

CHILD WITNESSES: A GLIMPSE INTO HISTORY

Presented at:
Celebrating Professor Nick Bala:
An Exceptional Career of Teaching & Scholarship

Presented by:
Joseph P. Hornick, Ph.D.
Canadian Research Institute for Law and the Family

May 8, 2009



Prior to 1988

- CEA (s.16) – a child of tender years may not give sworn evidence if the child does not understand the nature of the oath.
- Unsworn evidence was permitted if the child had sufficient intelligence to justify the reception of the evidence and understand the duty to speak the truth.
- Unsworn evidence required corroboration.
- Law Reform Commission and the Badgley Committee recommended abrogating rule of corroboration.



January 1, 1988

Bill C-15 – An *Act* to amend the *Criminal Code* and the *Canada Evidence Act*.

- Revisions to substantive and procedural laws governing the sexual abuse of children.
- Included new provisions under s.16(3) of the CEA for younger child victims/witnesses to give testimony under a promise to tell the truth and abrogated the need for corroboration and recent complaints.
- Included other testimony aids such as screens, close circuit TV, support people in the court room and videotaped evidence.



1989

- CRILF began a 3 year, multiple site evaluation of Bill C-15.
- Fall 1989, Nick Bala became CRILF's first visiting scholar.
- Nick Bala's duties included being a legal consultant to the Bill C-15 evaluation and also began work on *Canadian Child Welfare Law: Children, Families and the State*, which was published in 1991.
- CRILF and Nick also began judicial training regarding child witnesses at a conference for the Canadian Institute for the Administration of Justice in October 1989, at Kananaskis, Alberta.



1989 (cont'd)

- Hornick, J. and Clarke M. *Child Testimony: Legal and Developmental Issues*.
- Bala, N. *Double Victims: Child Sexual Abuse and the Canadian Criminal Justice System*.



1992

Findings of the evaluation of Bill C-15 regarding basis of acceptance of evidence from children under 14 years old.

Oath	Calgary		Edmonton		Total	
	n	%	n	%	n	%
Sworn Directly	6	12.2	3	12.5	9	12.3
Sworn After Questioning	31	63.3	9	37.5	40	54.8
Promise to Tell the Truth	12	24.5	12	50.0	24	32.9
Total	49	100.0	24	100.0	73	100.0



Performance as a Witness

Overall, the court observation demonstrated how well the children actually handled giving testimony. However:

- Children who were physically harmed during the incident had more difficulty presenting evidence.
- Children had difficulty “telling the story” if a long period of time had passed.
- The fewer strangers in the courtroom and the more supportive adults, the easier it was for the child to give evidence.
- Cross-examination by defence counsel was significantly the most stressful part of the court process.
- Child victim/witnesses’ feelings about the court process (from post-court interviews) seemed to be directly affected by the outcome of the proceedings, i.e., victim/witnesses were more upset if the proceedings did not result in conviction.



1993 – Present

Child Witnesses:

- Nick's CV indicates that he has completed more than 60 publications/consultations/major presentations in the area of child witnesses.
- Nick has also been a principal investigator on three major research projects funded by SSHRC in the area of child witnesses.

Work with CRILF:

- Since 1989 Nick has been involved in more than 30 projects.
- One of his latest projects was: Bala et al. (2008). *Testimonial Support Provision for Children and Vulnerable Adults (Bill-C2): Case Law Review and Perceptions of the Judiciary.*

