

2000.03 UNJUST TREATMENT OF CHILDREN IN ASSAULT CASES

Whereas: in Canada, the right of an accused person to present adequate defence is an important legal principle; and

Whereas: in our Canadian adversarial court system, Crown Attorneys and Defence Lawyers are compelled legally to attempt to persuade the judge and/or jury to accept their client's version of the incident; and

Whereas: the treatment of children as victims and witnesses before the criminal courts has been a major focus of legislative reform and judicial innovation over the past decade; and

Whereas: legislation has been enacted to allow children to testify with support persons present, to prohibit their being cross-examined by an accused, to allow them to testify outside the courtroom or behind screens and to allow the use of videotaped evidence of children describing the acts on which the prosecution is based; and

Whereas: criminal trials may take months, or even years after the alleged crime and some children may be asked complicated questions that are beyond their cognitive capabilities and their failure to answer and their confusion is used by the lawyers to argue that the child cannot give reliable testimony; and

Whereas: the courts have already accepted that the most accurate account may be a description of the events which the child gave to another person closer to the time of the event in question; and

Whereas: the national Council of Women of Canada (NCWC) is gravely concerned that despite improvements, some child victims/witnesses are still asked complicated questions that are beyond their cognitive capabilities, that questions and arguments may not be logical nor compelling, and that their resulting confusion may be used by the lawyers to argue that the child cannot give reliable testimony and that therefore, none of the victim's statements should be believed; and

Whereas: the judge and/or the Crown may fail to intervene and employ the present legal safeguards against badgering; and

Whereas: the Department of Justice Canada, Family, children and Youth Section, released a Consultation paper in November 1999 Child Victims and the Criminal Justice System. One chapter of which Improving the Experience of Child Witnesses and Facilitating Their Testimony in Criminal Proceedings deals specifically with NCWC's concern, therefore, be it

RESOLVED: that the National Council of Women of Canada:

- a. express its grave concern to the Government of Canada that the victimization of children and young people is continuing in the courtroom through developmentally inappropriate questioning and badgering of the child victim/witness; and
- b. submit a brief to the Child Victim Consultation, Family, Children and Youth, Department of Justice, based on the National Council of Women of Canada's continuing concern; and be it further

RESOLVED: that the National Council of Women of Canada express to the Canadian Judicial Council its concern regarding the developmentally inappropriate questioning and badgering of child victim/witnesses by lawyers in Canadian courts and seek their support:

- a. in the elimination of inappropriate questioning and badgering and the influence this may have on jurors; and
- b. in ensuring that all child victims/witnesses in Canada are supported consistently through the court process and afforded the presence of a support person, the use of a screen in the courtroom, video taped evidence, etc., and be it further

RESOLVED: that the National Council of Women of Canada express to the Canadian Bar Association its concern regarding the developmentally inappropriate questioning and badgering of child victim/witnesses by lawyers in Canadian courts and seek their support;

- a. in the elimination of inappropriate questioning and badgering and the influence this may have on jurors; and
- b. in ensuring that all child victim/witnesses in Canada are supported consistently through the court process and afforded the presence of a support person, the use of a screen in the courtroom, video taped evidence, etc.