













Exclusion of the public from the court



- s.486 – now JUST deals with excluding the public
- Test is the same, interest of public morals, maintenance of public order or proper administration of justice
- Defines the “proper administration of justice” The judge must give reasons where the order is not made, for certain offences
- **many offences are the same but adds**
 - child pornography and
 - luring (yet NOT voyeurism)
- **some interesting changes:**
 - s.170 (parent/guardian procuring sexual activity) no longer included
 - bestiality simpliciter no longer included but compelling it or committing it in the presence of a child is included



Support person 486.1 (the old 486(1.2))

- **Where witness is under 18 or has physical or mental disability**
 - raises age of witness from 14-18
 - changes the test from discretionary [“may” make the order without specifying upon what conditions] to mandatory “shall” make the order “unless ... the order would interfere with the proper administration of justice”



Testimony out of court/behind screen 486.2 (the old 486(2.1))

- **Where witness is under 18 or has physical or mental disability**
 - applies in “any proceedings” (not just enumerated/lengthy list)
 - removes word complainant and leaves witness (which includes complainant/victim)
 - changes the test from discretionary [“may” make the order without specifying upon what conditions] to mandatory “shall” make the order “unless ... the order would interfere with the proper administration of justice”
- **[new] Allows the section to apply to ANY WITNESS in ANY PROCEEDING**
 - discretionary test
 - the court may make the order “where necessary to obtain a full and candid account”
 - court to take into account same factors as for support person

**Section 16
Canada Evidence Act**

The old section STILL applies to witnesses over 14 years whose mental capacity is challenged.

**NEW SECTION 16.1
FOR WITNESSES UNDER 14 YEARS OLD**

- 1) There is a presumption that a person under 14 has the capacity to testify.
- (2) The person under 14 shall not take an oath or make a solemn affirmation.
- (2) The evidence of the witness shall be received if they are able to understand and respond to questions.
- (4) The party who challenges the capacity of the witness has the burden of satisfying the court.
- (5) The court shall conduct an inquiry.
- (6) The court shall require the witness to promise to tell the truth before

**NEW SECTION 16.1
FOR WITNESSES UNDER 14 YEARS OLD**

(7) No witness shall be asked any questions regarding their understanding of the nature of the promise to tell the truth for the purpose of determining whether their evidence shall be received by the court.

(8) If the evidence of the witness is received by the court it shall have the same effect as if it were taken under oath.



SENTENCING - PRINCIPLES

- s.718.01 NEW – when court sentences for an offence involving the abuse of a person under 18 it shall give primary consideration to the objectives of denunciation and deterrence of such conduct.
- s.718.2(a)(i) – aggravating factors - broken in two parts
 - (i) abuse of spouse or common law partner
 - (i.1) abuse of person under 18 (not restricted to offender's child)

R. v. Legare, [2006] A.J. No. 371 (Alta. Q.B)

- Accused acquitted and Crown appeal launched
- Court held that "dirty talk", although reprehensible, was not captured by this section
- agreed statement of fact stated that accused never intended to actually meet the victim
- Court held that Crown did not prove that the communication was for the purpose of facilitating the commission of the an offence

R. v. Randall [2006] N.S.J. No. 180 (P.C.)

- 33 yr old Accused spoke to who he believed was a 13 yr old girl on a chat room and arranged a meeting
- arrested at meeting site but claimed only showed up to warn her about dangers of meeting strangers encountered on the internet
- court held there was no air of reality to the defense that offender only wanted to scare the girl
- the Crown need not prove the accused actually intended to carry out the enumerated offence – the Crown does not need to prove the accused intended to lure the child for that purpose (the listed secondary offence need not be realized)
- a conviction can stand if a person intentionally communicates with someone in the prohibited class: "to urge that person to participate in one of the listed prohibited acts, in language that indicates objectively that he wishes that person to take his intentions seriously."

Child Pornography Cases

R. v. Horvat, [2006] O.J. No. 1673 (OSCJ)

- Court found that copying of child pornography onto DVDs, CD and memory cards constitutes "making" child pornography under s. 163.1(2) -personal use not a defence

R. v. Panko, [2006] O.J. No. 2208 (O.C.J.)

- Accused acquitted of child pornography charges
- Crown appeal filed on June 6, 2006
- Accused brought computer in for repairs
- child porn was found on computer
- trial judge found Crown did not prove possession and that child porn could have been downloaded to the computer without the accused's knowledge
- Crown failed to establish the essential elements of knowledge and control by the accused of the contents of the computer

R. v. Shelton, [2006] A.B.C.A. 190 (Alta. C.A.)

- Crown sentence appeal from a 2 Years Less a Day conditional sentence
- Appeal Granted – 15 mths imprisonment substituted
- the accused plead guilty to possession and distribution of child pornography
- accused collection was labeled as sophisticated and extensive
- held that trading to increase collection equally as reprehensible as trading for profit

Testimonial Aids Cases

R. v. Elmer, [2006] B.C.J. No. 585

- Robbery trial
- a s. 486.2(1) application was brought with respect to 2 female complainants
- hearing was held in which both complainants testified but were permitted to testify on the hearing itself behind a screen
- good discussion of different tests between new and old legislation
- Ruling – both complainants could testify behind a screen

R. v. C.N.H. [2006] B.C.J. No. 782

- Youth Trial of charges of Assault CBH
- Crown application to permit two witnesses under the age of 18 to testify via closed circuit television
- defence brought a constitutional challenge based on s. 7 & s. 11(d) to the new s. 486(2) provisions
- constitutional challenge dismissed
