



Chief Victims Advisor
to Government

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‘That’s a Lie!’ – The cross examination of children in sexual violence cases

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Opinion piece

Going to court to give evidence can be a confronting, intimidating experience for an adult.

For children and young people who have been victims of sexual violence, it can be even more distressing, harmful and re-traumatising.

After hearing the distress and shock of parents who had witnessed the way their children were cross examined as complainants in sexual violence trials, I commissioned research to better understand the challenges young complainants experience in the criminal justice system.

The research, conducted by an expert in this area, has resulted in the *That’s a Lie: sexual violence misconceptions, accusations of lying and other tactics in the cross-examination of child and adolescent sexual violence complainants* report.

The study analysed 15 transcripts of the cross-examination of young complainants from trials in the Auckland and Whangārei Sexual Violence Pilot Courts in 2017 and 2018. Their age, at the time of trial, ranged from 6-17 years – with the average age approximately 13 years. In all but two cases, the defendant was well known to the complainant at the time of the offending.

The report found that leading, confusing and credibility challenging styles of questioning that are known to be counter to best evidence were the dominant forms of cross examination.

The results of the study were both sobering and concerning. I found the report hard to read. A child who reported being violently raped at 7 years told the defence lawyer that the reason she couldn’t report the rape, even though she had physical injuries, was because she knew no one would believe her. The defence lawyer insisted it would be easy for her to tell.

Other children and young people were also grilled about why they hadn’t disclosed sexual abuse immediately. This is despite there being a huge amount of research evidence that demonstrates that few children feel able to disclose the abuse when it is happening, for reasons including that they think it’s their fault, they are ashamed, or they are fearful of the offender.

Child and adolescent complainants were portrayed through cross-examination as delinquent, emotional, or outright liars. It was the child’s behaviour before, during and after the alleged offence that was the focus of cross-examination.

It wasn’t just inferred that children were lying – in 13 of 15 transcripts the defence lawyer made statements that the children were lying despite many of the children stating they were certain that the abuse took place in the way they said it did.

Some of the more shocking examples of questions identified in the report put the responsibility for the abuse on the child. For example, a defence lawyer asked a 6-year-old if she liked having (a close member of the family) having his finger in her vagina, and, even though this question was ruled out, continued to ask, if she didn't like it, why did she return to his house.

Another defence tactic uncovered by the research was to question the complainant about why she or he did not stop the accused offender's abuse. One young person was asked over 60 questions, leading to why she 'deliberately' opened the bathroom door to a man who had allegedly abused her multiple times, and who was banging on the door demanding to be let in.

Over time, there have been some small steps made to improve the experience of young witnesses in court, but I consider that these improvements are not consistent or sufficient. It's clear that child witnesses need a great deal more support and protection than they have now.

The Sexual Violence Legislation Bill, currently before Parliament, will help address some of the issues raised by the report. The Bill will make it mandatory, rather than discretionary, for judges to intervene to protect vulnerable sexual violence complainants from unnecessary and sustained or aggressive lines of questioning. Complainants accept that their evidence should be tested. Cross-examination should not cause unnecessary and additional harm and it needs to be focussed on evidence not inuendo and victim blaming narratives.

I believe there should also be a dedicated court support service for child and adolescent victims of sexual violence. Currently the only service available is limited to adult victims.

Internationally, it is common for child and adolescent witnesses to have the benefit of pre-recorded cross examination. In Western Australia it has been routine practice to pre-record children since 1992 and it is reported there that it is extremely rare for children to be recalled to be cross-examined in person during trial. Further, both defence and prosecution lawyers say they find the practice helpful. The quality of the key witnesses' evidence is known well in advance of trial, enabling informed decision-making by both sides.

The intention of my research in this area was to better understand the sources of distress that cross-examination can cause to child and adolescent complainants. Now that we have it, there is the hope that changes can be made to both reduce distress and improve the quality of testimony by young witnesses.

Children and young people want to give good quality testimony. Continuing to attack their credibility and simply accusing them of lying in court will not assist them in this endeavour – it will only add to the harm.