metro Toronto; and Jewish Family and Child Services of Metro Toronto (the protocol also states that the Office of the Crown Attorney and, to a lesser extent, the Probation and Parole Services of the Ministry of Correctional Services were involved in negotiations). The Special Committee was established in October 1981 and quickly recognized the problem with the police and child welfare operating in isolation with frequently conflicting philosophy and practice, often leaving child victims in limbo. Thus, they established guidelines and procedures for a co-ordinated response to child sexual abuse in Metro Toronto. The following principles of the protocol were agreed to:

- Children reporting sexual abuse should be presumed to be telling the truth and bear no responsibility for their involvement, regardless of time or circumstances (the commentary following the principle reflects on the fact that effective response to child sexual abuse has been hampered by the myth that children fantasize about sexual encounters with adults and that if sexual activity occurs, the child is usually provocative or an eager participant);
- The use of a child by an adult for sexual purposes is an abusive and criminal act which should be investigated and prosecuted as such (no adult who molests a child should be exempt particularly by virtue of familial relationship);
- Conviction of offenders is not enough. Without appropriate treatment of the offender, the risk of re-offence remains high;
- Effective response requires the full co-operation and co-ordination of all systems. Specialization of core personnel is necessary to promote sensitivity, consistency and collaboration;
- Following disclosure of sexual abuse, the child victim and adult offender should be separated immediately. In intra-familial situations, every effort should be made to remove the offender from the home, rather than the child (the majority of sexual abuse cases are not prosecuted criminally and the ability to restrict the movements of offenders has been limited);
- Attention must be given to the development of specialized crisis and treatment services for the child victim and non-offending family members (at the time, the only places able to provide crisis support were the Hospital for Sick Children and the York-Finch Hospital – the Children’s Aid Society (CAS) fills the “gap” but was often over-extended with the investigation); and
- Early detection and prevention provide the ultimate key to ending the destructive consequences of child sexual abuse.

The protocol assumed that each member (i.e., police, CAS, crown) had a child sexual abuse specialist who handles most of the work on child sexual abuse investigations for the particular organization.

Specific aspects of the protocol included the following regarding interviews, support persons, or other matters.

#### Interviews:

- Interviews of children are to be conducted jointly between the police and CAS;
- interviews of children should be audiotaped in all cases and videotaped where circumstances permit;

- child should be offered opportunity to have support person in interview (although preferable to interview child alone);
- age-appropriate language should be used in the interview as well as anatomically correct dolls, drawings, etc.; and
- the team should proceed on the assumption that a child's report warrants a full investigation.

#### Support Person:

- the committee felt a support person should be designated for the child victim;
- the purpose of such a person is to: (1) ensure the child is given ongoing emotional support and case advocacy; and (2) perform a case management and monitoring function;
- in intra-familial cases, the support person should be the CAS sexual abuse specialist; and
- in extra-familial cases the support person is to be designated on a case by case basis.

#### Further Investigation and Other Matters:

- non-offending parent should be interviewed immediately and the interview audiotaped or reduced to a written statement;
- if the child has siblings, they should be interviewed as well;
- CAS should not be involved with the suspect interview;
- after interviews, the CAS specialist should begin a psycho-social assessment of the child and family and develop a case management plan; and
- the police specialist should notify the specialized Crown Attorney of the case at the earliest opportunity.

#### Revised Interagency Protocol (1994)

In 1994 a revised protocol was signed which included more signatories (i.e., certain government ministries and boards of education). This appears to be the third version (it appears there was a new version of the protocol in 1986 but we weren't given a copy).

This revised protocol was extremely comprehensive, addressing not only the various roles of agencies involved in a case of child sexual abuse but also acting as an informative resource, providing detailed information, for example, on types of offenders

and interview techniques. The scope of the protocol is large, covering topics ranging from the initial interview with the child to criminal proceedings to reintegration of the offender into the family.

The protocol is very detailed and provides appropriate responses to various scenarios where child abuse may occur (i.e., if the disclosure is made in the context of a custody and access dispute, if the disclosure is made by a native child, where the alleged offender is a child himself or herself).

Interview:

Approaches to interviewing children are suggested, including the “Stepwise Interview” developed by John Yuille. The child should be offered the comfort of a support person. The interview should be conducted by the police or CAS worker, depending on expertise and experience. The use of demonstrative tools (i.e., dolls and drawings) is addressed as potentially useful in an interview. Methods of analyzing the disclosure (statement validity analysis, professional judgement) are addressed.

The protocol indicates that interviews should be videotaped unless circumstances dictate otherwise. Other options included taking notes and audiotaping. Interviews of non-offending parents should be conducted immediately. The interview should be reduced to a written statement and signed as soon as possible. Interviews should also be conducted with siblings and any witnesses with the use of videotape or audiotape.

Some other information contained in the protocol is as follows:

- CAS worker should consider referring victim and family to Crisis Support Group Program run by the special committee on child abuse.
- There is a section of the protocol on multiple victim investigations with attention given to the special issues that arise in those types of situations.
- Instruction is given with respect to the interview of the alleged offender including information on types of offenders (e.g., emotionally dependent and angry retaliators).
- Some attention is given to available treatment centres and support programs for the child and the family. The Child Victim-Witness Support Program is one such organization mentioned. This is a group run by the special committee, the aim of which is to provide information and support to children who are expected to testify in criminal proceedings and to their allied parent.
- The CAS worker is to act as a support person for the child during the investigation.
- There is also information about reintegration of the offender into the family.

## Designated Personnel:

This protocol focuses on the use of “designated personnel” (DP) to conduct investigations and other matters, and include a DP from the police force, CAS, crown and probation officers. The DP usually has special training and advanced skills in investigating, prosecuting or working with offenders. There are listed areas for which the DP’s should have knowledge of (indicators of abuse, legislative information, etc.) and an ideal skill set outlined.

The Suspected Child Abuse and Neglect (SCAN) Program at the Hospital for Sick Children is also mentioned in the protocol. This unit has been providing care and treatment for families in crisis as a result of abuse since 1973 and was comprised of two paediatricians and a general practitioner, three social workers, an art therapist, a nurse, a program coordinator, a consulting psychiatrist, and legal consultant. Assistance is available through this program to child victims and their families, as well as adolescent perpetrators and adult perpetrators whose children are involved in the program. Due to an increase of reported abuse and referrals, in 1992, the hospital developed a Sexual Abuse Care Team (SAC Team) to respond to the needs of children where there is suspicion of sexual abuse in the very recent past.

There is mention in the introduction to the protocol of the need to implement ongoing training and support for the use of the protocol for all of the organizations involved. The committee recognized that the implementation of this protocol needed to be different and that past efforts were not successful in facilitating the integration of the protocol into each organization, one of the reasons being that no plans for ongoing training and support were created for the use of past protocols. The “one shot training” as previously provided for protocols would no longer be appropriate, given that the number of professionals working with the protocol has expanded into the hundreds. A need for ongoing review, monitoring and accountability for the protocol’s implementation was also expressed.

## Revised Agency Protocol (2006)

In 2006, the protocol was again revised. At this time there were a few new signatories to this protocol, including the Child Care Advisory Committee of Toronto, the Native Child and Family Services, the Toronto Child Abuse Centre and Toronto Children’s Services. There are 16 signatories in total. The protocol states the “best practices” for joint investigations. The principles of this protocol are as follows:

- all children have the right to a safe, nurturing environment in which to grow to their full potential, free from violence, abuse and neglect;
- all children who have experienced or witnessed abuse will be treated with dignity, respect and care;
- all actions taken will be in the best interest of the child;

- joint investigations are in the best interest of the child and will be the starting point for all child abuse investigations;
- the fundamental principle of joint investigations is that decisions are made together through a consultative process and that a plan for investigation is developed;
- the child's developmental level will be taken into account throughout the entire investigative process;
- training and ongoing professional development are critical to positive investigative outcomes; and
- investigators should proceed on the assumption that a child's disclosure warrants a full investigation.

Implementation and review of the protocol is to be conducted by protocol implementation groups, with the expectation that members of the various groups involved with the protocol will meet on a regular and on-going basis to discuss and assess the protocol's effectiveness. The protocol provides information on the following topics:

- the team (police officer, CAS member);
- responding to the initial report from the community (dependent on who is the alleged offender – a person in a position of trust or authority over the child (or not), or a CAS/Police);
- procedure for initial stages of the investigation (interview should be conducted in a child friendly environment, the team should see the child together as soon as possible);
- investigative interviews (interview jointly, support person available, should interview other witnesses – videotape best practice, police officer should conduct interview of alleged offender, team should consult following interview);
- medical situations;
- video recording investigative interviews (all interviews of alleged victims should be video recorded, if not video then audio);
- MVMO investigations (where more than branch of CAS is involved, a Team leader will be designated from the branch with the most victims);
- investigations in school or a child care setting;
- immediate protection of the child;

- child protection proceedings;
- support services (Child Victim-Witness Support Program at the Toronto Child Abuse Centre); and
- criminal proceedings.

This protocol, while comprehensive is more concise than the previous protocol; any “extra” information contained (i.e., on offences or procedures for video recording) is provided in the Appendix. There is no mention of designated personnel in this protocol.

### Internal Agency Policy and Procedure Manual

The first internal agency Policy and Procedure Manual written for Toronto Police Service investigators for child abuse (which included sexual abuse) was created in 1997. Changes were made to the Policy and Procedure Manual thereafter in May 1998, December 1998, March 2003 and September 2006.

In 1997, there were separate Procedures for child physical and sexual abuse. The Procedure dealt with things like “investigations on school premises” and outlines the roles of the police officer, officer in charge, designated investigator (specially trained for child sexual abuse investigations – must have taken the Sexual Assault/Child Abuse Investigators (SACA) Course) and unit commander. The Procedure provided for some initial work to be done by the police officer (brief interview of complainant, provide victim with medical attention, secure crime scene). The designated investigator was responsible for the balance of the investigation including notifying CAS, conducting a team (police/CAS) interview with the victim and ensuring the victim is examined by a doctor. With respect to the interview, the investigator was to videotape or audiotape where the circumstances permit, offer to have a support person outside or inside the room during an interview and invite the victim (or allied parent) to complete a Victim Impact Statement. There was a Child Witness Support Program for court preparation and a Victim/Witness Assistance program for court support in place at the time.

The Procedure required consultation with CAS throughout the investigation and contact with the Crown Attorney with respect to advising on the facts of the case. There was a specific “child abuse co-ordinator” in the Community Policing Support Unit (CPSU) whose job was to monitor all child abuse occurrences, assist investigative personnel and liaise with external agencies.

The procedure for physical abuse investigations was essentially the same as that for child sexual abuse investigations except that in a physical abuse investigation joint investigations are not always required (although CAS must be notified). It was left to the investigator to determine whether a joint investigation was needed.

On May 29, 1998, separate procedures for child physical and sexual abuse were completed. These were the same as the 1997 procedures.

In 2003, a Youth Crime Investigation Procedure for investigating crimes alleged to have been committed by youth was also developed (no specific information regarding child sexual abuse was included – there was reference to a “child in need of protection” but the procedure just speaks to the need to contact the CAS with respect to these types of cases).

In 2006, the Procedure was again revisited. This single Procedure now sets out responsibilities of police officers during a child abuse investigation (which includes child physical and child sexual abuse), as well as the duties of the supervisor, designated investigator and officer in charge. Reference is made to other protocols or procedures which must be followed during the course of a child abuse investigation including the “Protocol for Joint Investigations of Child Physical and Sexual Abuse: Guidelines and Procedures for a Co-ordinated Response to Child Abuse in the City of Toronto (2006),” the Toronto Police Service Criminal Investigation Manual and, where applicable, the Ontario Major Case Management Manual.

There is some discussion of conducting investigations on school premises and the requirement of a “team” approach (police and CAS) to investigating most child abuse matters (i.e., where the circumstances could include a violation of the *Criminal Code* and render the child in need of protection).

A new feature of the 2006 Procedure is the reference to using a non-uniformed child abuse investigator if possible.

The first police officer is responsible for the safety and well being of the victim, offender management and preservation of evidence at crime scene. Specifically, they must:

- interview victim briefly;
- ensure victim receives medical attention if necessary;
- secure scene and preserve evidence;
- request attendance of supervisory officer;
- notify Officer in Charge and request that he/she notify a designated investigator;
- notify CAS;
- enter the appropriate information into an eCOPS report in consultation with the designated investigator (this is a new procedure); and
- where reasonable grounds exist, lay charge.

The supervisory officer is responsible for the quality and thoroughness of the uniform response. Specifically, to:

- attend scene; and
- ensure sufficient resources for officer.

The designated investigator's responsibilities included ensuring the needs of the victim are met, effective management of the crime scene, including gathering evidence, and ensuring a thorough and comprehensive investigation. Upon being notified of a suspected case of child abuse that indicates child abuse cannot be ruled out, the investigator must:

- consult with sex crimes unit;
- notify CAS;
- arrange to have victim's injuries, scene and/or evidence photographed;
- confer with CAS worker where reasonable grounds exist to believe that the child is in need of protection; and
- conduct a unified search (including CPIC).

Other duties of designated officer:

This officer is in charge of organizing the investigation and must consider the need to interview other witnesses, whether the alleged abuse fits the definition of a major crime and the past conduct of the suspect towards children. He/she must also ensure that the victim is given medical attention (if there is alleged penetration or other concerns, the victim must be examined by a doctor as soon as possible).

When conducting an interview of the victim/witness:

- conduct a team (Police/CAS) interview if appropriate;
- try to ensure interview is electronically recorded;
- try to ensure a neutral setting in a child friendly facility – names of facilities are listed (include CAS, Hospital for Sick Children, Gatehouse Child Advocacy Centre, etc.);
- offer to have support person in room or accessible (support person must be advised that he/she could be a witness); and
- encourage victim to complete a victim impact statement.

More duties of the designated officer in charge:

- conduct interviews of other witnesses and alleged offender;

- take appropriate action if team determines victim is in need of protection;
- assess risk to other children (with CAS);
- consider adding conditions when laying a charge (i.e., no contact with victim);
- refer victim to Child Victim Witness Support Program for court preparation;
- speak to Crown Attorney before accused's first appearance; and
- complete and submit a ViCLAS booklet.

The Officer in Charge is responsible for ensuring an appropriate consistent response, and in the absence of a detective sergeant, an appropriate investigative response.

The Procedure includes an excerpt from the Child and Family Services Act defining the duty to report child in need of protection (the introduction to the protocol identifies that this edition of the protocol incorporates changes made to the Child and Family Services Act effective in 2000 and reflects a number of systemic changes in the child welfare system that have occurred since 1995).

The 2006 procedure is not significantly different from the 1997 procedure. It is essentially just more detailed.

#### Toronto Police Course Training Standard – Sexual Assault Child Abuse Course, 2006

Currently, the following topics are outlined in the Toronto Police Service Course Training Standard Manual and are taught in the sexual assault/child abuse course:

- victim;
- interviewing the victim;
- false allegations;
- sexual assault procedure;
- crime scene management;
- sexual assault evidence kit;
- sexual assault care centre;
- multilingual community interpreter services;
- legal issues – *Criminal Code*;
- forensic identification services;
- centre of forensic sciences – biology/toxicology;
- DNA;
- offender typologies/behaviours;
- ViCLAS;
- introduction to behavioural assessment;
- high risk offenders;
- sex offender registry;
- introduction to major case management and power case;

- protocols, procedures and resources;
- the medical perspective;
- child development and process of disclosure;
- forensic interviewing of children;
- slow motion interview;
- child interviewing of practicals;
- pedophiles, child pornography and the internet;
- child prostitution;
- legal issues – CFSA;
- child death investigations; and
- stress and wellness.

The manual makes a special note of topics taught during the course that include ethics/integrity issues and issues of diversity. This is described as their human relations training component which must be incorporated in all training and education provided by the Toronto Police Service. This information is included because it provides a more detailed description of the course content than listing above.

The core topics that are addressed in the course include:

- necessity of doing a full and complete investigation (guest speaker – a victim of sexual assault recounts her personal experiences and outlines areas that were important to her when she had dealings with police);
- interviewing victim – need to be cognizant of victim’s needs and address him/her in an appropriate manner;
- false allegations – necessity of conducting full and complete investigation before determining a false allegation is stressed (reminded not to make assumptions based on stereotypes);
- review of sexual assault procedure and crime scene management;
- legal issues – necessity of conducting investigations within parameters of case law;
- DNA – lawful methods for collection are discussed;
- ViCLAS – need to complete booklet and submit is stressed;
- High Risk Offenders/Sex Offender Registry – discussion of community notification of high-risk releases;
- Intro. to Major Case Management and Power Case – best practices relating to organization, collection, storage and retrieval of data are discussed;
- protocols, procedures, resources – need for mutual respect in joint investigations;

- medical perspective – emphasizes the need to not jump to conclusions but wait for corroborating scientific evidence;
- Child Development/Forensic Interviewing/Slow Motion Interview – need to conduct interview in an unbiased, open-ended manner and sensitive to the needs of child and family;
- Child Pornography and the Internet – emphasis on “child pornography is images of child abuse,” students are advised of the need to keep investigations on a professional level and to not access websites outside their professional capacity;
- Legal Issues – investigations, court issues, options for testifying in court;
- Child Death Investigations – necessity of conducting full and unbiased investigation; and
- Stress and Wellness – addresses the stress related to continuously conducting these types of investigations, awareness of personal limitations.

Topics that address diversity are:

- Guest Speaker – victim of Asian descent talks about the cultural impact her experience had on her, her family and her community;
- Interviewing the Victim – information regarding conducting interviews while considering culture, sexual orientation, vulnerability and age of victim;
- Multilingual Community Interpreter Services – information provided about this service;
- Child Development – reminder that victims come from all aspects of society and the need to be aware of the victim’s needs;
- Child Interviewing Practicals – children from various schools and mostly recent immigrants to Canada come to the College to assist with interviewing children practicals; and
- Child Prostitution – officers are reminded of the necessity of treating all people equally despite their own biases and perceptions.

The materials also provide an overview of changes in course content over time.

### Changes to Course Topics over Time

#### 1993 and Prior

- nurses from sexual assault centre brought in to talk about the centre and its relevance to sexual assault investigations;

- experts from the Centre of Forensic Sciences brought in to speak about work done at CFS in relation to sexual assault;
- investigators from the Sexual Assault Squad discuss types of predators and how to identify them, as well as interrogation of sex offenders;
- a child death case study was included several times between 1993-1996 by Detective Al Simpson (Ret.) of 14 Division;
- a sexual assault survivor speaks to the students about his/her perspective as a victim/survivor of sexual assault;
- expert scientists from the Centre of Forensic Sciences present information about the examination of evidence in relation to the sexual assault evidence kit, DNA and drug facilitated sexual assault; and
- a stress and wellness component provides students with information on dealing with stress.

### 2001

- detective from Forensic Identification Services discusses resources that the FIS provide to sexual assault investigations;
- actors were brought in to assist with interviewing practicals (actors now play the role of the victim) – this component was removed in 2003 due to logistics and cost; and
- investigative aids such as SCAN, profiling, etc. were brought in for discussion.

### 2002

- the new trend for forensic interviewing (formerly the Yuille method) modelled after Dr. Michael Lamb is taught by staff at the college; and
- dynamics of an investigation of child death as investigated from the Homicide squad.

### 2003

- a detective from the Sex Crimes Unit gives an overview of services provided by the Behavioural Assessment Section that may assist in a sexual assault investigation;
- expert scientists from the Centre of Forensic Sciences present information about the examination of evidence in relation to the sexual assault evidence kit, DNA and drug facilitated sexual assault;

- interviewing and interrogating is made a component of the General Investigative Course which is a pre-requisite for the Sexual Assault Child Abuse Course;
- forensic interviewing now taught by staff from the college and staff from CAS and Catholic CAS (the Lamb/Poole model continues to be used);
- the investigative aids component was incorporated into several other presentations (i.e., forensic identification services, crime scene management, etc.);
- multilingual community interpreter services information added; and
- sexual assault evidence kit instruction on up-to date information regarding its use.

#### 2004

- information on dynamics of child prostitution added to course (instruction given by investigators from the Sex Crimes Unit and survivor of child prostitution speaks about her experience);

#### 2005

- current information on identifying and dealing with high risk offenders (instruction by investigator with sex crimes unit); and
- introduction to major case management and power case.

Information about the structure of the course was also provided in the manual.

#### Current Course Calendar Description

The Sexual Assault Child Abuse course, presented at the Toronto Police College, is 10 days in duration and is for criminal investigators who are currently in an investigative role or about to go into such a role where they may investigate complaints of sexual assault of child physical/sexual abuse and other professionals involved with investigating such complaints.

This course was designed to be consistent with Adequacy Standards<sup>15</sup> for conducting investigations into complaints of sexual assault of child physical/sexual abuse and provides information about current best practices in line with Provincial Adequacy Standards.

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<sup>15</sup> This is the common reference given to Ontario's Regulation 3/99, the *Police Adequacy and Effectiveness Standards Regulation* which addresses the core policing functions prescribed by the *Police Services Act* as necessary to ensure the delivery of adequate and effective police service.

Pre-requisite:

- Accredited Criminal Investigator;
- In a position to investigate or soon in a position to investigate complaints; and
- Recommended that Interview Course and Major Case Management Course be taken prior to attending this course.

Evaluation of student:

- case studies;
- assignments;
- interview practicals; and
- outgoing exam.

The course is also evaluated by the recipients at the end of each component and overall.

### **5.3 Case Study #2: London Police Service**

London Police Service provided CRILF with a copy of the most current *Protocol Between the London Police Service and the Children's Aid Society of London and Middlesex* signed off in February 2006, as well as contact information for two police officers who had historical experience in the investigation of child sexual abuse cases. Both of these officers were interviewed.

#### **5.3.1 Police Experience and Practice (Interview Data)**

In terms of experience in investigating child abuse and child sexual abuse cases, the two officers interviewed began investigating these cases in 1989 and 1990 respectively. Each initially spent approximately two years investigating CSA cases and were responsible for investigating over 350 cases. Between 50% and 75% of these cases were child sexual abuse cases, and in the case of one officer the majority of cases were historical child abuse cases. One officer had no experience with MVMO cases while the second had some of these cases although these cases were very rare.

#### **Training**

In terms of training, both of the police officers reported receiving two courses when they first began investigating CSA cases. The Investigating Child Sexual Abuse Cases courses taken in 1989 were sponsored by Metro Toronto Children's Aid Society (CAS) and Goderich CAS. In 1990, a Focus on Child Abuse course was offered by the Institute for the Prevention of Child Abuse (IPCA) and in 1991 a Child Sexual Abuse course was taken at the Ontario Police College (OPC).

One police officer indicated that coming back into the area of investigating child sexual abuse cases in 2005 required at minimum three major courses to qualify to investigate these cases including: (1) General Investigative Techniques; (2) Sexual

Assault; and (3) Investigating Offences Against Children. All of these are now required by the Ontario Adequacy Standards.

In terms of the area in which the respondents reported having received some type of formal training, the officer who came back to the area in 1995 indicated receiving training in the following areas: videotaping; techniques for interviewing children; the use of aids; sexual assault kit; court preparation; and ritual abuse. The officers who investigated these cases from 1989 to 1990 indicated having received training in the following areas: sexual assault kit; court preparation; and ritual abuse. The Ontario Adequacy Standards were reported to come into effect by 2001.

### Organizational Support

In terms of organizational support, the first special unit for child abuse was set up in the mid-1990s and was called the “Crimes Against Persons Unit.” Later, this unit developed into the “Sexual Assault and Child Abuse Unit.” However, front-line specialists were accessible from the mid-1980s.

The first use of an interagency committee was identified as being in 1990. There was a Child Abuse Review Committee that included the police, Children’s Aid Society, and medical professionals which met monthly to discuss child abuse cases. There were also meetings with the London Family Court Services. Further, the first written protocol began development in the late 1980s and was formalized in the early 1990s.

In terms of resources and techniques, respondents indicated that in the mid-1990s a room suitable for interviewing a child victim and videotaping equipment were made available.

### Milestones

The respondents were asked to indicate any “milestones” that they recognized as being important to the development of child sexual abuse investigations and prosecutions. The following were mentioned:

- Change in the legislation regarding sexual offences (i.e., amendments to the *Criminal Code of Canada* in 1983 and 1988); and
- In the 1990s, there were significant changes such as: videotaping; the child witness project; specialized crown attorneys; a specific unit within the London Police Service; the use of a screen for testimony, as well as the use of closed circuit TV.

#### 5.3.2 Formal Protocol

The document provided by the London Police Service was the most recent *Protocol between the London Police Service and The Children’s Aid Society of London and Middlesex* for the investigation of child abuse allegations signed in 2006. This appears to be a revised version of an earlier protocol signed in 2002.

The following general principles are found at the beginning of the protocol:

- children have a right to be protected from abuse;
- child abuse is a crime and is to be investigated as such;
- all members of a family are affected by child abuse and must be treated by professionals in a manner that is sensitive to their needs;
- every effort will be made to eliminate further victimization of the child by the process of investigation and the criminal justice system;
- for the protection and the well being of the victim, the abuser, rather than the child, shall be removed from the home whenever possible;
- child abuse investigations shall be investigated jointly whenever possible and handled with sensitivity, consistency, collaboration, and co-ordination by skilled and trained personnel of the Children's Aid Society (CAS) and the London Police Service (LPS);
- LPS and CAS will work together co-operatively, share openly all information relevant to the investigation and whenever possible conduct joint investigations;
- MV and/or MO victims may be children in need of protection due to either acts of omission or commission by their parents, therefore the investigation is to be conducted in a manner reflective of both the mandate of CAS and the London Police. These investigations will be conducted jointly because of the difficulty and challenges inherent in this type of investigation; and
- children who suffered from parental maltreatment and are in the care of CAS are children who have experienced the realities of living away from their home and this must be taken into consideration when conducting child sensitive investigations.

### Staffing

Both CAS and the LPS are to have specialized workers trained in child abuse investigations on the job. The LPS must make available the Sexual Assault and Child Abuse Section (SACA) for the investigation of child abuse.

### Responsibilities

The primary responsibility of CAS is to ensure the immediate safety and protection of the child. The primary responsibility of the LPS is to gather necessary evidence for presentation in any *Criminal Code* proceedings. If possible, the CAS will delay contacting the alleged abuser until the police can conduct the interview. CAS and LPS will work together as a team to investigate child sexual abuse cases.

## Referrals

There is a procedure outlined for referral of calls involving child sexual abuse if received initially by CAS (i.e., refer the allegation to SACA of the LPS through the Detective Staff Sergeant) or if received initially by LPS (initial reports of child abuse should be reported immediately to the CAS).

If a uniformed officer responds to the initial report of child sexual abuse, he/she must then refer the allegation to SACA.

## General Procedures

At the point of referral, the police and CAS will determine how to proceed with the investigation and outline the roles and responsibilities of the agencies, including who will conduct the interview. The interview with a child victim is to be videotaped whenever possible. Notes are also to be taken during the interview.

## Response to Various Scenarios

The protocol provides “appropriate responses” by the police to the following scenarios:

- MV and/or MO (at the point of referral, the CAS Intake Supervisor and the LPS SACA Detective Sergeant will agree upon a plan for investigation, the Criminal Investigation Division Commander and the Executive Director of CAS will discuss staffing and media contacts);
- when an alleged victim is a child in the care of CAS (in this case, there will likely be more personnel from CAS involved); and
- when the alleged victim requires medical examination or treatment (this is a situation where the victim presents at a hospital; CAS is contacted).

## Priorities

- allegations of intra-familial abuse where the alleged abuser is still in the home are to be given the highest priority; and
- non-urgent cases are those where the child is not at risk of immediate harm and/or is not presently harmed.

## Videotaping

- whether or not the interview will be videotaped will be determined on a case by case basis with special attention given to the needs and best interests of the child;

- interview may be conducted by either the police officer or CAS as the primary interviewer, depending on the rapport with the child but given the potential use for the videotape in court; the police officer will lead the interview in most cases; and
- CAS and LPS each have the capacity to conduct the interview at their location.

### Meeting

CAS and the SACA are to meet as agreed upon and when required to discuss cases, participate in training and promote a positive joint working relationship.

### Related Procedures

The sexual assault investigation is to be conducted in compliance with the Ontario Major Case Management Manual and the LPS Criminal Investigation Management Plan.

Other policies that may need to be consulted during an investigation: LPS procedures for Bail and Violent Crime; Criminal Harassment; Domestic Violence Occurrences; Child Abuse and Neglect; and Firearms.

Members are to keep apprised of changes to the relevant *Criminal Code* sections.

### Initial Police Response

- minimize unnecessary repetition of facts by victim;
- victims under 12 are to be interviewed on videotape by a member of SACA;
- victims should be interviewed privately if possible, but may have a support person if necessary;
- during initial contact with victim, the officer must explain police procedure, medical investigation, legal process and availability of services of LPS Family Consultant and Victim Services Unit;
- victims who do not wish further police investigation and/or medical examination shall be provided with the Regional Sexual Assault Centre contact information;
- members should not judge the victim's credibility but take the statements at face value and report the information accordingly (gain the victim's confidence by being understanding);
- obtain all relevant information from the victim;
- consider the victim's safety, the preservation of evidence and a medical examination of the victim; and

- if charges have been laid, adult victims are to be referred to the Victim/Witness Assistance Program and child victims (under 18) to the Family Court Clinic, Child Witness Project.

### Crime Scene

The responding officer must secure the scene and/or victim to obtain corroborative evidence if available of hair, fibres, blood, semen, etc.

There is some information provided on how to deal with a sexual assault kit (i.e., check to ensure the kit is sealed before use, tag the kit and place it in the refrigerator, etc.) and how to deal with a victim's clothing.

Where the circumstances dictate, the responding member shall ensure the victim is transported to St. Joseph's Health Centre for treatment and/or forensic examination.

### Sexual Assault Examination (where the adult victim wants to remain anonymous)

- adult victims should be encouraged to have an exam within 72 hours of the assault;
- there is a specific hospital listed (St. Joseph's Health Centre) where the victim should go; and
- hospital staff is to advise the victim of their options following exam: (1) immediate police investigation; or (2) defer immediate police involvement (if this is the case, the hospital staff will call the police communication center and the responding member will attend the hospital to retrieve the kit but will not communicate with the victim).

### Other Information

All sexual assault investigations shall be reassigned to the Sexual Assault/Child Abuse Section, CID for review and further investigation if required.

If there is a high-risk suspect or serial sexual assault offences, consultations should be made with the Detective Superintendent, CID, and the ISU to determine what information and the manner in which the information shall be released to the community.

## **5.4 Case Study #3: Timmins Police Service**

Timmins Police Service provided CRILF with procedures and protocols from 2001 to 2005, as well as contact information for five police officers (one was retired) who had historical experience investigating child sexual abuse cases. All of these officers were interviewed.

#### 5.4.1 Police Experience and Practice (Interview Data)

In terms of experience investigating child abuse cases and child sexual abuse cases, one police officer began investigating these cases in 1985 and the most recent start was 2002. Overall, these investigators were responsible for investigating up to approximately 1,000 cases. Further, they indicated that over 75% to 80% of these cases on average were child sexual abuse cases. Few of these cases, however, (i.e., less than 15%) were historical child abuse cases. Four of the officers indicated that they had investigated cases involving one offender and multiple victims, but none indicated they experienced a true multi-victim/multi-offender case.

#### Training

In terms of training, the officers indicated receiving some training in investigating child sexual abuse cases as early as the early 1980s. The earliest training involved one-on-one training with a well trained CAS worker who received training in the United States. Other early training referred to was in-service mentor training which involved “shadow training” by teaming up with an experienced trainer. The training became more formal in the mid-1990s, when courses were offered by the OPC and IPCA. More recently (i.e., since 2000), training courses have also been offered by the Timmins Police Service and the local CAS.

In terms of the area in which respondents reported having received some type of formal training, the officers (excluding a supervisor who investigated only a few cases) all indicated receiving training in the following areas: videotaping interviews; techniques for interviewing children; sexual assault kits; court preparation; and multi-victim investigations.

#### Organizational Support

In terms of organizational support, the first special unit was set up in the mid-1980s and was called the Youth Bureau until 1993, when it was changed to the Sexual Assault Unit. Front-line specialists were also available from the mid-1980s.

The first use of interagency committees was identified as being in the mid-1990s, when high-risk family or offender cases were discussed by members of police services and child protection workers. Further, a teenage sexual offender (TASO) committee was set up to deal with cases involving teenage sex offenders. This was driven by the CAS and also involved the police. More recently, the Child Abuse Review Team (CART) was set up. At these meetings workers from various agencies came together to conference about difficult cases once a month.

In terms of resources and techniques, the respondents indicated that videotaping began in the early to mid-1990s, when the police also began to make use of a special room suitable for interviewing.

## Milestones

In terms of milestones, the respondents indicated the following:

- in the 1980s the public became aware of the problem of sexual abuse of children;
- in the 1990s more agencies became involved in the response to child sexual abuse;
- videotaping of victims was a breakthrough which helped elicit more guilty pleas;<sup>16</sup> and
- dedicated officers in a specialized unit and better training was a major change.

### 5.4.2 Formal Protocol and Procedures

While the police officers interviewed indicated there was a written operational protocol in the early to mid-1990s, the first formalized procedures protocol appears to have been developed in 2001.

Timmins Police Service Policy #2.34 provides procedural guidance for sexual assault investigations. It was made effective January 1, 2001. The purpose of the procedure was to “establish procedures to ensure that the Timmins Police Service response to complaints of sexual assault is co-ordinated, effective and victim-centred.”

According to the policy, the police were to investigate all complaints of sexual assault thoroughly, lay charges wherever reasonable grounds exist and attempt to assign trained personnel to investigate the complaint. These types of investigations were to be carried out as per the service criminal investigation management plan and the procedures set out in the Ontario Major Case Management Manual.

It was the responsibility of the Chief of Police to develop and maintain appropriate procedures, work together with other service providers to victims of sexual assault and to address training issues.

The following guidelines were given under “police response”:

- Communication Emergency Response Base (CERB) – dispatches personnel (ideally a trained investigator), and advises the complainant to attempt to preserve evidence.

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<sup>16</sup> Interestingly, a recent review of research on videotaping of children’s interviews by Vandervort (2006) concluded that although the results of different studies vary, overall, if properly done, videotaping is positive and may have the effect of obtaining more guilty pleas. Why this occurs is more a matter of speculation as opposed to fact. However, one suggestion is that the accused may experience remorse in viewing the videotape – particularly in intrafamilial cases of child sexual abuse. Another theory is that the defence, in viewing the videotape concludes that the child will be a credible witness, and decides that it is preferable to plead guilty.

- Initial Response – officers were to respond immediately to a report of sexual assault, advise complainant of need to attend hospital (if complaint received within 72 hours of assault or any time if complaint after 72 hours of assault), accommodate victim’s need for support person to attend hospital, warn community if necessary.
- Investigation:
  - interview victim;
  - if able, provide choice as to gender of interviewer;
  - victim may have support person during interview (who may be required to testify);
  - electronic equipment may be utilized with victim’s consent;
  - maintain contact with victim following interview and ensure he/she is in a safe location;
  - lay charges if warranted, if not, consult with crown attorney;
  - advise victim of protection of his/her identity;
  - obtain corroborative evidence (despite that no longer required by law);
  - have victim consider completing an impact statement; and
  - contact OPP if profiling or other investigative strategies are necessary.
- Medical Attention and Evidence Collection – investigating officer must ensure that the Sexual Assault Investigation protocol is followed re: transportation, notification, sexual assault evidence kit, and photographs;
- Disclosures, Referrals and Reporting – officer to follow protocol re: referral to SACC counselling, reports of dated sexual assault or abuse, reports of sexual harassment, third party reports, sexual assault kit storage and information sharing; and
- Child Sexual Assaults – the Children’s Aid Society must be notified and the investigation will proceed according to the protocol between the CAS and Timmins Police.

Policy (2005)

This Policy replaced “all previous policy orders, routine orders and procedures,” effective February 10, 2005. It is intended that the Policy be re-evaluated annually in March.

The purpose of this Policy is the same as the 2001 Policy. The 2005 Policy is slightly more detailed than the former. The “general” section identifies the other protocols and procedures that may be applicable in cases of sexual assault (i.e., Criminal Investigative Procedures, the Service Policy on Criminal Harassment, Standing Orders on Offences Involving Firearms, etc.). Of note, this section also provides that complaints of historical sexual assault and current cases that require extensive follow-up are to be assigned to a member of the Criminal Investigation Section following investigation. Further, sexual assault investigations are only to be conducted by personnel who meet the core competencies as outlined in the Policing Standards and, in certain cases, the Ontario Major Case Management Manual is applicable.

With respect to the response to a complaint, a distinction is made between recent and historical complaints, that being, that emergency services are only dispatched if necessary in cases of recent complaint, and a “recent” complainant must be advised of precautions necessary to preserve physical evidence.

The responsibilities of responding officers to recent complaints are as follows:

- respond as quickly as possible;
- provide assistance to the victim;
- conduct preliminary investigation;
  - the interview procedures mentioned in the 2001 policy apply here;
  - the 2005 report provides that a record should be kept of the conversation and that, where the victim consents, a videotaped interview may be conducted;
- protect the crime scene;
- preserve evidence; and
- ensure appropriate personnel are contacted (e.g., technical services, CIS).

Other information contained in the procedure includes:

- Medical/Forensic Evidence – sexual assault kits are available from the Centre of Forensic Services and police should be familiar with them.
- Charging Procedures – same as 2001.
- Bail, Pre-Trial Release – officer should recommend certain conditions if the alleged offender is released on bail.
- Reporting – solved and unsolved occurrences should be submitted to ViCLAS.

- Responsibilities – officers must ensure these procedures are carried out in a sensitive manner.

### Child Abuse and Neglect Protocol 2003

In 2003, a Child Abuse and Neglect Protocol was developed between Child and Family Services (CFS) of Timmins and District, Timmins Police Service and The Crown Attorney's Office of the Ministry of the Attorney General.

The protocol outlines the roles and responsibilities of each agency with respect to the investigation and prosecution of a case of child abuse (which, under the protocol, includes child sexual abuse). The Timmins Police Service (TPS) is required to: (1) participate in educational and prevention programs; (2) work with and report child protection cases to Child and Family Services of Timmins and District (CFS); (3) investigate allegations of child abuse; (4) participate in the prosecution of offenders; and (5) provide assistance to victims of child abuse.

Upon receiving a complaint, the police or CFS must contact one another before proceeding with the investigation. During the investigation, it is the police duty to investigate and identify the offender, and the child protection worker's ("worker's") duty to protect the child. Prior to investigating, the officer and worker should discuss the logistical concerns of the investigation.

There is a large section of the protocol on conducting videotaped investigations. It is a "preferred route" to have complainants prepare a written statement. If a videotaped interview is conducted, there must be consent between the TPS and CFS (it should only be considered for children aged 12 and under). This type of interview should be conducted in a child-friendly environment. The interview should also be audiotaped at all times. The interviewer should be trained in accepted investigative interviewing practices (i.e., ISOC). Officers and CFS workers should be involved in training sessions to learn about interviewing children (non-leading, full disclosure). The Crown Attorney will assist in the training by identifying prosecutorial needs. After the interview, the worker should identify resources (i.e., support services) to the child and family. An interview with the non-offending caregiver should be conducted as should an interview with the alleged or suspected offender (as soon as possible). Suspect interviews should be videotaped.

The protocol provides that the Child Protection Review Team for the District of Cochrane meets on a regular basis to discuss complicated or contentious cases and that the team shall include representatives from: CFS, TPS.

Witness preparation is the responsibility of the Crown Attorney.

Joint training between the TPS and the CFS should be conducted when possible, and training resources should be shared where practicable.

Videotaping Protocol of 2002 between TPS, OPP and CFS regarding child sexual abuse cases.

This protocol was incorporated into the 2003 protocol referred to above where videotaped interviews are discussed.

#### 2001 Protocol between CFS, TPS and Timmins and District Hospital re: Mobile Services Intervention

The Protocol was created to address the needs of children, youth and families who require an integrated and coordinated crisis management intervention. Although it does not directly refer to child sexual abuse, one of the goals is to provide a “24 hour crisis intervention to children and youth who are experiencing acute suicidal ideation, severe homicidal ideation and violently aggressive behaviour.”

Police are not given specific responsibilities under this protocol.

### **5.5 Case Study #4: RCMP**

The RCMP provided CRILF with four binders of documents including one binder with materials from the RCMP Operational Manual regarding sexual offences from 1971 to 2005 and three binders with training materials from 1980 to 2005. Unfortunately, we were not successful in obtaining information that would facilitate interviewing RCMP officers who had historical experience in investigating child sexual abuse cases. We did however, interview one senior official who had been involved in facilitating a number of initiatives regarding child sexual abuse in the early 1990s but had no direct experience in investigating these cases.

#### 5.5.1 RCMP Operational Manuals (1971 to 2005)

##### Operational Manual, 1971

The RCMP Operational Manual of 1971 included a section on rape and indecent assault in Appendix A of the *Practical Criminal Investigations Manual*. The section was only slightly over one page long that included a number of topics under specific sections as follows:

44. One of the major stumbling blocks in the successful investigation of the sexual crime is the lack of corroborative evidence. By their very nature, these offences are usually carried out in secret, resulting in complaints involving the evidence of the victim against that of the accused. Corroborative evidence under the circumstances becomes essential and the investigator should lose no time seeking any evidence which may corroborate the complaint's story or, conversely, evidence which may refute it.
45. The time the offence occurred and the time when it was reported should be carefully noted...

46. The investigator should always keep an open mind in cases of alleged rape and he must not be swayed by the emotional display of the victim. It should be remembered that many times allegations of rape have been made by females, after voluntary or lightly protested intercourse, which have been prompted by fear of discovery by parents or of pregnancy...
47. Sometimes the complainant is accompanied to the police office by the parents. Most often the parents are quite helpful and may be permitted to remain with the victim during the interview, especially if a younger girl is involved, if their presence is apparently a comfort to her... There are times when the presence of a parent is harmful to the situation and they should be tactfully excluded from the interview. Where possible, a matron, or other responsible woman should be present during the interview if a parent is not in attendance. In taking the statement from the victim, clinical language should be used to save as much embarrassment as possible, however, the investigator should make sure the victim understands the meaning of these terms...
48. Immediately, the initial interview is over, the investigator should arrange for a medical examination of the victim. Such an examination is of prime importance for the purposes of corroboration... The victim's fingernails should be closely examined at the time for traces of skin, hair or fibers... The undergarments of the victim should be taken...and sent to the laboratory for examination.
49. The investigator should, as soon as possible, go to the scene of the offence and make a minute search of the area... Quite often evidence of a struggle is apparent...
50. The clothing and body of a suspect should be examined without delay for evidence of stains, hair and fibers, or marks, scratches, etc...
51. If a vehicle was involved, a minute inspection of the interior should be made for any pertinent evidence or indication of a struggle.

#### Operational Manual, 1976

The Operational Manual of 1976 expanded on the 1971 version and added a section specific to children as complainants in Chapter II.2, section Q. 2. a., as follows:

If the complainant is a child and is accompanied to the police office by her parents, it is usually better to let the mother remain with her during the interview.

1. The parent should remain quiet during the interview and should not be permitted to interject while the complainant is telling her story.
2. If the parent's presence is harmful to the situation, tactfully exclude them from the interview.
  - (a) If the parent is not present when you interview a complainant, try to have a female member, matron or other responsible woman in attendance.
  - (b) When you take a statement from the victim, you may use clinical language to avoid embarrassment if the victim understands the clinical terms.

In addition to having specific references to child complainants, this version of the operation manual also raised concerns about the effect of the situation on the victim and witnesses as follows:

- E. 5. e. Keep in mind the nature of the crime when you interview victims and witnesses. Offences against the person usually will have a more profound effect on the people involved than offences against property.

### Operational Manual, 1983

The Operational Manual of 1983 expanded the definition of sexual offences by including three sections: General; Rape and Indecent Assault; and Incest. As well, under assaults, this manual added the concept of child abuse for the first time. The manual also expanded on concerns regarding the victim. For example, section K. 1. a. states:

Sexual crimes are often not reported by the victim due to fear, embarrassment, or personal trauma. An important role of the police is to provide to the victim support and knowledge about the criminal justice system throughout the investigation and trial process.

Further in section K. 2. b. the manual indicates:

2. Victim children fear adults and often experience guilt, anger or frustration after being victimized. The after effects are sometimes more harmful than the assault which took place.

When interviewing children police were also cautioned to "maintain a calm, supportive demeanor during all stages of the interview."

In terms of incest, in section K. 3. a. the manual informs police officers that:

1. Incest is prevalent in society but seldom reported. It is most often learned behaviour which occurs in families with a history of the problem.
2. Both females and males are subject to incestuous attacks.
3. Most often the offender is the father, step-father, grandparent, uncle, or brother; however, the perpetrator can be a female member of the family.
4. Children's suffering venereal diseases are most often the victim of an incestuous relationship.
5. Seldom is only one child in the family a victim of incest.

In cases of incest, investigators were also advised to confirm evidence by checking with other family members, social services, medical records from physicians or hospitals, and with the physical education or guidance counsellor at the school.

Finally the Operational Manual, 1983 defined child abuse in section L. 2. a. as follows:

1. "Child Abuse" and the "The Battered Child Syndrome" are medical terms used to describe a series of acts affecting the health and well-being of the child. Included are assaults causing injury or death, sexual assaults, including those of an incestuous nature, the administering of noxious substances, failing to provide necessities, and abandonment.

The Manual went on in the section on recognizing abuse to state the following:

1. It occurs in all segments of society, rich, poor, educated, uneducated, male and female.
2. It is prevalent in most societies regardless of ethnic origin.
3. It is committed by both the male and female.
4. Seldom does one marriage partner inflict abuse without overt or passive support or at least awareness by the other partner.
5. Some physical symptoms of abuse of children are passiveness, extremely obedient, underweight for age, bruises, scrapes or burns in unusual places and multiple healing wounds or fractures identified through x-rays.

6. Parents who abuse their children often display unusual disregard for the children's health; unemotional or passive behaviour, and a sense of righteousness in their use of force to control them.
7. Parents will, in most cases, tell an unlikely story as to the cause of their children's injuries.

#### Operational Manual, 1984

The Operational Manual revised in 1984 included section K. 2. c. 3. 3., which advised the investigating officer to:

Determine from the parents or others, common words used by the child to describe parts of the body or sexual acts.

Note: when interviewing young children use dolls or simple drawings to obtain evidence. Dolls with human sexual characteristics are available and should be used. Conduct the interview in the third person if it puts the child at ease.

This version of the manual also had a section advising the investigating officer to "avoid undue questioning about previous sexual activity. See section 246.6(1)CC."

#### Operational Manual, 1985 and 1986

During these two years a number of sections were added to the Operational Manual for dealing with spouse abuse cases, including the need to immediately protect the victim to ensure further assault does not occur and to investigate a breach of recognizance. However, there were not any specific revisions or additions to child sexual abuse.

#### Operational Manual, 1990

The Operational Manual of 1990 included, in section K. 3. and Appendix IV, a number of changes in response to the child sexual abuse legislation outlined in Bill C-15 which came into force in 1988. The general instructions (section K. 1) under sexual offences against children indicate:

1. Cases of child sexual abuse which indicate that a child may be at risk of repeat offences must be immediately reported to child protection authorities in accordance with provincial/territorial child protection legislation.
2. Interviewing children and young persons should be undertaken with sensitivity by a skilled member.

3. If the immediate threat of further assault is absent and the child has been traumatized by the experience it may, following discussions with other agencies, be advisable to allow medical or psychological treatment before police intervention.

In terms of interviewing the child, the manual indicates:

1. Attempt to have a parent/guardian/support person remain with the child during the interview.
  - a) Inform the parent/guardian/support person of the dual purpose of the interview and instruct him/her as to what is helpful and unhelpful behaviour.
  - b) Consider the child's wishes to who is to be present at the interview.
  - c) If the parent/guardian/support person is not present, or if circumstances warrant, attempt to have a member or other responsible person of the same sex as the victim in attendance.
2. Conduct the interview in the language and at a level appropriate to the understanding of the child victim.
  - a) Explain the purpose of the interview to the victim.
  - b) Encourage the victim to ask questions.
  - c) If it puts the child at ease, conduct the interview in the third person.
3. Build trust by taking the time to get to know the child and to reassure him/her that you believe what he/she is saying.
  - a) Try to gain background information about the family.

Appendix IV of this version of the Operational Manual 1990, also contained a section regarding Joint Investigations and Multiagency Team, as well as a section on Interview Location. Under Joint Investigations and Multiagency Team section 2 the manual indicates:

Due to overlapping responsibilities among police, child protection workers and the medical profession, larger cities are developing multiagency child abuse teams.

Where such a team, or a cooperative approach between two agencies exists, the following are important:

1. Sharing information with the objective of protecting the child and successfully prosecuting the offender.

2. Ensuring the coordination of agency roles in order to reduce trauma to the child and increase effectiveness.
3. Developing case management strategies and, if a case cannot or should not go to court, developing alternative strategies.
4. Providing support for the victim and the victim's family as appropriate.
5. Participating in prevention and public information programs.

If there is no child protection worker, a member will provide an immediate response in compliance with his/her responsibilities under the CC and the appropriate provincial/territorial child protection legislation.

The primary role of a member is to investigate, gather evidence and, when appropriate, lay charges.

When considering whether a child victim should testify in court, the guiding principle of all discussion must be what will provide the optimum conditions for the child victim to recover from the trauma of the abuse.

1. In spite of the involvement of multiagency teams, the RCMP member must retain his/her responsibilities for the investigation.

In terms of interview location, section 3. gives the following directive:

Before choosing the location for an interview, it is important to consider the following:

1. where and how the disclosure occurred,
2. where the abuse occurred,
3. where privacy and non-interruption are possible and the victim feels most comfortable,
4. where the alleged offender is located,
5. the reaction of non-offending parents,
6. the presence or absence of a support person, and
7. whether the interview is to be audio or videotaped.

Increasingly, interviews are being audio or videotaped.

1. Amendments to the CC now permit videotaped interviews with victims to be introduced as evidence in court in some situations.
2. A tape, although it may not be used in court, may still be of value in reducing the need for repetitive interviewing of the child, encouraging a guilty plea from the accused, and in determining the capacity of the child to testify in court.
  1. The child must always be given an explanation as to why the tape is being made and how it may be used.

### Operational Manual, 1996

The operation manual of 1996 strengthened some of the directives regarding sexual assault investigations and child abuse investigations. For example, in section K.

1. General and section K. 2. Member, the following directives were given:

1. a. A div. will develop directives in consultation and cooperation with their attorney general, health and social service agencies and child protection workers to ensure that provincial/territorial requirements are fully and accurately reflected.
1. b. A div. will develop case management strategies to deal with the more complex investigations or offences involving multiple victims.
1. c. A div. will ensure members receive adequate training in sexual assault investigations and continual access to resource and training material.
1. d. Units will assist in the development of interagency and community protocols to identify responsibilities and ensure cooperation among participants.
  1. These protocols should remain current and be adhered to during investigations.
1. e. Where possible, only members with demonstrated skills, proper interviewing techniques or the appropriate training should investigate sexual offence complaints.
2. a. Investigate complaints promptly, thoroughly and with sensitivity.
2. b. Give priority to the needs of the victim and offer medical and psychological services in all cases.
2. c. Where available, offer the assistance of the Victims' Services Unit.

- 2. d. Use the approved Sexual Assault Examination Kit (SAEK) to gather forensic evidence.
- 2. e. When considering DNA evidence, see II.12.L.
- 2. f. In appropriate cases, consider the use of alternative measures to the judicial system.
- 2. g. Use appropriate interviewing techniques and follow established video and audio taping procedures.

In terms of child abuse cases, the following directives were also included in section M of the 1996 Manual:

Each div. will develop protocols which will reflect a multi-agency approach.

When possible, only those members who have been adequately prepared or who have demonstrated an ability should investigate child abuse cases. If this is not possible, the investigator should consult with appropriate div. resource personnel during the course of the investigation.

#### Operational Manual, 2002

The Operational Manual revised in 2002 included the addition of the following statement regarding child sexual assault cases in section M. 3.: “When possible, child sexual-assault interviews will be conducted by a trained investigator to help minimize the victim’s trauma.” In addition, this version of the Manual dropped the following directive regarding sexual assault investigations that was included under section K 2. f. of the 1996 Manual: “In appropriate cases, consider the use of alternative measures to the judicial system.”

#### Operational Manual, 2003

The Operational Manual revised in 2003 added the following caselaw reference under section K. 1. e.: “As a result of the Lacombe vs Andre court case, it is imperative investigators consider the greater obligation to corroborate any allegations of sexual assault before arresting an individual.”

#### Operational Manual, 2004

The Operational Manual revised in 2004 further strengthened the directives regarding the investigation of child abuse cases by including the following under section 1. General:

Each division will develop protocols which will reflect a multi-agency approach.

When possible, only those members who have been adequately prepared or who have the demonstrated ability should investigate child abuse cases. If this is not possible, the investigator should consult with appropriate division resource personnel during the course of the investigation.

When possible, child sexual-assault interviews will be conducted by a trained investigator to help minimize the victim's trauma.

### Operational Manual, 2005

The Operational Manual revised in 2005 included a new section under section 2.1 Sexual Offences, which deals with the Behaviour Oriented Interview (BOI) - Questioning the Victim about the Offender, and gives specific directions to the interviewing officer. This interviewing strategy was developed to provide specific information that could be useful to the Violent Crime Analyst and can be included on ViCLAS.

#### 5.5.2 Recruit Training Materials

In this section of the report, the basic training materials and training standards for RCMP recruits are tracked from 1980 to present. Archive analysts for the RCMP were unable to retrieve any relevant documents from their archival system prior to 1980 because the search term was "child sex abuse" and, of course, this term was not widely used prior to that time.

#### 1980

In 1980, Chapter 19 of the "Basic Recruit Training Course Training Standard Manual" which was entitled "Applied Human Behaviour and Police Intervention" contained a section under problem solving which provided recruits with information regarding child abuse victims and rape/sexual assault victims.

#### 1983 to 1984

In 1983, a Family Violence Seminar was included in the investigator's course and included materials on sex crimes such as rape and child molestation. In addition to lectures, a special handout on child abuse which discussed such topics as "The Battered Child Syndrome" was distributed to recruits. In 1984 a section on child abuse investigations was included on the Investigators Course Training Standard. It was indicated that the purpose of this topic was to "make members more cognizant of the growing social problem."

#### 1986-1987

Under Mandatory Course Topics - Family Violence, the investigators course included discussion of the definition of child abuse, including categories such as: neglected child; abused child; battered child; sexually assaulted child; as well as a discussion of symptoms of abuse.

## 1991-1992

In 1991, the Applied Human Behaviour and Police Intervention chapter of the training Manual included a section on Elements of Psychopathology which included the text, Child Sexual Abuse by David Finkelhor. In addition, under section K, recruits receive training on the following topics:

- types of child abuse;
- major components of multidisciplinary teams;
- types of abuse indicators;
- common communication barriers between police officers and child victims;
- how a police officer can help reduce barriers when dealing with children;
- evidence an investigator can collect when investigating child abuse situations;
- investigative tools or aids used by police officers when interviewing children; and
- common faults of investigators dealing with child abuse.

References were also given to the recruits which included a number of videos dealing with child abuse indicators, the Badgley Commission Report, as well as conference materials on child abuse and several other references.

## 1993

In 1993, materials regarding Interviewing “Sexual Abuse Victims Using Anatomical Dolls” was added to the training materials.

## 1994

In 1994, the Sexual Abuse Workshop and Family Violence Seminar included a section on interviewing the child victim and referred to the greater likelihood of telling the truth on the first encounter, danger of psychological injury from repeated interviews and the possible use of videotaping.

In addition a detailed lesson plan on child abuse was included which covered the following topics: investigation; intervention; types of abuse; multidisciplinary approach; *Criminal Code* issues; typologies; indicators; why don't they tell; collaboration; and court. During this time, recruits were also given a detailed Child Sex Abuse Investigated Checklist.

## 1996-Present

In 1996-1997, major revisions occurred in both the content and method for training RCMP cadets (formerly called the recruits). In partnership with the federal government's Family Violence Initiative, the RCMP worked with other police services and community groups to develop modern training tools to assist police in developing partnership responses to family violence that are sensitive to the diverse and changing needs of the communities and the victims.

The program consists of 12 modules addressing issues related to violence against women, children, elderly people and persons with disabilities. The multimedia format of the modules allows for self-paced learning through the use of a user friendly computer program (for more information see: [www.rcmp-learning.org/does/ecdd77.htm](http://www.rcmp-learning.org/does/ecdd77.htm)). While the Cadet Training Program has been updated several times since the mid-90s, Modules 1-4 provide core information for the training of cadets on child sexual abuse up to the current date. These training modules cover the following areas:

### Module 1, Child Sexual Abuse, "Initial Response."

In this module the training takes the officer through the following steps:

- Defining the problem and deciding on the first course of action after receiving the report
- Considering the most important steps in the investigation, and the order in which to take them
- Identifying sources of corroborative evidence
- Important considerations for conducting an interview with the child
- Possible legal issues
- Applicable sections of the *Criminal Code*.

### Module 2, Child Sexual Abuse, "Interview."

The second module deals at length with the techniques of interviewing the child. The module is about the eight stages of a Stepwise interview. The training deals with:

- Deciding on an appropriate location for the interview

- The eight steps of the Stepwise interview process:
  - i. Rapport building with the child
  - ii. Establishing ground rules for the interview, and distinguishing between leading and non-leading questions
  - iii. Introducing the topic of concern
  - iv. Getting the child to the free narrative stage
  - v. Proceeding to open questioning
  - vi. The stage of specific questioning
  - vii. Interview aids
  - viii. Ending the interview
- The module concludes with the consideration of relevant legal issues.

### Module 3, Child Sexual Abuse, “Credibility Assessment.”

In the third module, the officer is trained to assess the credibility of the child’s statement, based on the interview.

The trainee goes through the following steps:

- Considering the child’s description of the context of the abuse allegation
- Assessing the credibility of the child’s description of specific sexual acts
- Evaluating the child’s emotional state during the interview
- Verification of the credibility points by re-playing the video of the whole interview.

### Module 4, Child Sexual Abuse, “The Non-Abusive Parent.”

The fourth child abuse module deals with interviewing the non-abusing parent. The training exercises address the following issues:

- Stereotypes or misconceptions about the role of the non-abusing parent
- Six points that should be covered in the interview of the non-offending parent:
  - i. Informing the parent of the suspected abuse
  - ii. Gaining the cooperation of the non-offending parent

- iii. Providing crisis support
  - iv. Determining the parent's possible role in the abuse
  - v. Evaluating the parent's ability to protect the child
  - vi. Gathering evidence.
- Insights provided by the family history
  - Planning the interview and getting started
  - Concluding the interview
  - Legal issues
  - Follow up services

These multimedia modules combined with presentations by outside experts and the application of problem-solving, research, practical experience, role-playing, videos and demonstrations provide the core of cadet training up to present-day.

The overall problem-solving model that cadets are trained to use in combination with other information is the Community Policing Problem-Solving Model-CAPRA. This is a learning tool designed to increase the cadets' understanding of the RCMP community policing problem-solving model. CAPRA is a unique operational model that provides an opportunity for cadets to experience any combination of service, protection, prevention, and enforcement, whether a problem exists or potential problem can be prevented. It is designed to assist police officers and other members of the force to anticipate problems and prevent problems from arising. It applies to enforcement as much as it does to prevention. CAPRA stands for the following: C=clients; A=acquire/analyze information; P=partnerships; R=response; and, A=assessment of action taken (for more information see:[www.rcmp-grc.gc.ca/ccaps/capra\\_e.htm](http://www.rcmp-grc.gc.ca/ccaps/capra_e.htm)).

### 5.5.3 In-Service Training Manuals

In addition to the recruit/cadet basic training materials, the RCMP has also produced an in-service training manual on sexual assault and child sexual abuse beginning in 1997. This manual, authored by Szabo et al. (1997) entitled *An Investigative Guide for Sexual Offences*, contained a series of modules which covered such issues as: basic case management; child complainant; acquaintance sexual assault; stranger sexual assault; historical sexual offences; and adolescent suspects. A second edition of this guide was produced in 2000 and was also made available on CD for broader distribution and a third edition is currently being prepared.



## 6.0 SUMMARY AND CONCLUSIONS

### 6.1 Purpose of the Review

In July 2006, the Cornwall Public Inquiry contracted with the Canadian Research Institute for Law and the Family (CRILF) to conduct a selective review of the development and evolution of Canadian police practices and policies in respect to the response to complaints of child sexual abuse and complaints by adults of historical abuse. In order to provide a comprehensive review of all aspects of child sexual abuse, the process and practices regarding investigations over time were examined. The specific objectives of this review were to:

- examine the evolution of police practices and policies in respect to police response to complaints of child sexual abuse from 1960 to 2006;
- examine any differences related to community size; and
- examine practices with respect to police officers reporting suspected abuse or reporting issues and handling of complaints.

### 6.2 Summary of Findings

#### 6.2.1 Milestones in Research, Knowledge and Government Response to Child Sexual Abuse From 1960 to Present Day

The purpose of this selective review is to provide a context within which to view police response to child sexual abuse allegations by reflecting on the general social climate regarding child sexual abuse from the 1960s to present day based on developments in social science research, government response and public awareness of child sexual abuse in Canada. The findings of this review are summarized below.

#### Child Sexual Abuse Prior to the 1970s

- Child sexual abuse was an unspoken and misunderstood problem in the 1960s and before. Although the first recorded prevalence study focused on child molestation dates back to 1929, there were only four published studies in the world on child sexual abuse prior to 1960 and few thereafter until the 1980s (Finkelhor, 1984). The lack of these types of studies coupled with the hesitancy to report this type of abuse left an unclear picture of the true scope of child sexual abuse prior to the 1970s.
- Kinsey's work, *Sexual Behaviour in the Human Female*, published in 1953, provided the first large-scale empirical research regarding child-adult sexual contact (Brecher, 1969). In a sample size of 4,441, he found that nearly one in four of the women surveyed recalled sexual contact before adolescence with a male at least 15 years of age and at least five years her senior.

- In the United States, the response to the broader issue of child abuse began at a state level in the early 1960s (Gomes-Schwartz, Horowitz & Cardelli, 1990). Within a four-year span from 1962–1966, statutes were passed in all 50 states requiring the reporting of abuse of children by caretakers. However, government response specific to the problem of child sexual abuse did not occur until the 1970s.

#### Child Sexual Abuse is “Discovered” in the 1970s

- In the late 1970s, the level of societal awareness about child sexual abuse began to increase. The influence of the women’s movement brought attention to the issue of child abuse, including child sexual abuse, and the government began to respond.
- Statistics on the occurrence of child sexual abuse gathered in Canada were collected during the 1970s largely as a by-product of studies with other purposes; however they did reflect a growing recognition of child sexual abuse in Canada (Badgley, 1984). Annual Reports of provincial child protection services made noteworthy reference to statistics on child sexual abuse beginning in the late 1970s. There was a significant increase in the reporting of child sexual abuse beginning in 1977 and rising yearly thereafter for the remainder of the decade.
- Psychological and sociological study of child sexual abuse continued in the 1970s. Among the topics explored were typologies of offenders and the relationship between family environment and child sexual abuse (Gomes-Schwartz, Horowitz & Cardelli, 1990).
- Although Canadian governments began to address the problems of child sexual abuse in the 1970s, the issue was often secondary to many government reviews and reports that emphasized the status of women or the broader topic of child abuse and neglect (Badgley, 1984).
- The Canadian Commission for the International Year of the Child was established, in 1978, with the objective of identifying support activities designed to advance children’s rights, interests and well-being. Among its many recommendations was a call to the federal government to enact legislation protecting children from sexual exploitation and to reform sex crime laws.
- In 1978, the Department of National Health and Welfare undertook a review of child abuse as part of its commitment to the International Year of the Child, this, ultimately resulted in the release of two discussion papers in the early 1980s relating to child protection in Canada.

## Child Sexual Abuse: Growth of Awareness and Response in the 1980s

- During the 1980s, societal awareness of child sexual abuse grew tremendously, and the response to child sexual abuse became more focused as research documented both the scope and nature of the problem, as well as its long-term effects on the victims.
- Prior to the 1980s, child sexual abuse prevalence studies were mainly conducted in the United States, where there was an explosion in the number of studies, academic articles, and books written on the topic of child sexual abuse.
- Research also became more focused on specific legal issues during this time. For example, research was conducted which focused on the reliability of child witnesses, suggestibility, and interviewing techniques, such as the work of Dr. Gail Goodman in the United States, Dr. John Yuille in Canada, and Professor Graham Davies in the United Kingdom.
- In 1980 the Minister of Justice and the Minister of National Health and Welfare announced the establishment of the Committee on Sexual Offences Against Children and Youth. In 1981 members were appointed to this committee and it became known as the Badgley Committee.
- In 1982 the National Clearinghouse on Family Violence was established and incorporated the federal desk for the Child Abuse Information Program. During its initial period of operation, it focused on the collection and distribution of general sources of information on family violence and child abuse.
- In 1984 a report entitled, *Sexual Offences Against Children*, commonly known as the Badgley Report, was released by the Committee on Sexual Offences Against Children and Youth. This report, which marks the first major research milestone in Canada, documented many of the problems in criminal law, other laws and policies related to the protection of children and adolescents from sexual abuse and exploitation. The Report contained 52 recommendations, many of which related to improvements in the substantive, evidentiary, and procedural laws relating to sexual abuse and exploitation of children and adolescents.
- In 1986, the federal government announced a five-year, \$25 million Child Sexual Abuse Initiative in the departments of Justice and Health and Welfare, with the Department of the Solicitor General also undertaking activities in this area.
- In 1986 the Family Violence Prevention Division was established as part of the Department of Health and Welfare to coordinate a variety of efforts around child sexual abuse within the Department of National Health and Welfare and among other federal departments.
- In 1987 Rix Rogers was named as the Special Advisor on Child Sexual Abuse to the Minister of National Health and Welfare. His major report entitled *Reaching for Solutions* was completed in 1990.

- On January 1, 1988 Bill C-15, marking another major milestone for Canada, was proclaimed to better respond to child sexual abuse. By the proclamation of this bill, the federal government sent a clear message that the protection of children and youth was a priority in Canada, and that sexual abuse of children was unacceptable and would not be tolerated.

### Child Sexual Abuse, 1990 to Present: Continued Development of a Comprehensive Response

- Overall, this period is characterized by increased public awareness of the problem of child sexual abuse and its effects on victims, as well as a corresponding increase in the development of targeted responses to new emerging types of sexual abuse.
- At the beginning of the period, the emergence of a number of historical institutional child sexual abuse cases involving multi-victims and multi-offenders (MVMO cases) had a significant impact on the extent to which child abuse was perceived as a serious problem.
- More recently, sexual abuse has evolved into the computer age with the advent of the Internet and the use of chat rooms by sexual predators to target and pursue children for the purposes of sexual exploitation.
- Given the rapid and continued development regarding the recognition and response to child sexual abuse and family violence during this period, it is difficult to point to specific major milestones as was the case in the previous decade.
- This period is more characterized by continual development of a number of smaller but significant milestones.
- There were a number of significant trends that occurred during this period including: a significant increase in federal government funding for research and development in the area of family violence and child sexual abuse; continued development of a legislative response to child sexual abuse and exploitation; development and publication of specific training materials for police regarding the investigation of child sexual abuse cases; and the expansion of the response to child sexual abuse and exploitation to an international level.
- By the beginning of the 1990s, a significant body of research knowledge had been published in the United States and to a lesser extent in Canada regarding child sexual abuse.
- Towards the end of the 1990s, Canadian research focused more and more on the broader issues of family violence but also included child sexual abuse under the umbrella of family violence. In addition, a major Canadian milestone in research in 2001 was with the publication of the *Canadian Incidence Study of Reported Child Abuse and Neglect* by Trocmé et al. (2001).

- The 1990s also marked the release of a number of publications which dealt specifically with the role of police in investigating child sexual abuse cases including: *Child Abuse and Exploitation: Investigative Techniques* by Shepherd et al. (1990) published by the US Department of Justice through the Office of Juvenile Justice and Delinquency Prevention; *A Police Reference Manual for Cases of Child Sexual Abuse* edited by Hornick and Paetsch (1995) funded by Solicitor General Canada with funds from the Brighter Futures program; and a comprehensive guide for investigating sexual offences published by the RCMP in 1997 for in-service training of officers in the field entitled *An Investigative Guide for Sexual Offences* by (Szabo et al. 1997).
- In 1991, the federal government announced a four-year \$136 million Family Violence Initiative involving seven federal departments and agencies. Responding to child sexual abuse was one of the primary subject areas under the mandate of this funding initiative.
- In 1994, the federal government announced the establishment of a national system to help organizations screen out child sexual abuse offenders applying to work with children.
- In 1994, the RCMP and the Ontario Provincial Police began the implementation of an innovative information system called the Violent Crime Linkage Analysis System (ViCLAS) which was designed to break down the jurisdictional boundaries that permitted mobile serial offenders to move from jurisdiction to jurisdiction and remain undetected.
- In 1997, Justice Minister Anne McLellan asked the Law Commission of Canada to prepare a report on the means for addressing harm caused by physical and sexual abuse of children in institutions operated, funded or sponsored by the government. The report, *Restoring Dignity: Responding to Child Abuse and Canadian Institutions* was released in 2000.
- From 1990 until present, the Federal Government of Canada also became more involved internationally in promoting international cooperation to address the sexual abuse and exploitation of children and youth.

#### 6.2.2 Legislative Changes in the Development of the *Criminal Code* Provisions Relating to Child Sexual Abuse and the Testimony of Child Witnesses

Chapter 3.0 of the report provides a historical overview of the development of Canadian legislation related to child sexual abuse, specifically, the *Criminal Code* and *Canada Evidence Act*. The findings of this review are summarized below.

- To a significant extent, the authority of the police to investigate cases of child sexual abuse and the prosecution of these cases is guided and constrained by legislation.

- The date of commission of an offence is important to the investigation of child sexual abuse cases. The alleged offender can only be charged with a *Criminal Code* offence in existence at the time the alleged offence occurred, despite that it may be reported several years later, although the current procedural and evidentiary rules apply to the prosecution (Hornick & Paetsch, 1995).<sup>17</sup>
- The Badgley Report of 1984 characterized the *Criminal Code* offences as “general” and “vague,” and lacking in the ability to adequately deal with the full range of child sexual abuse and exploitation.

#### The *Criminal Code* Following the Amendments of Bill C-127 as of January 4, 1983

- The sexual offence provisions of the *Criminal Code* were substantially altered on January 4, 1983 with the coming into force of Bill C-127. Existing sections of the *Code* were modified, some were repealed and new offences were created (Baril et al., 1988). This wide-sweeping reform to the *Criminal Code* was based upon the following principles: (1) the protection of the integrity of the person; (2) the upholding of public decency; and (3) the elimination of sexual discrimination (Justice Canada, 1980). Bill C-127 has been described as directed mainly at improving the treatment of female adult victims of sexual assault (Bowland, 1994).
- Under the amendment of Bill C-127, consent was not a defence to the new sexual assault provisions of the *Code* if the complainant was under 14 unless the accused was less than 3 years older than the complainant (*Martin’s Annual Criminal Code*, 1985, s. 246.1(2)).

#### The *Criminal Code* Following the 1988 Legislative Amendments of Bill C-15

- The Badgley Report was released in 1984, documenting many of the problems in criminal and other laws and policies related to the protection of children and adolescents from sexual abuse and exploitation. The Report contained 52 recommendations, many of these relating to improvements in the substantive, evidentiary and procedural laws relating to the sexual abuse and exploitation of children and adolescents.
- Bill C-15 which came into force on January 1, 1988, marked the first focused effort to reform the *Criminal Code of Canada* to protect children and adolescents from child sexual abuse and exploitation, and the first real recognition that child and adolescent witnesses should be treated differently from adults (Hornick & Bolitho, 1992). The objectives of the Bill C-15 amendments were as follows: (1) to provide better protection to child sexual abuse victim/witnesses; (2) to enhance successful prosecution of child sexual abuse cases; (3) to improve the experience of the child victim/witness; and (4) to bring sentencing in line with the severity of the offence. The strategy to implement these objectives involved: (1) overall simplification of the law relating to sexual offences; (2) creation of new offences specific to acts of child sexual abuse; (3) changes regarding procedure

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<sup>17</sup> See for example: *R. v. Bickford* (1989) 51 C.C.C. (3d) 181 (Ont. C.A.).

and evidence; and (4) changes to the *Canada Evidence Act* regarding the testimony of child witnesses. Bill C-15 provided significantly more protection to children by creating new offences related to exploitation and accommodated child witnesses (Schmolka, 1992).

### Reforms to the *Criminal Code* and Related Acts and Developments in Other Resources for Child Sexual Abuse Investigations after 1988

- Beginning in 1992, the federal justice department undertook a series of amendments and expansions of the child sexual abuse legislation which was proclaimed in 1988 with Bill C-15. These amendments began with Bill C-49 and continue to date.

#### 6.2.3 A Survey of Police Experience and Training in Child Abuse Investigations in 1991

Chapter 4.0 of the report presents the analysis of data from a survey of front-line police regarding their experience and training in investigating child abuse cases which was conducted in early 1991 for the Canadian Police College (CPC) and the Canadian Association of Chiefs of Police (CACCP) by O'Sullivan and Roberts. A summary of the findings of this analysis are listed below.

#### Officer Experience

- Police investigators from the smallest communities tended to report the highest average number of years experience in investigating child abuse cases (7 years).
- Police investigators from the two largest categories of communities reported the lowest average number of years experience in investigating child abuse cases (3 and 4 years).
- There was a broad range in the total number of child abuse cases ever investigated by the police officers, ranging from 2 to 700.

#### Officer Training

- Overall, approximately two-thirds of the police officers reported in 1991 that they had received formal training in child abuse investigation.
- The percentage of officers having received formal training increased as the size of the community increased.
- Overall, 51 investigators reported having received 117 courses up to 1991.
- Approximately 17% of the courses were general child abuse courses, and the percentage of investigators receiving these courses increased with community size.

- The percentage of investigators who reported receiving child sexual abuse courses increased with community size ranging from a low of 5% for the smaller communities up to 24% for the second largest community.
- A case-by-case examination of the courses reported by the respondents indicated that the earliest sexual abuse course/workshop was reportedly offered by the British Columbia Ministry of Social Services and Health (MSSH) in 1982.
- The number of courses specific to child sexual abuse increased significantly in 1988 in conjunction with the child sexual abuse legislation (Bill C-15) coming into force.
- Investigators from the largest communities were much more likely to receive training in videotaping interviews and techniques for interviewing children.
- Overall, 55% of the total sample of investigators indicated they received some training in the use of aids for interviewing children; however, there was not a great deal of variation by community size.
- Overall, 50% to 60% of all investigators from the various communities reported receiving training in the use of sexual assault kits.
- Although the overall percentage of investigators who reported receiving some training on multi-victim investigations was not high (25.7%), investigators from the largest communities were much more likely to receive training on this topic with 40% indicating that they had this type of training, compared to 16% to 26% of investigators from smaller communities.

#### Special Child Abuse Investigation Unit

- By 1991, only 20% of police agencies in the smallest communities had separate child abuse investigation units, compared to 75% and 60% of the police agencies from the two largest categories of communities.
- Generally, front-line specialists were available to most of the investigators in 1991.

#### Organization Protocols

- Overall, almost 90% of the agencies reported having written operational protocols for dealing with child protection agencies by 1991.
- 40% of the investigators from the smallest communities reported that they had inter-agency child abuse committee meetings by 1991, compared to 73% of the respondents from the largest community category.

## Agency Techniques and Facilities

- The use of videotaped interviews varied only slightly by community size, with respondents from four of the community groups indicating that it was used in approximately 60% of the departments. Only investigators from communities with populations of 62,000-89,000 with mainly small municipal police forces indicated lower use at 33%.
- Overall, just over 50% of the investigators indicated use of audiotaping of the initial interview with child victims.
- Audiotaping the initial interview of the non-offending parent was used seldom in comparison with the other techniques, with only slightly over 12% of respondents indicated use of this technique.
- Departments in the larger communities were more likely to have special rooms for interviewing children than departments in smaller communities. Only 20% of the agencies in the smallest category of communities reported having this facility, compared to 47% of the agencies in the two largest categories of communities.
- Police agencies overall were more likely to have videotaping equipment than a special room, since almost 50% of the respondents reported their agencies had this facility by 1991. However, there was considerable variation by community size and police agencies in the largest communities were much more likely to have access to video equipment (80%) than police agencies in the smallest communities (27%).

### 6.2.4 Case Studies of Police Experiences, Training and Organizational Support for Investigating Child Sexual Abuse

Chapter 5.0 of the report presents an analysis of interview data from police officers (n=11) who had experience investigating cases of child sexual abuse, as well as an analysis of documents, policies, directives, and training materials regarding the investigation of reports of child sexual abuse from four police organizations: RCMP; Toronto Police Service; London Police Service; and Timmins Police Service. Unfortunately, this analysis is limited by both the small number of organizations that agreed to participate in the study and the small number of police officers with historical experience who we were able to contact and interview. The findings for this chapter are summarized below.

- The small sample of police respondents (n=11), as well as the small number of police organizations (n=4) necessitated a case study approach which limits any comparative analysis. The case studies therefore should be individually examined.
- The obvious differences that do exist between the police organizations in this chapter are likely due to the type of organizations and the size (especially regarding resources) and nature of the communities they serve.

- Both the interview data and the document analysis suggest that few if any systematic responses to the problem of child sexual abuse occurred prior to the 1980s. As a couple of the respondents said, “prior to the 80s, the response to a report of child sexual abuse depended on who took the call.”
- While there were a number of efforts to deal with the problem of child sexual abuse in the 1980s, the coming into force and implementation of Bill C-15 provided the major drive for police to develop a systematic response to the problem of child sexual abuse.
- The interview data from the police respondents suggested that multi-victim/multi-offender cases of child sexual abuse were rare and, when they did occur, were very difficult.
- The police respondents concluded that the legislative changes that resulted from Bill C-15, especially the videotaping of child victims, was the major milestone.

#### 6.2.5 Comparison with Other Jurisdictions<sup>18</sup>

While it was not a major objective of this report to conduct an international comparative analysis of police practices, policy and training in the area of child sexual abuse, as we mentioned in Chapter 2.0 of this report much of the early research regarding child sexual abuse was conducted in other jurisdictions, particularly the United States. Further, the earliest comprehensive training/reference manual by Toth and Whalen (1987) was prepared by the American Prosecutors Research Institute, National Center for the Prosecution of Child Abuse. However, even though a considerable amount of research information and training materials are available to front-line police officers in the United States, it does not appear that widespread training has occurred due, to a significant degree, to the fact that there are many (over 1600) municipal, county, and state police agencies which are relatively small and have only limited resources. As Maguire indicated in his 1993 report, “personnel policies, together with the widespread fragmentation of agencies, serve as an impediment to the implementation of large-scale change in American policing, thus hindering enhanced professionalization in CSA cases.” Further, Daly’s recent study of 250 police academies in the United States concluded that:

Police officers do not receive adequate training to prepare them to handle child sexual abuse investigations. This is true not only for patrol officers, but also for those assigned to child protection units... Respondents also reported that the majority of state authorities did not mandate specialized training for child sexual abuse investigations (Daly, 2004, p. 1.)

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<sup>18</sup> In part this section of the report resulted from a telephone discussion/interview with Professor Graham Davies conducted on November 8, 2006. We would like to thank Professor Davies for his contribution to this report.

In contrast, specialized training for police officers who investigate child sexual abuse cases seems to be much more widespread in both Canada and the United Kingdom. To a large extent this may be due to the fact that criminal law that deals with child sexual abuse is unified under federal jurisdiction in both Canada and the United Kingdom, as opposed to being fragmented under state jurisdiction as it is in the United States. Further, there are far fewer police agencies in both Canada and the United Kingdom and they appear to be more organized and unified under their associations, namely, the Canadian Association of Chiefs of Police (CACP) and the Association of Chief Police Officers (ACPO) in the United Kingdom. There are other parallels between Canada and the United Kingdom in the historical development of police training and procedures for dealing with child sexual abuse. For example in the late 80s, one of the major conclusions of the Cleveland Inquiry (Butler-Sloss, 1988) was that that professionals involved in interviewing young children needed to receive special training.

The report noted that interviewers needed to be trained in non-suggestive questioning procedures. The report also drew attention to the need for police officers and social workers to work more closely together in child abuse inquiries and called for the setting up of integrated Specialists Assessment Teams. The idea was incorporated in the successful “Bexley Experiment” (Metropolitan Police and London Borough of Bexley, 1987) where police and social workers in one London bureau worked together in child abuse investigation...

Meanwhile legislation governing the gathering of evidence in child abuse investigations was developing apace. In 1988, the home office had set up a committee under His Honour Judge Thomas Pigot, QC...following the positive recommendations of the Pigot Committee Report (1989), the 1991 Criminal Justice Act incorporated proposals for police and social workers to conduct joint investigative interviews with child complaints of abuse. Such interviews were to be videotaped and could be substituted for the child’s live examination in chief at court. (Davies, 1998, pp. 1-2.)

These interviews are conducted under the guidelines set out by the “Memorandum of Good Practice on Video Recorded Interviews with Child Witnesses for Criminal Proceedings” (Home Office/Department of Health, 1992). (Davies, 1999, p. 1.)

The current key issue regarding the processing of child sexual abuse cases in the United Kingdom appears to be the challenge of adopting national standards/curriculum as the next step in the professionalization of their response to these cases.

### 6.3 Conclusions

The conclusions of this report are summarized below by specific objective.

#### Objective #1: The Evolution of Police Practice and Policies

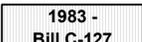
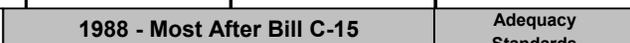
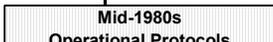
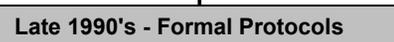
Figure 6.1 graphically summarizes the overall evolution of the recognition and response to the problem of child sexual abuse from 1960 to the present. As can be seen from an overview of Figure 6.1, the onset for most relevant activities occurred in the mid-1980s. Prior to the late 1970s and early 1980s, there was little recognition of the nature and scope of the problem of child sexual abuse in Canada or internationally and there was virtually no systematic response. After the 1980s, however, there has been continued development up to the current date. Sporadic research knowledge and advocacy, especially by feminist organizations, slightly preceded and interacted with government activities. This resulted in legislative change which subsequently resulted in the increase in training and specialization.

More specifically, the Badgley Report published in 1984 was a major milestone. This Report documented in detail that the scope of the problem of sexual abuse and sexual exploitation of children was a very serious social problem that required a comprehensive targeted response. Bill C-15, which to a significant degree was based on the recommendations of the Badgley Report, provided police with new “legal tools” to deal with child sexual abuse and heightened public awareness of child sexual abuse. The coming into force of this legislation in 1988 proved to be another major milestone in the evolution of the police response to the problem of child sexual abuse.

The early 1990s became a period characterized by an extremely high level of activity in response to the problem of child sexual abuse on the part of the federal government, provincial/territorial governments, and police organizations, especially the Canadian Association of Chiefs of Police (CACP) and the RCMP. By 1991, over two-thirds of police who dealt with child abuse and child sexual abuse cases had received special formal training. In addition, it was recognized that partnering and collaboration was the best way to deal with child sexual abuse and the implementation of the amendments of Bill C-15. Further, all parties soon realized that child sexual abuse was not just a child protection issue or a police issue. It was a complex social issue that required a multiagency team approach, and these teams were formed in many communities across Canada.

Initially, in the mid-1980s, written operational protocols were developed and used by police and child protection workers to guide and coordinate their response to reports of child sexual abuse. Over the years, these protocols became more comprehensive as new information was gained. In addition, over the years, these operational agreements evolved into formal signed interagency agreements between several organizations. The Toronto Police Service appears to be one of the first police organizations to sign a formal interagency protocol in 1983 – which was exceptional at that time. Other formal interagency protocols tended to occur after the late 1990s.

**Figure 6.1**  
**Summary of Milestones in Recognition of and Response to Child Sexual Abuse in Canada**

Milestones	1960	1970	1980	1990	2000	2006
Research Knowledge				 <b>1984 - Badgley Report</b>		
Government Action				 <b>Committee on Sexual Offences Against Children and Youth</b>		
Development of Legislation				 <b>1988 - Bill C-15</b>		
Special Courses/Training				 <b>1988 - Most After Bill C-15</b>		<b>Adequacy Standards</b>
Special Police Units					 <b>Response to Bill C-127 and Bill C-15</b>	
Special Training Materials/Manuals					 <b>Most After Mid-1990s</b>	
Inter-Agency Protocols						 <b>Late 1990's - Formal Protocols</b>

 = Sporadic, individual activity.  
 = Constant, systematic activity.

While the early to mid-1990s marked the most rapid growth in the provision of services and legislation to respond to child sexual abuse, growth has continued to present day with the support of the federal and provincial governments, in collaboration with the police and child protection agencies. Further, the experience of the late 80s and early 90s also prepared these organizations to develop responses to new forms of sexual abuse and child exploitation such as “Internet luring” and child pornography.

Training of police for investigating child sexual abuse cases has also evolved considerably and police now had more specialized training and tools such as police investigation manuals to use in their response to child sexual abuse. In the 1980s, some courses were offered mainly by non-government agencies (NGOs) such as the Institute for the Prevention of Child Abuse (IPCA); however, special courses soon became a part of standard training for police organizations’ training units such as the Ontario Police College and Toronto Police College. More recently, these courses have been expanded and standardized, and in certain jurisdictions like Ontario are now required under the *Police Adequacy and Effective Standards Regulations*, commonly referred to as the “Adequacy Standards” for police who investigate child sexual abuse cases.

#### Objective #2: Differences in Evolution Related to Community Size

The analysis of the questionnaire data from the 1991 national survey of police training needs regarding child abuse and child sexual abuse contained in Chapter 4.0 of this report, as well as case study data contained in Chapter 5.0 of this report, clearly indicate that community size was positively related to training opportunities for the police. As well, it appears that larger communities had more resources for such things as videotaping equipment, which facilitated decreasing the number of interviews that a child victim/witness was subject to.

#### Objective #3: Issues Reported by Police Officers in the Handling of Complaints

The lack of information regarding the police response to reports of child sexual abuse prior to the late 1970s and early 1980s is somewhat surprising given that Section 31 of the *Child Welfare Act* of Ontario in 1965 required “every person having information of the abandonment, desertion, physical ill-treatment or need for protection of a child” to report the information to the Children’s Aid Society or Crown Attorney.<sup>19</sup> However, while it could be argued that sexual abuse would fall under the broad concept of physical ill-treatment, there was no explicit mention of child sexual abuse. The concept of “sexual molestation” was added to the *Act* when it was amended in 1978.<sup>20</sup> Thus, consistent with the other findings of this report, it appears child sexual abuse was not broadly recognized prior to the late 1970s.

Given the lack of recognition and knowledge regarding child sexual abuse prior to the 1980s, the response to a complaint of child sexual abuse as indicated by those police officers that we interviewed, apparently depended almost solely on the attitudes,

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<sup>19</sup> *Child Welfare Act*, S.O. 1965, c. 14, s. 41(1).

<sup>20</sup> *Child Welfare Act*, S.O. 1978, c. 85

beliefs, and experience of the individual police officer who answered the call. It appears that there was little if any direction from superiors within the police organizations regarding how to handle these complaints. During this time, most of the police officers who dealt with these cases were either self-taught or had taken the initiative to identify a mentor and/or “shadowed” someone who appeared to have knowledge and experience in these investigations. In the late 1980s and early 1990s this changed very rapidly as is indicated by Figure 6.1 above. Further, the survey data in Chapter 4.0 indicate that, by 1991, almost all police agencies had written protocols for dealing with child protection agencies, and over half had established multiagency committees.



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**APPENDIX A**  
**INTERVIEW SHEET**



## CORNWALL INQUIRY SURVEY INTERVIEW SHEET

The questions below relate to your experience and current practices in processing child abuse cases and in particular, child sexual abuse cases.

- 1) Number of years of police service? \_\_\_\_\_  
If retired, in what year did you retire? \_\_\_\_\_
- 2) Sex: Male \_\_\_\_\_ Female \_\_\_\_\_
- 3) What is the population of the community you police? \_\_\_\_\_
- 4) Is your organization:
  - a) Federal \_\_\_\_\_
  - b) Provincial \_\_\_\_\_
  - c) Municipal \_\_\_\_\_
- 5) In what province is your organization situated?  
\_\_\_\_\_  
\_\_\_\_\_
- 6) With regard to child sexual abuse/child abuse investigations, does your organization currently have access to front-line specialists? (e.g., experienced child sexual abuse/child abuse investigators, or child protection workers to assist you)  
Yes \_\_\_\_\_ No \_\_\_\_\_  
If yes, for what type of investigation do you have access to front-line specialists?  
Child sexual abuse \_\_\_\_\_ Child abuse \_\_\_\_\_  
When did it become standard practice to use front-line specialists? \_\_\_\_\_
- 7) Does your organization have a separate child abuse investigation unit that includes child sexual abuse?  
Yes \_\_\_\_\_ No \_\_\_\_\_

If yes, what year was the unit created? \_\_\_\_\_

- 8) Your organizations child sexual abuse/child abuse unit is:
- a) Not part of a larger division \_\_\_\_\_
  - b) Part of a criminal investigation division (plain clothes) \_\_\_\_\_
  - c) Part of a crimes against person unit \_\_\_\_\_
  - d) Part of a youth bureau \_\_\_\_\_
  - e) Part of another unit (specify unit name below) \_\_\_\_\_
- 9) How many police officers currently work in your specialized unit? \_\_\_\_\_
- a) How many police officers were in the unit when it was first created? \_\_\_\_\_
- 10) How many civilian professional staff work for your organization that are available to assist you in a child sexual abuse/child abuse investigation? \_\_\_\_\_
- a) When did your organization first use civilian professional staff to assist in child sexual abuse/child abuse investigation? \_\_\_\_\_
- 11) In what capacity do you currently work on a child sexual abuse/child abuse case?
- a) Initial investigation \_\_\_\_\_
  - b) Follow-up interviews \_\_\_\_\_
  - c) Court process \_\_\_\_\_
  - d) All aspects of the case \_\_\_\_\_
  - e) Training \_\_\_\_\_
  - f) Other (please explain below) \_\_\_\_\_

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- 12) In the past, in what capacity have you worked on a child sexual abuse/child abuse case and in what time period?

- a) Initial investigation \_\_\_\_\_ to \_\_\_\_\_ (years)
  - b) Follow-up interviews \_\_\_\_\_ to \_\_\_\_\_ (years)
  - c) Court process \_\_\_\_\_ to \_\_\_\_\_ (years)
  - d) All aspects of the case \_\_\_\_\_ to \_\_\_\_\_ (years)
  - e) Training \_\_\_\_\_ to \_\_\_\_\_ (years)
  - f) Other (please explain below)
- 
- 

13) When did you start investigating child abuse cases?

Month \_\_\_\_\_ Year \_\_\_\_\_

14) When did you start investigating cases that were specifically child sexual abuse cases?

Month \_\_\_\_\_ Year \_\_\_\_\_

15) How many child abuse cases have you investigated? \_\_\_\_\_

16) How many child sexual abuse cases have you investigated (or what percentage)? \_\_\_\_\_

17) What was your usual caseload for child abuse cases? \_\_\_\_\_

18) How many historical child sexual abuse cases have you investigated (or what percentage)? \_\_\_\_\_

19) Have you ever had a multiple victim or multiple offender case? (probe and description) \_\_\_\_\_

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20) Have you received formal training specific to child sexual abuse investigations?

Yes \_\_\_\_\_ No \_\_\_\_\_

If yes, please indicate the courses and workshops you have taken, as well as the name(s) of training facilities or course sponsors. (e.g., police, government, course or workshop, etc.)

Name of course (workshop)	Location	Date	Duration
_____	_____	_____	_____
_____	_____	_____	_____

21) Have you received formal training in child abuse, other than child sexual abuse, investigations?

Yes \_\_\_\_\_ No \_\_\_\_\_

If yes, please indicate the courses and workshops you have taken, as well as the name(s) of training facilities or course sponsors. (e.g., police, government, course or workshop, etc.)

Name of course (workshop)	Location	Date	Duration
_____	_____	_____	_____
_____	_____	_____	_____

22) Does your organization have a written policy for dealing with child sexual abuse and/or child abuse cases?

Yes \_\_\_\_\_ No \_\_\_\_\_ (probe)

a) When was the policy implemented? \_\_\_\_\_

23) Does your organization have a written protocol for dealing with local child protection agencies?

Yes \_\_\_\_\_ No \_\_\_\_\_

a) When was the protocol implemented? \_\_\_\_\_

24) How high a priority does your organization give child sexual abuse and child abuse investigations compared to other kinds of police work? (e.g., patrol, major crimes (e.g., homicides), break and enters, drugs, etc.)

Very Low									Very High
1	2	3	4	5	6	7	8	9	

25) Check the areas where you have received some type of formal training. (course or workshop)

- a) Videotaping interviews \_\_\_\_\_
- b) Techniques for interviewing children \_\_\_\_\_
- c) Use of aids such as anatomically correct dolls, art, diagrams, puppets, etc. \_\_\_\_\_
- d) Sexual assault kit \_\_\_\_\_
- e) Court preparation (child victims) \_\_\_\_\_
- f) Multi-victim investigations (e.g., daycares) \_\_\_\_\_
- g) Ritual abuse \_\_\_\_\_
- h) Other (please specify) \_\_\_\_\_

26) Which of the following techniques are currently used in your department?

- |   | <u>Current</u> | <u>Impl.</u> |
|---|----------------|--------------|
| a) Videotaping interviews of young sexual abuse victim's          | ___            | ___          |
| b) Using audio tape for initial interview of child victim         | ___            | ___          |
| c) Using audio tape for initial interview of non-offending parent | ___            | ___          |
| d) Other (please specify) _____                                   |                |              |

27) Which of the following facilities and equipment does your department have?

- |   | <u>Current</u> | <u>Impl.</u> |
|---|----------------|--------------|
| a) A room suitable for interviewing a child                         | ___            | ___          |
| b) Videotape equipment  | ___            | ___          |
| c) Access to videotape equipment. If so, where?                     | ___            | ___          |
| d) Access to suitable room for interviewing children. If so, where? | ___            | ___          |

28) Have you or one of your colleagues ever used a videotaped interview of a child as evidence in court?

Yes \_\_\_\_\_ No \_\_\_\_\_

If yes, when was a videotaped interview of a child first used as evidence in court?

\_\_\_\_\_ (year)

29) As a child sexual abuse investigator you may be required to deal with other agencies. How would you describe your working relationship with the following groups?

	Poor								Excellent
a) Medical professionals Hospital, Therapy	1	2	3	4	5	6	7	8	9
b) Child protection workers	1	2	3	4	5	6	7	8	9
c) Community workers	1	2	3	4	5	6	7	8	9
d) Crown attorneys (prosecutors)	1	2	3	4	5	6	7	8	9

30) As a child sexual abuse investigator do you have a regular interagency or community child sexual abuse/child abuse committee meeting?

Yes \_\_\_\_\_ No \_\_\_\_\_ (probe)

If yes, when was an interagency or community committee meeting first used?

\_\_\_\_\_ (year)

31) Which of the following groups are currently represented at such meetings?

- a) Crown attorneys office \_\_\_\_\_
- b) Representative of the child protection agency \_\_\_\_\_
- c) Medical professionals \_\_\_\_\_
- d) Community workers \_\_\_\_\_
- e) Other (please specify) \_\_\_\_\_

32) What training is currently required to enable child sexual abuse investigators to do their work effectively? (Please list subject matter or content areas.)

a) Interviewing children \_\_\_\_\_

b) Child development \_\_\_\_\_

c) Court preparation of child witness \_\_\_\_\_

d) Video tape interviews with children \_\_\_\_\_

e) Other (list) \_\_\_\_\_

**Historical Overview**

When do you think the problem of child sexual abuse was first recognized as a community issue? (police role)

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How did your organization respond to the first reports? (probe – disbelief or supportive)

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Over time, how and when did issues regarding the investigation and prosecution of child sexual abuse change? Were there milestones? (probe – what was the police response?)

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What, if any, are the current issues and needs?

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## **APPENDIX B**

### **SUPPORTING TABLES FOR CHAPTER 3.0**



**TABLE B1**  
**Sexual Offences in the *Criminal Code of Canada*<sup>1</sup>**

1955- January 3, 1983	January 4, 1983- December 31, 1987	January 1, 1988-Present (Present Numbering)	
Main Sexual Offence	Main Sexual Offence	Main Sexual Offence	Section
Rape	Sexual assault	Sexual assault (H)	s.271(1)
	Sexual assault with a weapon, threats to a third party or causing bodily harm	Sexual Assault (I) - with a weapon - by threats to third party - with bodily harm - party with another to sexual	s.272(1)(a) s.272(1)(b) s.272(1)(c) s.272(1)(d)
	Aggravated sexual assault	Aggravated sexual assault (1)	s.273(2)
Indecent assault on female			
Indecent assault on male		Sexual interference (H)	s.151
		Invitation to sexual touching (H)	s.152
		Sexual exploitation (H)	s.153(1)
Other Sexual Offences	Other Sexual Offences	Other Sexual Offences	Section
Sexual intercourse with female under 14	Sexual intercourse with female under 14		
Sexual intercourse with female 14- 16	Sexual intercourse with female 14- 16		
Sexual intercourse with feeble- minded, etc., not his wife			
Incest	Incest	Incest (I)	s.155(2)
Seduction of a female between 16 and 18	Seduction of a female between 16 and 18		
Seduction under promise of marriage	Seduction under promise of marriage		
Sexual intercourse with step- daughter, etc., or female employee	Sexual intercourse with step- daughter, etc., or female employee		
Seduction of female passengers on vessels	Seduction of female passengers on vessels		
Acts of gross indecency	Acts of gross indecency		
Buggery or bestiality	Buggery or bestiality	Anal intercourse (H) (ruled unconstitutional in 1995)	s.159(1)
		Bestiality (H)	s.160(1)
		Compelling commission of bestiality (H)	s.160(2)
		Bestiality in presence of child (H)	s.160(3)
Parent or guardian procuring defilement	Parent or guardian procuring defilement	Parent or guardian procuring sexual activity of person (I)	s.170
Householder permitting defilement	Householder permitting defilement	Householder permitting sexual activity (I)	s.171
Corrupting children	Corrupting children	Corrupting children (I)	s.172(1)
Indecent acts	Indecent acts	Indecent acts (S)	s.173(1)
		Exposure (S)	s.173(2)
Vagrancy	Vagrancy <sup>2</sup>	Vagrancy (S)	s.179(1)(b)

B1 (cont'd)

Sexual Offences in the *Criminal Code of Canada*<sup>1</sup>

1955- January 3, 1983	January 4, 1983- December 31, 1987	January 1, 1988- Present	
Main Sexual Offence	Main Sexual Offence	Main Sexual Offence	Section
Other sexual offences with no direct concordance			
		Order of prohibition (H) <sup>3</sup>	s.161(4)
		Living off avails of prostitution under 18 (I) <sup>4</sup>	s.212(2)
		Aggravated offence in relation to living on the avails of prostitution of a person under the age of 18 (I)	s.212(2.1)
		Prostitution of person under 18 (I)	s.212(4)
		Do anything to remove a child from Canada under the age of 14 with intent to commit certain sexual acts (H) <sup>5</sup>	s.273.3(1)(a)
		Where child between 14 to 18 (H)	s.273.3(1)(b)
		Where child under 18 (H)	s.273.3(1)(c)

<sup>1</sup> This table is primarily meant to reflect changes to the *Criminal Code of Canada* following the introduction of Bill C-127 on January 4, 1983 and Bill C-15 on January 1, 1988. Changes that were not part of the aforementioned Bills are specified. The section numbers provided are current as of *The 2007 Annotated Tremear's Criminal Code*. The type of offence (i.e., summary, indictable or hybrid) is noted beside the offence name as follows: (S) = summary, (I) = indictable, (H) = hybrid.

<sup>2</sup> This section first appeared in the *Criminal Code* in 1993. In essence, this offence involves a breach of an order made after conviction for certain sexual offences under the *Criminal Code* against persons under 14, enjoining the offender from: attendance where persons under 14 are expected to be; attendance at daycares, schools, playgrounds, community centres; and seeking or holding employment involving a position of trust or authority towards persons under 14.

<sup>3</sup> This section was revised by Bill C-19 that came into force on December 4, 1985. The new text for s.175 after this date (until further changes in 1988) read as follows: (e) having at any time been convicted of an offence under a provision mentioned in paragraph (b) of the definition "serious personal injury offence" in section 687, or in paragraph (b) of that definition as it read immediately before January 4, 1983, is found loitering or wandering in or near a school ground, playground, public park or bathing area. The definition of vagrancy has changed over the years to include new sexual offence provisions added to the *Criminal Code*.

<sup>4</sup> In both the *Code* pre and post January 4, 1983, and until the legislative amendment of January 1, 1988, there was a provision with respect to prostitution in general; however, the offence was not age specific and did not recognize the special exploitative concerns related to juvenile prostitution.

<sup>5</sup> These offences first appeared in the *Criminal Code* of 1995.

**TABLE B2**  
**Evidence Laws Relevant to Cases of Child Sexual Abuse**

Evidence	1955- January 3, 1983	January 4, 1983- December 31, 1987	January 1, 1988- Present
Corroboration of evidence of complaint in sexual offence	Under s.139 of the Code, corroboration of the evidence of a complaint was required for several listed sexual offences. <sup>1</sup> The corroboration requirement was abolished for rape and indecent assault cases following an amendment to s.142 in 1976.	Corroboration was not required for the new sexual assault offences or for incest or gross indecency. The judge did not instruct the jury that it was unsafe to find the accused guilty in the absence of corroboration.	The list of offences where corroboration is not required for a conviction expands following the 1988 amendments, most notably, to include the new child specific sexual offences. <sup>2</sup>
Recent Complaint	Under the Common Law, evidence of a "recent complaint" was admissible if made by the victim to a third party at the "first reasonable opportunity after the assault occurred." Failure to make a recent complaint could be used to attack the credibility of a victim.	The rules relating to evidence of recent complaint in sexual assault cases were abolished.	The "abolishment" of the recent complaint doctrine was extended to, among others, the new child sexual abuse offences of the Code following the 1988 amendments. <sup>3</sup>
Past Sexual Behaviour	<p><u>Test for Admission:</u></p> <p>Whether the exclusion of the evidence would prevent the "just determination of an issue of fact in the proceedings," including the complainant's credibility.</p>	<p><u>In General:</u></p> <p>No evidence could be adduced by or on behalf of the accused in respect of the complainant's sexual activity in a proceeding with respect to the sexual assault offences with any person other than the accused.</p> <p><u>Test for Admission:</u></p> <p>Unless the evidence:</p> <p>(i) was such that it rebutted evidence of the complainant's sexual activity or absence thereof adduced by the prosecution;</p> <p>(ii) was of specific instances of the complainant's sexual activity tending to establish the identity of the person who had sexual contact with the complainant on the occasion set out in the charge; or</p> <p>(iii) was of sexual activity that took place on the same occasion as the sexual activity that forms the subject matter of the charge, where the evidence relates to the consent that the accused</p>	<p><u>In General<sup>4</sup> (1992):</u></p> <p>Evidence of a complainant's past sexual activity whether with the accused or another person is inadmissible in proceedings with respect to most sexual offences in the Code when tendered to support an inference that the complainant is more likely to have consented to the sexual activity that forms the subject matter of the charges or is less worthy of belief.</p> <p><u>Test for Admission:</u></p> <p>(1) Firstly, the court must determine that the evidence is of specific instances of sexual activity, is relevant to an issue at trial and has significant probative value that is not substantially outweighed by the danger of prejudice to the proper administration of justice.</p> <p>(2) Secondly, in determining admissibility under (1), the court must consider several enumerated factors (included amongst these are the interests of justice and an accused's right to make a full answer and defence, as well as the potential prejudice to the complainant's personal dignity and right of privacy).</p>

**TABLE B2 (cont'd)**  
**Rules of Evidence Relevant to Cases of Child Sexual Abuse<sup>1</sup>**

Evidence	1955- January 3, 1983	January 4, 1983- December 31, 1987	January 1, 1988- Present
		alleges he believed was given by the complainant.	<p>a) <u>Testimony outside Courtroom</u><sup>5</sup></p> <p>A complainant under 18 at the time of the court hearing of a sexual abuse or sexual assault case may (upon order of the court) testify outside the courtroom via closed circuit television or behind a screen or other device that would allow the witness not to see the accused if the court is of the opinion that the exclusion is necessary to obtain a full and candid account of the acts complained of from the complainant.</p> <p>Arrangements must be made for the accused, the judge and jury to be able to watch the testimony by closed-circuit television or otherwise. The accused must be able to communicate with counsel while watching the testimony.</p> <p>(b) <u>Videotaped Evidence</u><sup>6</sup></p> <p>A video recording of an interview with a victim or witness under the age 18 (at the time the offence took place), made within a reasonable time after one of the enumerated sexual abuse or sexual assault offences is alleged to have taken place that describes the acts complained of, is admissible if, while testifying in court, the victim or witness adopts the contents of the video recording (unless the admission of video would interfere with the proper administration of justice).<sup>7</sup></p>
Evidence of Child Under 14	A child of "tender years" who did not understand the nature of an oath could give unsworn testimony in court if, in the opinion of the judge, the child was "possessed of sufficient intelligence to justify	The Laws of Evidence with respect to child testimony did not change during the 1983-1987 period.	Under the <i>Canada Evidence Act</i> , children under 14 who understand the nature of an oath or solemn affirmation and are able to communicate may testify under oath or affirmation. <sup>8</sup>

**TABLE B2 (cont'd)**  
**Rules of Evidence Relevant to Cases of Child Sexual Abuse<sup>1</sup>**

Evidence		January 4, 1983- December 31, 1987	January 1, 1988- Present
Evidence of Child Under 14 (cont'd)	the reception of the evidence," and understood the "duty of speaking the truth." Both the Criminal Code and Canada Evidence Act provided that a person could not be convicted upon the unsworn evidence of a child unless the evidence was corroborated by independent evidence.		<p>Children under 14 who do not understand the nature of an oath or solemn affirmation but are able to communicate may testify upon promising to tell the truth.</p> <p>Before testifying, the court must inquire into the ability of the witness under 14 to (1) understand the nature of an oath or affirmation; and (2) determine whether the witness is able to communicate the evidence.</p> <p>There is no corroboration requirement for a child's testimony (under either the Canada Evidence Act or Criminal Code), but until 2006 children were still required to satisfy the court that they understood the meaning of the promise to tell the truth as a condition of testifying.</p>

<sup>1</sup> These offences included: sexual intercourse with feeble-minded, etc., incest, seduction of female between 16 and 18, seduction under promise of marriage, sexual intercourse with step-daughter, etc. or female employee, seduction of female passengers on vessels and parent or guardian procuring defilement.

<sup>2</sup> As of October 2006, the offences for which corroboration is not required include: sexual interference, sexual exploitation, sexual exploitation of person with disability, invitation to sexual touching, incest, anal intercourse, bestiality, parent or guardian procuring sexual activity, householder permitting sexual activity, corrupting children, indecent acts, procuring and all of the sexual assault offences.

<sup>3</sup> As of October 2006, the offences for which the recent complaint doctrine does not apply are the same as those listed above with the exception of procuring and, instead of bestiality, the offences of compelling bestiality and committing bestiality in the presence of persons under 14 are included.

<sup>4</sup> This is the current evidentiary requirement for admitting evidence of a complainant's past sexual behaviour at the trial for certain sexual offences. The 1988 legislative amendments did not alter the test for admission of past sexual behaviour but rather, extended protection to the new sexual abuse offences created by Bill C-15. The present provision restricting admission of evidence of past sexual behaviour is s.276, with the procedure governed by ss.276.1 to 277, and which were enacted in 1992.

<sup>5</sup> The protection afforded by this section was extended by Bill C-2 in January 2006. If requested, the court now shall make an order permitting testimony outside of the courtroom or from behind a screen in any proceeding with respect to any witness under 18 or a witness who may have difficulty communicating evidence because of a mental or physical disability, unless the court is of the opinion that the order would interfere with the proper administration of justice. This protection is now also available to any adult witness in any proceeding upon application of the prosecutor or witness if the court is of the opinion (after having considered specific factors) that the order is necessary to obtain a full and candid account from the witness of the acts complained of.

<sup>6</sup> This section was also impacted by the Bill C-2 amendments that came into force in 2005 and 2006. The section now provides for protection to a victim or witness under 18 at the time the offence is alleged to have been committed in any proceeding unless the court is of the opinion that the admission of the video recording in evidence would interfere with the proper administration of justice.

<sup>7</sup> Bill C-126, proclaimed in force in 1993, provided other protections or aids to child witnesses under 14 at the time of trial for sexual offences, sexual assault offences or an offence in which violence against the person is alleged to have been used, threatened or attempted. These protections are: permitting a support person to accompany a child during testimony at the trial and prohibiting the cross-examination of a child by the accused personally unless required for the proper administration of justice. Bill C-2 extended the possibility of obtaining these protections in any proceedings where a witness is under 18 unless they would interfere with the proper administration of justice and further, upon meeting specified criteria, to any witness in any proceeding.

<sup>8</sup> Bill C-2 amendments had significant impact on the ability of children under 14 to testify. There is no longer an inquiry into the ability of a child under 14 to understand the nature of an oath or promise to tell the truth. A person under 14 is presumed to have the capacity to testify. The evidence of such a witness will be received if the child is able to understand and respond to questions. The child witness need not take an oath or make a solemn affirmation but rather, "promise to tell the truth" before giving evidence. This evidence will have the same effect as if it was taken under oath.



## **APPENDIX C**

### **SUPPORTING TABLES FOR CHAPTER 4.0**





**APPENDIX C -- TABLE C3**

**Number of Courses Taken by Officers by Community Size (1991)<sup>1</sup>**

		Community Population					Total
		135 - 18,000	21,500 - 60,000	62,000 - 89,000	90,000 - 170,000	177,000 - 2,500,000	
<b>Child Abuse Course</b>	n	1	4	1	5	9	20
	%	5.9	22.2	5.0	17.2	27.3	17.1
<b>Child Abuse/Victim Conference</b>	n	1	0	2	2	3	8
	%	5.9	0.0	10.0	6.9	9.1	6.8
<b>Child Sexual Abuse Course</b>	n	1	2	2	7	5	17
	%	5.9	11.1	10.0	24.1	15.2	14.5
<b>Interviewing Children</b>	n	0	1	4	2	4	11
	%	0.0	5.6	20.0	6.9	12.1	9.4
<b>Videotaping Evidence</b>	n	1	2	0	0	0	3
	%	5.9	11.1	0.0	0.0	0.0	2.6
<b>Bill C-15 Course</b>	n	1	1	0	2	1	5
	%	5.9	5.6	0.0	6.9	3.0	4.3
<b>Other Child Abuse</b>	n	1	3	1	0	4	9
	%	5.9	16.7	5.0	0.0	12.1	7.7
<b>Family Violence</b>	n	2	0	1	0	1	4
	%	11.8	0.0	5.0	0.0	3.0	3.4
<b>Victims</b>	n	3	0	1	0	0	4
	%	17.6	0.0	5.0	0.0	0.0	3.4
<b>Sexual Assault Course</b>	n	2	4	0	7	2	15
	%	11.8	22.2	0.0	24.1	6.1	12.8
<b>General Investigation<sup>2</sup></b>	n	4	1	8	4	4	21
	%	23.5	5.6	40.0	13.8	12.1	17.9
<b>Total</b>	n	17	18	20	29	33	117
	%	100.0	100.0	100.0	100.0	100.0	100.0

<sup>1</sup> Percentages and totals are based on responses (n=117) from 51 officers who reported receiving courses.

<sup>2</sup> This category included some courses which may or may not have included child abuse and child sexual abuse as an area of study.

**APPENDIX C -- TABLE C4**

**Sponsors Who Offered Courses Taken by Officers by Community Size (1991)<sup>1</sup>**

		Community Population					Total
		135 - 18,000	21,500 - 60,000	62,000 - 89,000	90,000 - 170,000	177,000 - 2,500,000	
<b>RCMP</b>	n	2	1	0	1	2	6
	%	13.3	5.9	0.0	3.7	6.1	5.5
<b>Provincial Police College</b>	n	3	5	6	10	7	31
	%	20.0	29.4	33.3	37.0	21.2	28.2
<b>Municipal Police</b>	n	2	0	1	1	7	11
	%	13.3	0.0	5.6	3.7	21.2	10.0
<b>Federal Government/ Justice/Solicitor General</b>	n	1	3	1	2	1	8
	%	6.7	17.6	5.6	7.4	3.0	7.3
<b>Provincial Government</b>	n	3	2	1	4	3	13
	%	20.0	11.8	5.6	14.8	9.1	11.8
<b>Institute for the Prevention of Child Abuse (IPCA)</b>	n	1	2	0	4	5	12
	%	6.7	11.8	0.0	14.8	15.2	10.9
<b>Children's Aid</b>	n	1	2	6	3	1	13
	%	6.7	11.8	33.3	11.1	3.0	11.8
<b>Other NGOs</b>	n	2	2	3	2	7	16
	%	13.3	11.8	16.7	7.4	21.2	14.5
<b>Total</b>	n	15	17	18	27	33	110
	%	100.0	100.0	100.0	100.0	100.0	100.0

<sup>1</sup> Percentages and totals are based on responses (n=110; 7 missing) from 51 officers who reported receiving courses.





**APPENDIX C -- TABLE C9**

**Relationship Between Investigator and Other Professionals by Community Size (1991)<sup>1</sup>**

	<b>Mean</b>	<b>Median</b>	<b>Range</b>	<b>n</b>
<b>Medical Professionals</b>				
<b>Community Size</b>				
135 - 18,000	6.8	6.0	4 - 9	15
21,500 - 60,000	6.7	7.0	4 - 9	15
62,000 - 89,000	7.1	7.0	2 - 9	12
90,000 - 170,000	6.8	7.0	4 - 9	16
177,000 - 2,500,000	7.3	7.0	5 - 9	15
<b>Child Protection Workers</b>				
<b>Community Size</b>				
135 - 18,000	8.1	8.0	5 - 9	15
21,500 - 60,000	6.9	7.0	2 - 9	15
62,000 - 89,000	7.8	8.0	5 - 9	12
90,000 - 170,000	7.7	8.0	3 - 9	16
177,000 - 2,500,000	7.3	8.0	3 - 9	15
<b>Community Workers</b>				
<b>Community Size</b>				
135 - 18,000	7.4	8.0	3 - 9	15
21,500 - 60,000	6.2	7.0	2 - 9	14
62,000 - 89,000	7.5	7.5	5 - 9	12
90,000 - 170,000	6.6	7.0	5 - 9	14
177,000 - 2,500,000	6.4	6.0	3 - 9	15
<b>Crown Attorneys</b>				
<b>Community Size</b>				
135 - 18,000	7.2	7.0	2 - 9	15
21,500 - 60,000	7.1	8.0	2 - 9	15
62,000 - 89,000	7.8	8.0	5 - 9	12
90,000 - 170,000	7.4	8.0	6 - 9	16
177,000 - 2,500,000	7.7	8.0	6 - 9	15

<sup>1</sup> Note: Investigators rated relationships on a scale of 1=poor to 9=excellent.



