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Identifying the Issues:
Victim Services' Experiences
Working with Victims with
Fetal Alcohol Spectrum Disorder



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with Fetal Alcohol Spectrum Disorder

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*The views in this report are those of the authors and
do not represent those of the Department of Justice or the government of Canada.*

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Executive Summary

The purpose of this research was to gain insights from victim services workers' experiences working with victims with FASD (both with and without a formal diagnosis). Anecdotal information suggests that individuals with FASD are at risk of becoming victims of crime. The authors sought to learn from those who work with victims of crime who have FASD to gain further understanding of how this disability impacts the full participation of victims and witnesses in the criminal justice system.

The role of victim services varies across the country, but they all have a common goal: to provide information and support to victims and witnesses of crime. Victim services workers may only have a short period of time to assist clients and as such, their ability to communicate effectively with clients is crucial to their job.

Fetal Alcohol Spectrum Disorder (FASD) is a lifelong brain-based disability that often goes unrecognized as it is not easily identifiable. Many people suspected of having FASD are not formally diagnosed. The criminal court may be unaware that a victim or witness has FASD, which may negatively impact their experience and interaction with the criminal justice system. For example, the way counsel asks questions is critical for obtaining accurate information from individuals with FASD. Individuals with FASD generally do not understand abstract questions; testimony may be misinterpreted when the court is not aware that victims or witnesses have cognitive limitations.

Victims of crime who have disabilities (including FASD) are at increased risk of being repeatedly victimized compared to the general population. Victims and witnesses with FASD may have difficulty explaining the details of a crime to police, and testifying in court, as well as difficulty conveying their experiences into words when writing a Victim Impact Statement. Victims with FASD are some of the most vulnerable individuals in society since many times their disability is unknown to themselves or the court.

Interviews were sought with victim services workers with experience working with clients who have FASD. Directors of Victim Services in the thirteen jurisdictions across Canada were contacted to assist in identifying workers' who had experience working with clients with FASD. Twelve interviews were conducted. All participants agreed that FASD is an important issue to address, and that there is a lack of knowledge and awareness of FASD among individuals involved in the criminal court process. All participants recommended training for all justice professionals on FASD.

Participants indicated that the strategies identified for working with clients who have FASD could be used for any client that may have communication or learning challenges.

Participants provided recommendations that could improve their ability to work with clients with FASD, such as having them watch a DVD that explains the court process and having a manual for workers with tips on providing information to clients with communication difficulties. None of these recommendations are resource intensive. Small adjustments to regular work protocols could greatly improve communication between victims and witnesses with FASD and victim services workers', which could result in improved court experiences for all parties.

1. Introduction

Fetal Alcohol Spectrum Disorder (FASD) is the term used to describe the range of permanent brain disorders caused by maternal alcohol use during pregnancy. All individuals with FASD have central nervous system damage, involving varying difficulty with intellect, learning, memory, attention, communication, executive functioning, and adaptive behaviour. FASD is one of the leading causes of developmental disability and mental retardation in Canada (Chudley, Conry, Cook, Looock, Rosales, and LeBlanc 2005; Roberts and Nanson 2000). Empirical evidence has demonstrated that offenders with FASD are at high risk of coming into repeated contact with the criminal justice system (Conry and Fast 2000; MacPherson and Chudley 2007; Streissguth and Kanter 1997).

Victims and witnesses may be impacted by FASD in two ways: they may have FASD themselves, or they may be the victim or a witness of a crime committed by a person with FASD. Both of these circumstances could negatively impact victims and witnesses' experiences with criminal court proceedings unless there is appropriate awareness about FASD. Victims and witnesses with FASD may have difficulty testifying in court and difficulty in conveying their experiences into words when writing a Victim Impact Statement. In cases where victims or witnesses do not have FASD, but the perpetrator does, FASD may impact upon their experience in a variety of ways: they might not understand the behaviour of the perpetrator including why it appears that the perpetrator does not show remorse and they might not understand the judgement made by the court (e.g., if FASD was considered as a mitigating factor at sentencing).

Individuals with disabilities are at a higher risk of victimization of violent crime (Canadian Centre for Justice Statistics 2001; Petersilia 2001). This includes individuals with FASD. As a result of permanent brain damage, individuals with FASD may have difficulties understanding the implications of behaviours that may put them at risk of being victimized. Some of these behaviours include putting themselves in physical or social environments that are unsafe. Individuals with FASD often have difficulties with executive functioning, which may result in them not understanding when someone is taking advantage of them, agreeing to do something to please the person who is making the request (regardless of whether it is right or wrong), or not being able to anticipate the potential consequences of putting themselves at risk.

Research on FASD and the criminal justice system has focused almost exclusively on the offender and there has been no empirical information collected to date world-wide on victims or witnesses who have FASD. The purpose of this research was to gain knowledge about victim services workers' experiences working with victims who have FASD (both with and without a formal diagnosis), and with victims where the accused persons have FASD.

This report is divided into three sections. Following this brief introduction, the second section provides background on FASD, caselaw and FASD, data on victims with disabilities, and victim services in Canada. The third section details the methodology used for this study and the final section presents the findings and a discussion.

2. Background

2.1 Fetal Alcohol Spectrum Disorder (FASD)

Fetal Alcohol Spectrum Disorder is the term used to describe the continuum of effects that include Fetal Alcohol Syndrome (FAS), partial Fetal Alcohol Syndrome (pFAS), and Alcohol-Related Neurodevelopmental Disorder (ARND). The degree to which prenatal exposure to alcohol damages the individual depends on numerous factors including genetics, maternal characteristics, nutrition, environment, developmental timing, reactions to other drugs and duration and extent of alcohol exposure.

FASD cannot be identified through a blood test. According to the Canadian Guidelines for Diagnosis of FASD (Chudley et al. 2005), a diagnosis of FAS, pFAS, or ARND should be conducted by a physician (geneticist or paediatrician) in collaboration with a psychologist, a speech language pathologist and someone to confirm maternal alcohol history during pregnancy.

Characteristics of FAS and pFAS include:

- pre and/or post natal growth retardation;
- short palpebral fissures (short horizontal eye length);
- thin flat upper lip; and a
- flattened midface.

As described by Chudley et al. 2005 and Lang 2006, for a diagnosis of FAS, pFAS, or ARND, individuals must have impaired functioning in three of the ten brain domains:

- adaptive behaviour;
- executive functioning;
- memory;
- attention;
- academic achievement;
- intellect;
- language;
- social communication;
- neurologic regulatory system; and,
- physical signs (e.g., small head circumference).

Individuals with ARND have no physical characteristics (facial anomalies or growth retardation). An assessment of brain functioning is completed with a series of neuropsychological tests and also by examining school, hospital, or social services records collected on the individual. With the exception of FAS, a diagnosis within the spectrum of FASD requires confirmation from a reliable source that the birth mother drank alcohol during pregnancy.

FAS was first identified in the early 1970s. There remains a lack of awareness of the disorder within the Canadian medical profession, as well as a paucity of FASD diagnostic services available. In Canada, there is no national data available on the prevalence of FASD, but it is considered one of the leading causes of mental retardation and developmental disability in Canada (Chudley et al. 2005). FASD is highly under-diagnosed among the general Canadian population (Clarren 2008).

Although some individuals with FASD have above average intelligence, research has suggested that about half of individuals with FASD have mental retardation and the remainder generally have below average to average intelligence (Alberta Learning 2004; Streissguth, Clarren, and Jones 1985). It has been reported that average academic functioning for individuals with FASD (including adults) is at the second to fourth grade level (Streissguth and Kanter 1997).

Cognitive and behavioural characteristics associated with FASD vary depending on the parts of the brain affected. FASD affects every individual differently. As highlighted by Streissguth et al. 1999 and Streissguth and Kanter 1997, some characteristics of FASD can include:

- becoming overwhelmed by stimulation;
- lack of understanding and respecting of personal boundaries;
- displaying impulsiveness;
- distractibility; and,
- aggressiveness.

Other characteristics of FASD can include difficulties with:

- time perception;
- short term memory;
- planning;
- linking behaviours to consequences; and,
- daily living tasks.

In addition to the cognitive and behavioural characteristics associated with FASD, individuals with FASD often develop other problems as they become adolescents and adults. "Secondary disabilities" is a term coined by Ann Streissguth, one of the leaders in FASD research to describe the non-organic problems that occur as an individual with FASD attempts to cope with daily living (Streissguth 1997). These problems can include employment difficulties, homelessness, and trouble with the law. Many individuals with FASD have substance abuse problems and mental health diagnoses, such as depression, anxiety, or Attention Deficit Hyperactivity Disorder (ADHD). Secondary disabilities are very prevalent among individuals with FASD, especially among individuals who have no family or community support systems.

Based on anecdotal evidence, victims of crime who have FASD appear to be at risk of coming into repeated contact with the criminal justice system (Conry and Fast 2000; Fraser 2008; Vitale Cox 2005). The prevalence of FASD among victims and witnesses of crime is unknown, but published Canadian caselaw demonstrates that issues related to victims and witnesses who have FASD have been raised during criminal court proceedings, and notably at sentencing.

2.2 Caselaw and FASD

Although published caselaw is not representative, an examination of caselaw was included to examine the issues that were brought to the court in cases where the victim or witness had FASD. A Quick Law search was conducted in April 2009 which resulted in 561 hits where 'fetal alcohol' or 'alcohol related neurodevelopmental disorder' was mentioned in published Canadian family, civil, and criminal court cases. All criminal cases were reviewed to determine how many included victims or witnesses with FASD. Most of the criminal cases involving FASD were for instances where the *offender* had FASD.

There were 24 instances, representing 20 different criminal cases where the *victim or witness* was reported to have FASD (both with and without a formal diagnosis). Seven of the reported cases were from Ontario, four were from the Yukon Territory, two were from British Columbia, and one case was reported in each of Manitoba, Saskatchewan, Alberta, the Northwest Territories, and Newfoundland. There has been a notable increase over time in Canadian cases where FASD is mentioned (McDonald et al. 2009; Roach and Bailey, in press).

In all of the instances where the victim or witness had FASD, the court was aware of the limitations associated with this disorder. The issues that were brought to the court related to the credibility of victims and witnesses' testimony and whether the vulnerability of the victim with FASD was considered an aggravating factor at sentencing. Anecdotal information suggests that courts would not be receptive to victims who did not have an official FASD diagnosis, but caselaw shows that, in some instances, courts have been receptive to taking FASD into consideration without having a formal diagnosis of FASD. Interestingly, as described by Roach and Bailey (in press), the social worker, on behalf of the victim in *R. v. C.M.S.* was permitted to prepare the Victim Impact Statement. This was accepted by the judge as being applicable under s. 722 (4) of the *Criminal Code* for circumstances where the victim is incapable of making a statement.

2.3 Data on Victims with Disabilities

In Canada, crime data is collected through two main sources – police-reported data and self-reported victimization. Since not all crimes are reported to the police,¹ self-reported surveys such as the General Social Survey (GSS) on Victimization, which is currently conducted every five years,² provide a more comprehensive picture of victimization in the country. As well as these national data collection projects, research is being undertaken at local levels which focus on particular populations.

A recent report from Statistics Canada (Perreault 2009) examines data from the 2004 GSS on Victimization and the 2006 Participation and Activity Limitation Survey (PALS). The report notes that in 2004, rates of violent victimization were two times higher for persons with activity limitations³ than for persons without such limitations. Almost two thirds (65%) of violent crimes against persons with activity

¹ For example, sexual assault is one crime that is extremely underreported. The 2004 General Social Survey on Victimization estimates that only 8% of sexual assaults are actually reported to the police (Brennan and Taylor-Butts 2008). The reasons for underreporting vary and can be attributed to a number of factors, but in the case of sexual assault, it would appear that a lack of confidence in the criminal justice system plays a key role (see for example, Hatter 1999).

² At the time of writing, the Policy Centre for Victim Issues, Department of Justice Canada, had provided funding to the Canadian Centre for Justice Statistics to complete a feasibility study to examine increasing the frequency of the victimization survey.

³ Statistics Canada defines activity limitations as limited ability to engage in day-to-day activities due to a condition, disability, or health problem. Last accessed June 15, 2009 from <http://www.statcan.gc.ca/cgi-bin/imdb/p2SV.pl?Function=getSurvey&SDDS=3251&lang=en&db=imdb&adm=8&dis=2>.

limitations were committed by a person known to the victim. Furthermore, the personal victimization⁴ rate for persons with mental or behavioural problems was four times higher than the Canadian average. We also know that in 2004 persons with activity limitations were two to three times more likely to be victims of sexual violence, be beaten, struck or threatened with a weapon by a spouse.

The data in the Statistics Canada report is limited inasmuch as many persons with disabilities may be living in institutions, or in community-assisted living situations, and therefore would not be included in the GSS sample. The data confirm what other studies have reported - that persons with disabilities have higher rates of violent victimization than the general population (see for example Office for Victims of Crime 2008; Petersilia, 2009).

2.4 Victim Services in Canada

The Victim Services Survey 2005/06 (Brzozowski 2007) undertaken by Statistics Canada provides a good overview of the services offered to victims of crime by organization. Each province and territory in Canada provides assistance to victims of crime. Service delivery varies considerably between and within jurisdictions. For example, community-based services, such as sexual assault centres, are located outside of the formal criminal justice system, and receive their funding from a variety sources. Police-based services, on the other hand, are affiliated with police services and provide services in police-related matters. System-based services are those that are located within the structure of the criminal justice system and often, but not always, provide assistance to victims throughout the process (from police contact through the courts).

Models of victim services delivery vary depending on whether full-time, paid workers are delivering the services, whether volunteers are used, or a combination of both. Training requirements, qualifications, and remuneration all vary considerably across Canada. Particular issues, such as recruitment and retention, are noted in rural and remote communities. A study on the professionalization of victim services workers examines many of these issues (McDonald 2007).

The Victim Services Survey found that in 2005/06, over 400,000 people sought assistance from the 589 agencies which provided data (Brzozowski 2007). More than one fifth (22%) of those agencies provided specific programs for persons with mental disabilities, and more than three-quarters of agencies (81%) reported that they were able to provide services to persons with mental health issues. Moreover, it was found that agencies provide a range of services to accommodate the various needs of victims of crime, and also use networks of referrals to ensure that victims get the assistance they need on all issues, whether it is housing, health, or social assistance.

⁴ Violent victimization includes the crimes of sexual assault (all levels), robbery and assault. Personal victimization includes the additional crime of theft of personal property. The sample size was too small to obtain a figure for violent crimes only. The rate was 845 incidents per 1,000 persons which is more than four times the incidents for the population as a whole (199 per 1000 persons).

The federal government shares responsibility with the provinces and territories to respond to the needs of victims of crime. The federal government launched the Victims of Crime Initiative in response to the 1998 report by the Standing Committee on Justice and Human Rights, *Victims' Rights – A Voice Not a Veto*⁵. This initiative is in its second five-year term, and is managed through the Policy Centre for Victim Issues (PCVI) at the Department of Justice. The initiative has played a key leadership role in the following areas:

- law reform;
- research on national and regional victim trends and issues;
- funding for projects with innovative methods for delivering services; and,
- fostering information sharing through such mechanisms as the Federal, Provincial, Territorial Working Group on Victims of Crime.

As described in Figure 1, the provincial and territorial governments are responsible for delivering victim services to victims of crime in their respective jurisdictions. Governments at both the federal and provincial/territorial levels actively worked together to develop the Canadian Statement of Basic Principles of Justice for Victims of Crime.⁶ These principles laid the foundation for how victims are to be treated within the Canadian criminal justice system and as such, provide the basic framework for the delivery of victim services.

The great variance in service delivery models between and within jurisdictions, as well as different levels of resources, means that there are no truly national standards or unified sets of rules governing victim services. As a result, victim services' are more developed in certain areas than in others, and in some places they are virtually non-existent.

Figure 1. Federal, Provincial and Territorial key areas of responsibility for victim issues

Jurisdiction	Main responsibilities
Federal Government	<ul style="list-style-type: none"> ➤ Enacting criminal law (<i>Criminal Code, Youth Criminal Justice Act, Corrections and Conditional Release Act</i>) ➤ Correctional Services Canada and National Parole Board provide information and a role for victims through the <i>Corrections and Conditional Release Act</i>. ➤ Research ➤ Encouraging program development through project funding and public information ➤ Law reform and policy development ➤ Evaluation and monitoring of national programs and <i>Criminal Code</i> amendments ➤ Prosecution of <i>Criminal Code</i> (and other federal) offences in the Territories as well as drug offences in Canada generally

⁵ Last accessed June 25, 2009 from <http://www2.parl.gc.ca/HousePublications/Publication.aspx?DocId=1031526&Language=E&Mode=1&Parl=36&Ses=1>

⁶ Refer to the Department of Justice Canada website for the Statement. Last accessed June 15, 2009 from <http://www.justice.gc.ca/eng/pi/pcvi-cpcv/pub/03/princ.html>

Jurisdiction	Main responsibilities
Provinces and Territories	<ul style="list-style-type: none">➤ Enforcing the law, prosecuting offences and administering justice*➤ Delivery of victim services➤ Victim-related legislation (may include principles, administration of a Victims Fund, criminal injuries compensation, surcharge on provincial offences, service standards; notification of offender release, safety)➤ Development and administration of special projects/programs to respond to victim issues through grants and contributions (this includes public awareness)➤ Evaluation and monitoring of jurisdiction programs, services, and delivery models➤ Research

* Note that the Public Prosecutions Service of Canada (PPSC) has responsibility for the prosecution of all federal offences, including *Criminal Code* offences, in the three Territories. The PPSC and the Policy Centre for Victim Issues, Justice Canada provide funding for the delivery of Crown-based victim services' in the three Territories. The delivery of victim services' is under provincial jurisdiction in the provinces.

In Canada, there are provisions in the *Criminal Code* that protects witnesses with physical or mental disabilities. These provisions are referred to as "testimonial aids"⁷, and can include the following:

- having a support person present while testifying to make the experience more comfortable;
- testifying behind a screen, so that the witness does not have to see the accused;
- testifying outside the courtroom via closed-circuit television, also so that the witness does not have to see the accused;
- ordering a publication ban to protect the identity of the witness; or
- ordering members of the public to leave the courtroom during the proceedings.

The judge has the final decision regarding whether or not a testimonial aid can be used. Use of testimonial aids is not common for vulnerable adults (Bala et al. forthcoming) and there is no empirical evidence on the use of testimonial aids for adults with disabilities.

⁷ For more information on testimonial aids, please refer to the Justice Canada website. Last accessed June 15, 2009 from <http://canada.justice.gc.ca/eng/pi/pcvi-cpcv/exp.html>.

3. Methodology

3.1 Participant Recruitment

A letter of information was sent to the thirteen provincial and territorial Directors of Victim Services across Canada through the Federal, Provincial, Territorial Working Group on Victims of Crime. The letter asked the Directors to identify specific victim services workers' who might have had experience working with clients who have FASD. The process by which Directors identified victim services workers was up to each Director. Persons identified by the Directors were contacted by telephone to determine if they were interested in being interviewed.

Prior to beginning the interview, participants were asked if they objected to having the conversation audio-taped and assured that the tapes would be destroyed once transcribed. They were also asked if their name could be included in a List of Participants.⁸ All participants agreed to be included on this list, which may be found at Appendix A.

3.2 Research Questions

Research questions related to participants' knowledge of FASD, the importance and prevalence of FASD among their clients, their strategies for working with clients with FASD, and their recommendations regarding what could help them better prepare for clients who may have FASD. In a semi-structured format, the following questions were asked of participants:

- How prevalent is FASD among your clients?
- How important is FASD to the criminal justice system?
- When did you first learn about FASD? Prior to your role with Victim Services?
- Have you or your organization taken any steps to improve your knowledge of FASD? What were these steps?
- How do you know your clients may have FASD?
- How do you work with clients who may have FASD? Do you use any specific strategies? What are they and where did you learn these strategies?
- Have you provided referrals for clients who may have FASD? To where?
- What could help you better prepare for clients who may have FASD?
- What do you think could further assist these clients?

3.3 Considerations

While the incidence of FASD is considered to be higher among Aboriginal persons, FASD can affect anyone, regardless of culture, race, or economic background, if alcohol was consumed by the mother during pregnancy. Ideally, participation from victim services workers serving clients representative of Canada's was sought, but during the design of the research, it was suspected that results may primarily include victim services workers' experiences with issues that are specific to individuals who self-identify

⁸ The research project underwent an ethics review that is based on the principles found in the Tri-Council Policy Statement. Last accessed June 15, 2009 from <http://www.pre.ethics.gc.ca/eng/policy-politique/tcps-eptc/>.

as First Nations, Métis, or Inuit. This is because many of the communities that are knowledgeable of FASD (e.g., Whitehorse, Winnipeg, Saskatoon, Goose Bay, Thunder Bay) have a high representation of Aboriginal persons. Various Aboriginal groups and communities have identified FASD as an important issue to address, while Caucasian and other racial groups have not acknowledged the issue to the same extent. As a result, the suspected higher incidence of FASD among Aboriginal persons is also due to their heightened awareness and action in this area compared to non-Aboriginal persons. It is also important to recognize the social and environmental factors (other than alcohol) that contribute to FASD among Aboriginal persons including poverty, abuse, lack of access to medical care, and nutritious food (Tait 2003).

3.4 Limitations of the Study

Directors of Victim Services across the country were gracious in taking the time to determine if there was anyone in their respective jurisdictions who had experience working with clients with FASD. Not all victim services workers experienced in working with clients who have FASD were aware of this research and their ability to participate in an interview. Not all identified individuals were contacted for participation. Therefore, the results only characterize one sample of victim services workers across Canada who had worked with clients who have FASD. Despite these limitations, these interviews provided an opportunity to explore the perspectives of victim services workers on their experiences with FASD within the context of the criminal justice system.

4. Findings and Discussion

4.1 Demographics

All Directors were receptive to the research project and agreed to attempt to identify if any victim services workers had experience working with clients with FASD. Several Directors indicated that FASD was not an issue that had been raised by victim services workers. As noted in section 3.3, many of the victim services workers' who participated in the research worked in regions with high representation of Aboriginal persons. This does not mean that FASD is not an issue for non-Aboriginal persons.

Twelve telephone interviews were conducted averaging thirty minutes each. Interviews were with front line victim services workers, one consultant, and one psychologist who were employed in various parts of the country (seven provinces/territories). Nine participants reported that they had worked with clients who had FASD while employed with victim services. The three remaining participants had experience working with clients who had FASD in other types of social service capacities. Most participants worked with adults only, a few worked exclusively with children, and a few worked with both adults and children. One participant was a volunteer victim services provider, one participant was a consultant for victim services, and the remaining participants were employed by federal/provincial/territorial governments.

The majority of the participants were employed in rural or remote areas and several also worked on circuit where they had to drive or fly to a community that does not have a regular criminal court. Several participants were employed with victim service organizations that offer services to victims from the crisis (police) stage all the way through to sentencing. Other participants provided primarily court-based support preparing witnesses for court and informing victims about the court process.

The results are presented in a format that combines both the individual topics discussed and general themes that emerged. The results section includes the following topics: (1) the reality of FASD from a victim services perspective; (2) the importance and prevalence of victims who have FASD; (3) knowledge of FASD among participants; (4) providing information to the court; (5) strategies for working with clients who may have FASD; and (6) recommendations on what could help victim services' workers better prepare for clients who may have FASD.

4.2 Experiences with Victims who have FASD

It was apparent throughout the interviews that there are fundamental challenges in addressing FASD from a victim services perspective. Two themes emerged from the discussions that highlight these challenges. There was a lack of opportunity to identify clients who may have cognitive difficulties, and a lack of awareness of FASD within the context of the criminal justice system.

There are several reasons why FASD is difficult to identify. FASD is different from many other types of disabilities because there is often no observable physical or cognitive impairment. This is why FASD is referred to as an "invisible disability" - the individual often appears to understand what is being said to them and verbal skills appear "normal", despite low comprehension. The opportunity to identify individuals who may have cognitive difficulties is often not feasible. Not all victim services offer a seamless service; that is, an ability to assist the client from the first contact with police throughout the

court process until a decision is made (court/sentencing). Sometimes, a victim services provider only spends a short period of time with a victim or witness. A couple of participants worked on circuit where they fly or drive to a remote community that does not have a designated court house. The victim services available to victims within these communities are somewhat limited. For example, one participant explained:

It's usually a half an hour before court starts and it's not just one trial, it's several. I might only get ten minutes with each person...

The limited time some victim services workers have with clients makes it very challenging for them to be able to identify if the person appears to have cognitive or learning challenges, let alone FASD. Even victim services workers who work with clients over time (from police stage to post-sentencing) may not be aware the victim has cognitive difficulties unless the workers are familiar with the characteristics associated with cognitive difficulties. Many victim services workers have been trained in responding to certain types of crimes, for example family violence and sexual assault. They are trained to look at the type of crimes and not the characteristics of particular victims. This further reinforces the challenges in identifying clients with cognitive difficulties.

It was clear from participants that there is a significant lack of awareness of FASD within the criminal justice system. If justice professionals are not aware that some individuals within the justice system have cognitive difficulties, then they will not be able to appropriately respond to their unique needs. One participant explained an experience they had in court that highlights the challenge of identifying and addressing FASD in the criminal justice system:

And I tried to warn the Crown that he probably wasn't going to make a good witness. That you're going to have to be really direct with your questions, because he doesn't...I said this is what's going on for him, he's not going to deal with abstract questioning very well. And he was a horrible witness, and it was terrible. Because the judge ended up tearing a strip off him.

And it was just terrible because nobody actually came out and asked specific questions to get the information that was needed to be gotten and it never came out. So it made him look guilty and the father look innocent, which wasn't the case. And then here's this kid who, for the first time in his life, had spoken out against his abusive father, got a strip torn off him by the judge because he was an unreliable witness. It was just a nightmare. ...the boy was really nervous, so he was kind of coming across as being cocky because he was trying to, I don't know, appear calm...I don't know. ...do you realize now these people have no place to go. Because now dad is being let loose. They have none of their clothing, they have nothing, and there's no place for them to go. And they had taken off and I couldn't find them. But they were in fear for their lives now because dad got released as a result of the whole process. I just thought the whole system failed this kid.

What happened in this instance clearly demonstrates the importance of asking appropriate questions to ensure that witnesses are able to convey the information they need to have presented to a judge. It also alludes to the lack of awareness that justice professionals have in cases where cognitive difficulties could

be impacting the court proceedings. One participant stated that justice professionals appear hesitant in addressing FASD because:

...when you're trying to create awareness about FASD sometimes, it's like they think you're saying that these people should be exempt from the criminal process because they have a disability. That's not what I was saying, but that was how it was perceived.

What was clear from the interviews is that FASD in clients presents significant challenges for workers in all they do whether it is providing information, support, court preparation, referrals and/or follow-up. FASD represents an additional layer of complexity to the realities that their clients are facing.

4.3 Importance and Prevalence of Victims who have FASD

There was a consensus that FASD within the context of victims and witnesses is very important. This is not surprising as we were interested in hearing from people who had experience with FASD. It was stated, however, that FASD is not one of the main issues for participants; FASD is considered a lower priority issue within the broad range of issues faced by victim services workers. For example, responding to victims of domestic violence is a primary concern for participants.

All participants felt that criminal justice professionals at all stages of the criminal justice process should be aware of FASD. One participant explained the importance of criminal justice professionals being aware of victims with FASD:

...we need to know that the justice system, whether it's the judiciary, the Crown etc. that they're aware of this issue...that that's just something that is part of the knowledge that they have, so that they can do the work that they need to do, keeping that in mind.

Another participant highlighted the importance of working with victims who have FASD, because of the vulnerability of such persons:

...those that are affected are often also the most vulnerable to continued victimization. It's a limited contact that we have with people, but when we do, trying to work with people to try to have a safety plan in place so that we can minimize the number of times that they're in situations where they are at risk again.

All participants hesitated when they were asked how prevalent they think FASD is among their clients. There was a consensus that FASD is under-diagnosed and that in many cases FASD is suspected and not diagnosed. In the words of one participant:

It [FASD] is much higher than we realize because it's either misdiagnosed or it's just not noticed at all.

One participant indicated that all victim services workers have worked with a client with FASD, but that they do not have the ability to recognize when a client has FASD. The perceived prevalence rate varied and was dependent on participants' comfort with the behavioural characteristics of FASD.

Different populations have different social issues going on. And I know for us this [FASD] is one of the big issues within our communities.

Participants were asked to approximate how many persons they worked with had FASD. The perceived prevalence rate of FASD among their caseload ranged from a low of 1% to more than 50% among participants' case loads. The high perceived prevalence rates were not exclusively restricted to communities that had many Aboriginal persons. Among participants who worked with children and youth, their perceived prevalence rate was between 10-15% of their clients. For example, one participant stated:

I think it's more prevalent in some of our youth and older teens, and they're blaming it on maybe drug usage and other things also.

A couple of participants who work primarily with Aboriginal clients indicated that FASD often overlaps with Post Traumatic Stress Disorder. One participant noted:

...in a lot of cases, there's so much post traumatic stress symptoms that it would be hard to tell them apart unless you know what you're dealing with.

Participants were also asked about the prevalence of working with victims where the accused persons have FASD. Participants who commented on this topic indicated that the prevalence of FASD among accused persons is higher than that among victims and witnesses. Only one participant noted that they had been involved in situations where they had informed victims that an accused person had had FASD so that the victims were aware of how FASD could have impacted upon their behaviour. One common point noted by several participants was that most of their clients know the accused.

Generally speaking the type of clients that I have in here know the accused, and there isn't a lot that I could tell them about the accused that they don't know.

4.4 Knowledge of FASD among Participants

In recruiting for this study, victim services workers who were knowledgeable of FASD, and who had experience working with victims of crime who had FASD (both with and without a formal diagnosis) were sought. All participants were knowledgeable of and familiar with FASD, the diagnostic process, and strategies for working with clients who display characteristics associated with FASD. As one respondent noted:

I feel comfortable with my understanding of FASD issues, but I think the most important thing that people can realize, for myself that I realize in dealing with these people is that it's a spectrum disorder, and because of that you can't just deal with one client like you would deal with another client. Even within the spectrum disorder like everyone else these people have good days and bad days.

Victim services workers gained their knowledge surrounding FASD from a variety of sources. Interestingly, only one participant learned about FASD through their work as a victim services worker. This participant first became aware of FASD during a criminal case where the accused person had FASD, and a physician provided testimony on the impact of FASD on this particular individual. Another participant learned about FASD at an awareness training session on FASD to improve their knowledge of FASD to inform their role as a victim services worker.

Some participants gained their awareness of FASD through previous employment with the social services and/or the child welfare system. They stated that these experiences exposed them to FASD, so they were able to transfer their knowledge from that setting to their work with victims. Most participants learned directly about FASD through their formal training in the social work field, or by attending workshops or short courses on FASD. These educational training sessions occurred prior to their employment with victim services. A couple of participants noted that they have attended training sessions on mental health (including suicide) and/or developmental disabilities as part of their continued learning within victim services. Furthermore, one participant noted that their victim services organization was currently attempting to have an expert on FASD come to speak to their staff to improve their skills in the area of:

Helping... being able to communicate most effectively with the kids so that they can integrate the concepts that they'll need for court purposes.

Overall, the level of knowledge among participants was high, and more importantly, participants were aware of what they did not know, and often asked for training to fill such knowledge gaps.

4.5 Providing Information to the Court

Participants were asked if they had ever, or if they would be willing to, provide information to a court regarding a victim's FASD or other disability. Participants were also asked if they ever considered encouraging the use of testimonial aids⁹ for any of their clients who had FASD. Only a few participants indicated that they had previously spoken with the Crown about a witness having FASD. One participant provided suggestions to the Crown regarding questioning that witness: the participant questioned whether the Crown took those suggestions into consideration.

I don't know that he really necessarily took into consideration what I had to say, or even if he knew what that meant, as to how the questioning should go. It wasn't until it was over that he realized what I was talking about.

Another participant noted that they do not identify disabilities of witnesses, but instead they provide the Crown with the knowledge that a witness may have cognitive challenges. For example, one respondent noted:

... usually I don't couch it as just FASD, I'd say look there's some delays here, and you may have to slow down with the legalese and make it very simple, and don't ramble on because the attention span may not be there even if they do understand where you're coming from.

Most participants indicated that they were not comfortable with providing information to the court about whether or not a victim or witness had FASD, recognizing the complexity of the diagnostic process.

I'm just not qualified to do that.

⁹ See supra note 7.

None of the participants had experience with a case where a testimonial aid was used because the child or adult had FASD. Several participants indicated that defense counsel would argue against the use of testimonial aids for individuals that did not have an official diagnosis of FASD.¹⁰

I'm only guessing but I think the Defence would object to that right away because we don't have any proof, and they'd be all over us. Having said that I'm not aware of anybody ever trying that...

Another participant noted that even if a person did have FASD they may not be inclined to request a testimonial aid:

I don't know that we really use the testimonial aids specifically because they are FASD; it would be more around issues related to the abuse in terms of their fearfulness or, you know, ability to communicate the evidence because they have to see the accused...those sorts of things.

Also, with respect to requesting the use of testimonial aids, one participant indicated,

I think the thing that would help us is just to know that if we did request that, we would be honoured in that request.

4.6 Strategies for Assisting Victim who have FASD

Most participants noted that they do not use specific strategies when working with victims who have FASD. Instead, participants identified strategies they employ when working with individuals they perceived to have communication or learning challenges. Examples of approaches participants had used include:

- doing more hands-on activities;
- providing simpler materials;
- using pictures;
- using visual cues;
- taking several breaks;
- repeating information; and,
- asking the client to explain to the victim services workers what they had just been told.

A few participants underscored the importance of these strategies when working with persons with communication or learning difficulties. One participant noted:

We try as best we can to use plain language, but I think I'm even more cognizant of making sure that what I'm saying makes sense. And checking with people and being aware that people may say that they're understanding what I'm talking about even if they may not.

¹⁰ Caselaw and a survey of judges indicates that testimonial aids are rarely used for adults (Bala et al. forthcoming). As such, there is no indication of exactly what supporting documentation would be needed for a successful application for a testimonial aid. In the context of children, quite often there are letters from social workers and other professionals who have worked with the child who is to testify indicating why a particular testimonial aid would be beneficial.

Similarly, another participant noted that:

...we have to be really careful about making sure that we're using appropriate language, that's appropriate to people's level of comprehension and taking in account that there's sort of social likeability thing that kicks in, that people will agree with us, or appear to say that they understand things that perhaps they don't.

One participant highlighted how they assist victims who may have FASD:

What is there for FAS and post traumatic people is the immediate present, that's what's there right now. And you have to take care of those things first. Maybe they're looking for a way to get something for dinner, and what your concern is, is about how they're going to behave in the witness box. Well, forget it. Like, you get the dinner thing, like help them with those things and work up towards what they're going to do in the witness box. You just have to be conscious of what they need and try to find ways to put that stuff around them.

One participant noted that their victim services unit had partnered with a family literacy program to adapt the Victims of Crime Protocol¹¹ to a lower level of literacy that was more concrete and simple.

Several participants provided approaches they use with victims, regardless of whether or not they have a disability:

The one thing that I'll usually say to people is the judge doesn't know in his head what you know in your head. And it's the job of the Crown to get that information from your head out, and so the judge knows what you know. What I find, what people struggle with is they can know so much about the perpetrator but they're not understanding if it doesn't get presented in the courtroom, then the judge's decision is based on what he hears. And he doesn't always hear everything he needs to hear.

The most important thing is to establish some sort of trust and sort of ongoing relationship in order for anything to happen. Simply somebody who comes in who has been victimized that needs information, number one is to form some sort of bond with them before you try to regurgitate a bunch of, you can go here and this is where you get money and this is where you can get child care.

Participants were asked whether they provide referrals to victims who have FASD, or to victims they suspect have learning or cognitive challenges. Participants indicated that they often provide referrals to clients regardless of whether or not they have a disability. The types of referrals that participants made were based on program availability in their respective communities. Most participants indicated that they provided referrals for counselling.

¹¹ In Alberta, the Victims of Crime Protocol is provided to every victim of crime. It details what one can expect from the criminal justice system. Last accessed June 24, 2009 from http://www.solgps.alberta.ca/programs_and_services/victim_services/Publications/2007/Victims%20of%20Crime%20Protocol.pdf.

Several participants indicated that they often ensure the client attend scheduled appointments:

...if the client is going to see a counsellor, for example, I may not just make that referral and leave it at that; I may have the person...or ask the person to come here to my office, and we will go together. It becomes more predictable then if they know every time they come to see me it'll be at 11:00. And we might have our...so it's simpler, it's not a bunch of different places that someone has to go.

Another participant noted that they often ask the police to come to the victim services' office when a victim who has FASD has to give a statement instead of requiring that individual to provide a statement at a police station:

If someone has to give a statement or give more evidence and it's not going to be a videotaped statement, then I will try to arrange for the RCMP to come here. Because I think it makes a real difference to have predictable, familiar places.

4.7 Recommendations for Assisting Clients who have FASD

Participants were asked what they would recommend to help provide the best services possible for clients who have FASD. The most iterated suggestion was that training on FASD be provided to all justice professionals. It was repeatedly noted that there is a lack of awareness of FASD within the criminal justice system. To that end, one respondent noted:

If it were required that every judge, every Crown, every defense attorney, every RCMP member had to have a knowledge of FASD, that would help us greatly. Because sometimes half the battle is just trying to convince somebody that there's something going on.

Many victim services workers have annual training on various topics. It was suggested by several participants that FASD should be included in the annual training.

Another suggestion was that a kit or DVD be prepared that individuals with disabilities could watch to help them to understand their role in court, and also to show what should be included in a Victim Impact Statement:

If there was a kind of kit, or DVD that was specifically geared to people with learning disabilities or poor attention spans in the same way there are the same types of kits or audio presentations preparing children to testify. That would be very useful.

Participants also thought it would be helpful to have a manual for their own use that explained ways to better interact with individuals with learning and communication challenges.

Another suggestion was to let clients do an activity that is familiar to them while talking with them, such as knitting or drawing:

Once they're mentally concentrated on something, like an activity of some sort then it's better to interact with them. So I'd say give them a stress ball or just maybe have them draw something on a piece of paper or I guess...You know that they're giving them something that familiar to do.

4.8 Discussion

The participants in this study had a high level of awareness about FASD, and noted that there are many other victim services workers who likely do not share that level of awareness. The participants saw FASD as part of a larger constellation of challenges toward providing quality victim services. Participants indicated that the strategies identified for working with clients who have FASD could be used for any client that may have communication or learning challenges.

Agencies have limited resources, workers have limited time for training, and there are competing training needs and priorities. It would be worthwhile to explore a strategy that would ensure that victim services workers are allotted the time to learn about FASD, and how to work with clients who have communication challenges. Such training could be built into other training sessions. Improving knowledge of FASD and other disabilities among victim services workers would assist them in communicating effectively with vulnerable victims of crime, which could result in improved court experiences for all parties.

The use of testimonial aids in Canada for vulnerable adults is not common (see Bala et al. forthcoming). It may be worthwhile to explore further the use of testimonial aids for vulnerable adults and assess Crown and judicial willingness to use aids for some individuals with FASD. It may also be beneficial to explore whether Victim Impact Statements are being completed by a designated support person for vulnerable adults as in *R v. C.M.S.*

Victims with FASD may be some of the most vulnerable victims of crime; it is incumbent upon criminal justice professionals to better understand how the Canadian criminal justice system may provide the best services possible for all victims of crime, particularly vulnerable victims of crime.

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Case Law where the victim or witness has FASD

R. v. Isaac [1979] Y.J. No. 8 1979
R. v. Wahpay [1991] O.J. No. 2300 1991
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R. v. D.B. [2005] O.J. No. 5151 2005
R. v. Gauthier [2006] N.J. No. 340 2006
R. v. Horeczy [2006] M.J. No. 444 2006
R. v. R.L. [2007] O.J. No. 5307 2007
R. v. R.L. [2007] O.J. No. 5294 2007
R. v. R.L. [2007] O.J. No. 4095 2007
R. v. B.K.W. [2008] B.C.J. No. 2670 2008

Appendix A: List of Participants

Brad Agnotnes

Milco De Graaf

Brooke Harker

Lynette Janzen

Mary Beth Levan

Kami Lucas

Claudia Mann

Evelyn Marshall

Kathy Osadcuk

Dr. Wayne Podmoroff

Mary White

Jared Zeldin