Copyright Statement

The digital copy of this thesis is protected by the Copyright Act 1994 (New Zealand).

This thesis may be consulted by you, provided you comply with the provisions of the Act and the following conditions of use:

- Any use you make of these documents or images must be for research or private study purposes only, and you may not make them available to any other person.
- Authors control the copyright of their thesis. You will recognize the author's right to be identified as the author of this thesis, and due acknowledgement will be made to the author where appropriate.
- You will obtain the author's permission before publishing any material from their thesis.

General copyright and disclaimer

In addition to the above conditions, authors give their consent for the digital copy of their work to be used subject to the conditions specified on the Library Thesis Consent Form and Deposit Licence.
Young Complainant Witnesses in New Zealand: Experiences and Innovations

Isabel Randell

A thesis submitted in partial fulfilment of the requirements for the degree of
Doctorate of Clinical Psychology
The University of Auckland
2017
ABSTRACT

Most young witnesses in New Zealand are complainants in trials for offences of a sexual nature. For effective provision of justice it is important that young witnesses are involved in criminal trials, yet participation may be detrimental to their wellbeing and presents challenges for gaining their full and accurate evidence. This research included two related projects: one aimed to better understand the experiences of young complainant witnesses and their families, and the other evaluated recent innovations with regard to trials involving young witnesses at the Whangarei District Court. Both studies were qualitative in nature and used thematic analysis to analyse data. Study One involved interviews with four young complainant witnesses and ten parents of young complainant witnesses. Nine themes were identified: pre-trial delay makes everything worse; uncertainty is difficult and being prepared is important; cross-examination is stressful; having a voice is a positive aspect of the trial; the possibility of seeing the defendant is stressful; for parents, putting on a brave face and being a supporter is challenging; young witnesses feel exposed by the court process and family members feel exposed to details of the offending; support is critical; and families place importance on the verdict and sentencing. The focus of Study Two was the Whangarei Young Witness Pilot Protocol which was implemented by judges in the Whangarei region in late 2014 with aims of decreasing the negative impact of the court process for young witnesses and enhancing the quality of evidence that they provide. Individual and group interviews were conducted with 29 practitioners involved in court trials with young complainant witnesses including judges, lawyers, police, victim advisors and court support staff. The majority of participants believed that the protocol had valid intentions and was beneficial for young witness wellbeing and evidence. Resistance to the protocol was largely from defence lawyers who expressed concern that cross-examination would be restricted. Participants expressed a need for flexibility, clarity, and education concerning the protocol in order for it to function more effectively. All participants identified a need to address pre-trial delay, consistent with the concerns of young witnesses and their parents. The findings indicate that there is positive shift towards better protection of young witnesses in New Zealand, but that there is still much to be done.
ACKNOWLEDGEMENTS

This research was a hefty undertaking both practically, and personally, and the support of many others has made its completion possible.

Firstly, I am so thankful to the young people and their caregivers who generously offered their time to this research and were willing to speak about what were often incredibly difficult experiences. I hope that I have made a small contribution to their voices being recognised.

I am grateful to those people who made this study possible in practical terms. I would like to thank His Honour Judge Harvey who invited us to conduct research regarding the Whangarei Young Witness Pilot Protocol. I acknowledge the Ministry of Justice: Tāhū o te Ture Research and Evaluation Team Sector Group, and The New Zealand Police Research Review and Access Committee for their approval of the research. I am also grateful for the support of Chief District Court Judge Jan-Marie Doogue. I want to thank the victim advisors and court support staff, who work tirelessly to support young witnesses. Their enthusiasm for the project and support with recruitment was invaluable. I also want to thank the crown prosecutors who also contributed to recruitment efforts. I gratefully acknowledge all the professional participants who offered their time and thoughts to this research.

I am extremely grateful to my supervisor Professor Fred Seymour. Fred, you are an incredibly committed and supportive supervisor. I am so appreciative of your kindness, wisdom and guidance. You are a tireless advocate for children and families and this has been a constant source of inspiration and motivation for me. You are my model of what it is to be a clinician, academic and advocate and I will take that with me through my career.

I am thankful for my classmates who have experienced the highs and lows alongside me on this rollercoaster of a degree, and made the ride all the more enjoyable; and for my friends for their understanding of my many absences in recent months, and for cheerleading me along the way.

I am so grateful to my amazing family for their unconditional love and support. Mum, Dad, Beatrice and Rose - you are my source of strength and resilience. Thank you for all the many ways you have been there for me - I don’t know how to put them into words.

Finn, you are a gem and I am so grateful to have you in my life. You have brought so much fun and happiness to these past couple of years. Thank you for your endless love and support and seeing what I do as worthwhile even when I was a stressed out and tearful mess.
# TABLE OF CONTENTS

ABSTRACT ............................................................................................................................ iii

ACKNOWLEDGEMENTS ........................................................................................................ iv

CHAPTER ONE: INTRODUCTION ......................................................................................... 1

Young People as Witnesses .................................................................................................. 1

Child Sexual Abuse .............................................................................................................. 2

Overview of the New Zealand Justice System and Young Witnesses ............................... 5

Issues for Young Complainants in Trials for Sexual Offences .......................................... 6

Lack of Supporting Evidence .............................................................................................. 6

Misconceptions About Child Sexual Abuse ......................................................................... 6

Court Involvement and Young Witness Wellbeing ............................................................ 8

The Experiences of Young Witnesses ................................................................................ 9

Young Witnesses and Reliability of Evidence ................................................................... 13

Children as Reliable Witnesses .......................................................................................... 13

Impact of Stress on Reliability of Evidence ........................................................................ 13

Best Practice Interviewing .................................................................................................. 14

The New Zealand Context .................................................................................................. 17

Legislative and Procedural Measures for Young Witnesses .............................................. 17

Ongoing Issues Regarding Young Witnesses: A Gap Between Policy and Practice ....... 19

The Call for Reform ............................................................................................................ 20

The Whangarei Young Witness Pilot Protocol .................................................................. 22

The Current Research ........................................................................................................ 23

CHAPTER TWO: METHODOLOGY ..................................................................................... 26

Theoretical Framework ...................................................................................................... 26

Qualitative Research .......................................................................................................... 27

Interview Process ............................................................................................................... 27

Data Analyses ..................................................................................................................... 28

Subjectivity and Reflexivity .............................................................................................. 30

Ethical Considerations ....................................................................................................... 31

Informed Consent/Assent ................................................................................................. 32

Avoidance of Interference with Legal Processes ............................................................ 32

Safety and Risk ................................................................................................................... 33
Protection of Privacy.....................................................................................................................35
Cultural Considerations..................................................................................................................35

CHAPTER THREE: STUDY ONE..................................................................................................36

The Experiences of Young Complainant Witnesses in Criminal Court Trials for Sexual Offences

Method .........................................................................................................................................38
Participants.................................................................................................................................38
Interview Schedule......................................................................................................................39
Procedure....................................................................................................................................40
Data Analysis ...............................................................................................................................41
Findings .........................................................................................................................................41
Pre-Trial Delay Makes Everything Worse..................................................................................41
Uncertainty is Distressing and Being Prepared is Important ......................................................43
Cross-Examination is Stressful .......................................................................................................45
Having a Voice is a Positive Aspect of the Trial ............................................................................47
The Possibility of Seeing the Defendant is Stressful .....................................................................47
For Parents, Putting on a Brave Face and Being a Supporter is Challenging ...............................49
Young Witnesses Feel Exposed by the Court Process, and Family Members Feel Exposed to Details of the Offending ..................................................................................................................50
Support is Critical .......................................................................................................................51
Families Place Importance on the Verdict and Sentence ..............................................................52
Discussion ......................................................................................................................................53

CHAPTER FOUR: STUDY TWO..................................................................................................60

Evaluation of the Whangarei Young Witness Pilot Protocol

Method .........................................................................................................................................63
Participants.................................................................................................................................63
Interview Schedule......................................................................................................................63
Procedure....................................................................................................................................63
Data Analysis ...............................................................................................................................65
Findings .........................................................................................................................................65
The Protocol.................................................................................................................................65
Implementing Change ....................................................................................................................83
Factors that are Important to the Success of the Protocol (in Whangarei and Elsewhere) ..........83
Future Innovations ................................................................................................................. 87
Discussion .............................................................................................................................. 91
CHAPTER FIVE: CONCLUSION .............................................................................................. 95
Young Complainant Witnesses .............................................................................................. 95
Barriers to Change ................................................................................................................. 97
Can Changes be Made Without Making Legislative Change? ............................................. 99
How Can Research Support Cultural Change in Courts? .................................................. 101
What Future Change is Needed in New Zealand? .............................................................. 103
What Future Research is Needed in New Zealand? ............................................................. 105
Implications for Clinical Psychology .................................................................................. 107
Strengths and Limitations of the Research ......................................................................... 107
Conclusion ............................................................................................................................ 109
APPENDICES ....................................................................................................................... 110
Appendix A - Whangarei Young Witness Pilot Protocol .................................................... 111
Appendix B - Study One: Participant Information Sheets .................................................. 114
Appendix C - Study One: Permission to Contact Form ...................................................... 123
Appendix D - Study One: Consent and Assent Forms ......................................................... 125
Appendix E - Study One: Interview Schedules .................................................................. 134
Appendix F - Study Two: Participant Information Sheet .................................................... 141
Appendix G - Study Two: Consent Forms ......................................................................... 146
Appendix H - Study Two: Interview Schedule .................................................................. 151
REFERENCES ......................................................................................................................... 153
Co-Authorship Form

This form is to accompany the submission of any PhD that contains published or unpublished co-authored work. Please include one copy of this form for each co-authored work. Completed forms should be included in all copies of your thesis submitted for examination and library deposit (including digital deposit), following your thesis Acknowledgements. Co-authored works may be included in a thesis if the candidate has written all or the majority of the text and had their contribution confirmed by all co-authors as not less than 65%.

Please indicate the chapter/section/pages of this thesis that are extracted from a co-authored work and give the title and publication details or details of submission of the co-authored work.

**Chapters 3 & 4**

<table>
<thead>
<tr>
<th>Nature of contribution by PhD candidate</th>
<th>Designed research projects, wrote all applications for ethical approval and research access with government departments, conducted all interviews across both studies, analysed data, wrote articles for review by co-authors.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Extent of contribution by PhD candidate (%)</td>
<td>90%</td>
</tr>
</tbody>
</table>

**CO-AUTHORS**

<table>
<thead>
<tr>
<th>Name</th>
<th>Nature of Contribution</th>
</tr>
</thead>
<tbody>
<tr>
<td>Fred Seymour</td>
<td>Primary supervisor of thesis, joint interviewer of judges</td>
</tr>
<tr>
<td>Emily Henderson</td>
<td>Supported establishment of project, including access to professional participant groups, provided comments on drafts of both research reports (Chapters 3 and 4).</td>
</tr>
<tr>
<td>Suzanne Blackwell</td>
<td>Supported establishment of project, including access to professional participant groups, provided comments on drafts of both research reports (Chapters 3 and 4).</td>
</tr>
</tbody>
</table>

**Certification by Co-Author**

The undersigned hereby certify that:

- the above statement correctly reflects the nature and extent of the PhD candidate's contribution to this work, and the nature of the contribution of each of the co-authors; and
- that the candidate wrote all or the majority of the text.

<table>
<thead>
<tr>
<th>Name</th>
<th>Signature</th>
<th>Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>Fred Seymour</td>
<td>[Signature]</td>
<td>10-03-17</td>
</tr>
<tr>
<td>Emily Henderson</td>
<td>[Signature]</td>
<td>6 March 2017</td>
</tr>
<tr>
<td>Suzanne Blackwell</td>
<td>[Signature]</td>
<td>2 March 2017</td>
</tr>
</tbody>
</table>
CHAPTER ONE:

INTRODUCTION

Young People as Witnesses

Over the past 40 years, the participation of children and young people as witnesses in the criminal justice system has increased greatly both in New Zealand and internationally. Of those trials involving young complainant witnesses, the majority concern an allegation of child sexual abuse (CSA) (Hanna, Davies, Henderson, Crothers, & Rotherham, 2010).

Literature in this area suggests that court involvement is experienced as stressful by young witnesses and impacts negatively on their wellbeing. Additionally, the court process, particularly cross-examination, has been found to compromise the quality of evidence that young witnesses are able to provide. For these reasons, a number of legislative and procedural changes with the intention of better accommodating and protecting young witnesses have been implemented in New Zealand and elsewhere. However, in New Zealand the translation of legislative change into tangible improvements for young witnesses has been slow, and there are ongoing concerns about witness wellbeing and evidence. Additionally, change in New Zealand has been based on assumptions of those in positions of power without direct enquiry with young witnesses and their and family members. Little is therefore known about how young witnesses, particularly those who are complainants, experience their involvement in the justice system in New Zealand.

Studies concerning the experiences of young witnesses have been conducted elsewhere, including the United Kingdom (Hayes, Bunting, Lazenbatt, Carr, & Duffy, 2011; Plotnikoff & Woolfson, 2004, 2009), Sweden (Back, Gustafsson, Larsson, & Berterö, 2011), and Australia (Eastwood & Patton, 2002), and have been an important means of informing positive change regarding young witnesses. A need for such research in New Zealand, where there is significant scope for greater understanding and improved practice in this area, provided the impetus for the current research.

As my supervisor Professor Fred Seymour and I were embarking on research to better understand the experiences of young witnesses, Judge Duncan Harvey invited us to conduct a preliminary evaluation of the Young Witness Pilot Protocol that would provide feedback to
judges about how this protocol was received by professionals in the region, and would inform the further development of the protocol. The protocol, implemented in 2014, was developed by Judge Harvey and other judges in Whangarei with the intention of improving court processes for young witnesses.

The current research therefore grew to consist of two related qualitative studies; one which concerned the experiences of young complainant witnesses involved in trials for allegations of sexual abuse or assault and their families (Chapter Three), and the other which focused on perspectives of professional stakeholders regarding the Whangarei Young Witness Pilot Protocol and its implementation (Chapter Four). The intention of these studies was to reflect on and contribute to the development of current and future innovations concerning young witnesses in the New Zealand context.

This chapter reviews relevant literature regarding young witnesses. It discusses CSA and outlines particular issues for young complainants in trials for offences of a sexual nature. It reviews literature concerning the experiences of young witnesses and the impact of testifying on their wellbeing. Issues of reliability and quality of evidence pertaining to young witnesses are discussed. An overview of the history of innovations in the New Zealand context is provided and the current research is outlined.

**Child Sexual Abuse**

The World Health Organisation (2006) defines CSA as:

> the involvement of a child in sexual activity that he or she does not fully comprehend, is unable to give informed consent to, or for which the child is not developmentally prepared, or else that violates the laws or social taboos of society. Children can be sexually abused by both adults and other children who are – by virtue of their age or stage of development – in a position of responsibility, trust or power over the victim. (p. 10).

CSA is a widespread and complex problem which is universal to cultures and societies throughout the world (Finkelhor, 1994b; Pereda, Guilera, Forns, & Gómez-Benito, 2009). Although subject to significant variation, literature concerning prevalence rates suggests that up to 31% of females and 17% of males have experienced CSA (Barth, Bermetz, Heim, Trelle, & Tonia, 2013). In a large community sample of New Zealand
women, 23.5% of those in Auckland and 28.3% of those in Waikato, retrospectively reported CSA (Fanslow, Robinson, Crengle, & Perese, 2007). In a national survey of secondary school aged children in New Zealand, 20% of female students and 9% of male students reported having been touched in a sexual way or been made to do sexual things that they did not want to (T. C. Clark et al., 2012).

In 2016, Child, Youth and Family\(^1\) investigated 16,394 care and protection reports of concern, relating to 13,598 individual children and young people aged 16 or younger (Ministry of Social Development, 2017). Of these, there were substantiated findings of abuse or neglect of 1,167 children and young people, and substantiated findings of sexual abuse of 1,136 children and young people. It is however widely acknowledged that the reported incidence of sexual abuse provides a very conservative estimate of the true rate of sexual offending because of the low rate of victim reporting (London, Bruck, Ceci, & Shuman, 2005).

Most sexual abuse is perpetrated by someone well known to the victim and with whom they have a significant attachment, such as a family member, family friend, teacher or coach (Berliner & Conte, 1995; Fanslow et al., 2007; Finkelhor, 1994a). In a large sample of Australian complainant witnesses, 92% were abused by either a family member or someone known to the child (Eastwood & Patton, 2002). Rather than a sudden, immediately traumatic occurrence, most sexual abuse involves a gradual "grooming" process in which the perpetrator manipulates the child into participating (Leclerc, Proulx, & Beauregard, 2009; Paine & Hansen, 2002). Grooming behaviour, in addition to the power differential between children and adults, may contribute to a child’s lack of fear or avoidance of the perpetrator, and difficulty recognising the behaviour as abusive (Paine & Hansen, 2002). Physical force is rare and sexual offenders often seek to make the victim feel as though he or she is a willing participant in sexual activity, or that they caused the offender to act sexually toward them. As a result, children often have great difficulty distinguishing who is responsible for the abuse and frequently blame themselves (Paine & Hansen, 2002). Such dynamics also contribute to children maintaining secrecy about the abuse.

Motivation to disclose sexual abuse may include to stop the abuse, to prevent others being abused, or a desire for justice (Eastwood & Patton, 2002). However, most victims of

\(^1\) Child Youth and Family is a service of the Ministry of Social Development and is New Zealand’s statutory child protection agency.
CSA do not disclose their abuse immediately, often taking months or years to do so (Hershkowitz, Lanes, & Lamb, 2007; London et al., 2005; London, Bruck, Wright, & Ceci, 2008). Approximately two thirds of those who experience sexual abuse as a child do not disclose this at all during childhood (London et al., 2005). Reasons for delay in disclosure include feelings of complicity, responsibility, shame, guilt, stigma, fear of not being believed, perpetrator threats, fears of retribution and abandonment and concern for self, loved ones, or the perpetrator (Eastwood & Patton, 2002; Paine & Hansen, 2002). Longer delay is also more likely where the child victim is older, feels greater responsibility for the abuse, and fears negative consequences of disclosure (Goodman-Brown, Edelstein, Goodman, Jones, & Gordon, 2003). The common situation of a family member having perpetrated the abuse, increases the likelihood of non-disclosure or delayed disclosure (Goodman-Brown et al., 2003). A substantial minority (approximately a quarter) of young people who have been abused recant their allegations (Malloy, Lyon, & Quas, 2007). Recantation is more common among those who have been abused by a parent, who lack social support and who experience external pressure recant (Malloy et al., 2007).

The experience of CSA has been found to significantly increase risk of adverse short and long term health and mental health outcomes. These include posttraumatic stress disorder, depression, anxiety, personality disorders, suicidal ideation and attempts, substance abuse, physical health problems, marital and family problems, academic difficulties, antisocial behaviour and criminality, and future victimisation (Anda et al., 2006; Battle et al., 2004; Dube et al., 2005; Fergusson, Boden, & Horwood, 2008; Fergusson, McLeod, & Horwood, 2013; Kendall-Tackett, 2002; Kendall-Tackett, Williams, & Finklehor, 1993; Paolucci, Genuis, & Violato, 2001).

The increasing recognition of CSA over the past few decades and the development of multidisciplinary assessment and investigation processes within child protection agencies, has led to an increase in the number of prosecutions for abuse-related offences. Consequently the number of children who appear in criminal court trials as complainant witnesses has also risen. Annually, over 2,000 children are involved in court trials in New Zealand as complainant witnesses (Ministry of Justice, 2010). Sexual assault trials make up approximately 22% of all District Court trials in New Zealand, and the majority of these involve complainants aged younger than 16 years old (Seymour, Blackwell, Calvert, &
McLean, 2014). An allegation of CSA is the primary reason for children appearing as complainant witnesses in New Zealand criminal courts (Hanna et al., 2010).

**Overview of the New Zealand Justice System and Young Witnesses**

Before describing the issues related to young witnesses, it is necessary to provide an outline of the criminal justice system as it operates in New Zealand, and in particular as it applies to young complainant witnesses. In New Zealand a ‘child’ for the purposes of court proceedings is defined as an individual under the age of 18 (s 4 Evidence Act 2006). Throughout this thesis the terms “child witness” and “young witness” are used interchangeably to refer to those witnesses under the age of 18 years.

If a child or another party reports child abuse, the child will typically be interviewed by a specialist police or Child Youth and Family interviewer approximately two weeks following the report of the abuse. The police then investigate allegations, and a decision is made about whether charges will be filed and the offence or offences will be prosecuted. If a defendant pleads guilty, the case is sentenced without a trial. If not, the case will proceed to a criminal trial.

With its roots in British law, New Zealand’s criminal justice system is adversarial by nature of its structure. That is, the contesting parties - the Crown Prosecutor, for the prosecution, and defence lawyer for the defendant - present relevant evidence to the court and the verdict is decided either by a jury, or in some cases, by a judge alone. In New Zealand the majority of trials for offences of a sexual nature are tried by jury and heard in the District Courts, but can be heard in the High Court in some cases. Witnesses give their evidence, led by the prosecutor, and are then cross-examined by the opposing lawyer. Young complainants in trials for sexual offences are typically the key witness for the prosecution. Where a forensic interview has been recorded, this is able to be used as evidence-in-chief at trial, however cross-examination of the complainant usually occurs live at the trial, most often via closed circuit television (CCTV) from a room separate from the courtroom, or in the courtroom with the use of a screen to shield the witness from the defendant. A defendant is found guilty in cases where the jury (or judge in ‘judge only’ trials) is satisfied of guilt beyond reasonable doubt. In cases of a guilty verdict, sentencing occurs, usually some weeks following the conclusion of the trial. A person convicted of an offence may appeal their conviction.
Issues for Young Complainants in Trials for Sexual Offences

In addition to the many difficulties that all young witnesses face in relation to involvement in criminal court trials, trials for sexual offences bear a number of additional stressors and complications arising from the unique characteristics of sexual abuse. These are presented in the following section.

Lack of Supporting Evidence

In cases of CSA there is rarely any corroborative evidence. Because CSA almost invariably occurs in private, the complainant is typically the sole witness. Furthermore, given that sexual abuse of children often does not cause overt physical damage and that disclosure is in most cases significantly delayed, medical or physical evidence is usually absent or, if available, inconclusive (Berenson et al., 2002; Heger, Ticson, Velasquez, & Bernier, 2002; Kellogg, Menard, & Santos, 2004). There is no typical cluster of symptoms or pattern of disclosure among abused children, and approximately one third exhibit no identifiable behavioural symptoms (Kendall-Tackett et al., 1993).

As a result of these characteristics of CSA, as compared with other offences, the verbal evidence that a young complainant provides is typically unsupported by other evidence and is therefore vital to the prosecution case. The focus of the defence case typically involves discrediting the young person’s verbal evidence and their fitness as a witness. This increases the likelihood that the experience of giving evidence, and particularly cross-examination, will be highly stressful.

Misconceptions About Child Sexual Abuse

Common misconceptions regarding CSA have implications both for how young witnesses are regarded in court and how their evidence is received. These inaccurate beliefs about CSA often mitigate offender blame or minimise the true impact of sexual abuse on victims (Collings, 1997). Despite a significant body of evidence that contradicts common misconceptions, research indicates that they remain pervasive in the public conscience, including among jurors or samples of the public who are eligible as jury members in New Zealand (Blackwell, 2007), Australia (Cossins, Goodman-Delahunty, & O’Brien, 2009) and the United States (Quas, Thompson, Alison, & Stewart, 2005). Such misconceptions include that CSA is rare, that delay in disclosure is uncommon, and that an abused child would call
for help or try to escape, display strong emotional reactions, and avoid the abuser (Blackwell, 2007; Cossins, 2008; Cossins et al., 2009; Quas, Thompson, et al., 2005). Jurors are also often unaware that physical examinations are unlikely to provide evidence of sexual abuse (Cossins et al., 2009). Inaccurate knowledge of CSA has an impact on juror perceptions of a complainant’s credibility, which in turn has an impact on the trial outcome (Goodman-Delahunty, Cossins, & O’Brien, 2011).

In New Zealand courts, misconceptions have been found to be commonly utilised by defence counsel as a means of disputing the credibility of witnesses (Blackwell, 2007; Davies, Henderson, & Seymour, 1997; Davies & Seymour, 1998). A study of 137 trials in New Zealand, found that over 90% of the defence counsel utilised at least one misconception in trials, most utilising several (Blackwell, 2007). Blackwell found that three quarters of defence counsel used a complainant’s apparent affection for, lack of fear of, and continued contact with the defendant to undermine the young witness’ credibility, and in over two thirds of trials, a delay in disclosure was used to the same effect. Similarly, a lack of struggle or attempt to escape or stop the abuse was often used by defence counsel as an argument that the abuse did not occur. Defence counsel argued that allegations were false and influenced by others, such as mothers with motivation of revenge, or influencing child custodial proceedings. Finally, Blackwell found that the defence asked children directly whether they were telling the truth in 15% of cases, and made an overt accusation of influence or coaching in 21% of the cases.

Additionally, jurors and jury eligible people in New Zealand and Australia show significant uncertainty about the reliability of children and young people as witnesses, and the types of questioning that could lead to false claims (Blackwell, 2007; Cossins et al., 2009). Misconceptions about the reliability of children as witnesses (the evidence against which is discussed briefly later in this chapter are also utilised by defence counsel (Davies, Henderson, & Hanna, 2010). A focus is often placed on peripheral aspects of an alleged event (Hanna, Davies, Crothers, & Henderson, 2012), of which recall is known to become less accurate over time (Gobbo, 2000), to create an impression of memory issues.

The Impact of Court Involvement on Young Witnesses

A broad range of research has examined the impact of court involvement for complainant and non-complainant young witnesses involved in trials for offences including,
but not limited to CSA. This research indicates that participation is often experienced by young people as stressful, distressing and confusing (Back et al., 2011; Eastwood & Patton, 2002; Hayes et al., 2011; Plotnikoff & Woolfson, 2004) and is often detrimental to their wellbeing (Quas, Goodman, et al., 2005). Two aspects of this research are reviewed: the impact of court involvement on the wellbeing of young witnesses, and the self- and caregiver-reported experiences of young witnesses.

Court Involvement and Young Witness Wellbeing

Many young witnesses are already at risk of a number of adverse outcomes prior to participating in court processes as a result of the trauma they have experienced (Anda et al., 2006; Battle et al., 2004; Dube et al., 2005; Fergusson et al., 2008; Paolucci et al., 2001). A small body of research has attempted to establish whether court involvement has an additional impact on the short and long term wellbeing of young witnesses.

A study from the United States found that those child complainants of sexual abuse who testified failed to show an improvement in psychological wellbeing several months after testifying compared with a group of matched non-testifiers, who showed improvement in functioning (Goodman et al., 1992). Furthermore, it was found that in the same sample of witnesses, testifying had ongoing, long term negative effects on mental health and wellbeing, 10 years following court involvement, especially for those who had testified repeatedly or were younger at the time of the trial (Quas, Goodman, et al., 2005). Repeated interviewing was also found to be associated with negative attitudes towards the legal system (Goodman et al., 1992).

Although existing research has established that court involvement is distressing for young people, not testifying can also have negative outcomes for some young people (Goodman et al., 1992; Quas, Goodman, et al., 2005). In certain situations testifying may be experienced as empowering, even following initial short term distress. Quas and colleagues found that in cases that involved “less severe” abuse (in terms of shorter duration and a previously unknown perpetrator) and resulted in “not guilty” outcomes, or “lenient” sentences, non-testifiers were more negative about the case, reported the legal system to be less fair, and had poorer mental health outcomes than their testifying counterparts, years after participation. They suggest that a trial may act to validate a child’s experience as significant and the perpetrator’s actions as wrong, and involvement in this process may reduce feelings
of helplessness. Some caution should however be exercised in assuming the generality of these findings of these studies given that these young people testified in the United States in the late 1980’s when few protections such as use of screens or CCTV (which are now common in New Zealand courts), were available to vulnerable witnesses.

For young people who have experienced abuse, caregiver support is a key moderator of adverse outcomes regardless of circumstances of testifying (see van Toledo & Seymour, 2013 for a review) and is associated with increased functioning during court involvement (Goodman et al., 1992). Lack of maternal support increases risk for adverse mental health outcomes during and immediately following the trial (Goodman et al., 1992) as well as being predictive of longer term adverse consequences such as greater internalising problems (Quas, Goodman, et al., 2005). In cases of sexual abuse particularly, caregiver support may be compromised by the impact of the disclosure on caregivers (van Toledo & Seymour, 2013). Parents have described the disclosure of sexual abuse by a child as a major life crisis, with most describing themselves being as ill prepared to deal with its impact, and unsure about how to support their child following disclosure of abuse (van Toledo & Seymour, 2013).

The Experiences of Young Witnesses

From the research reported above it is apparent that the involvement of young witnesses in criminal trials has the potential to impact negatively on their wellbeing. Given that children who have been abused are already at risk for adverse outcomes, and that court experiences are complex and varied, it is difficult for research to determine the extent to which testifying itself accounts for this risk, or the aspects of testifying that are particularly harmful. Greater depth of understanding as to the negative impact appearing in court as a witness can be gained from talking with young witnesses directly. Studies from the United Kingdom (Hayes & Bunting, 2013; Hayes et al., 2011; Plotnikoff & Woolfson, 2004, 2009), Australia (Eastwood & Patton, 2002), and Sweden (Back et al., 2011) have interviewed young witnesses and in some cases their parents also, with the aim of gaining a better understanding of their court related experiences.

Qualitative studies with young witnesses have identified significant distress and anxiety while awaiting trial. Long delays between reporting to the police and going to trial are common, with research having found an average delay of 15 months in New Zealand.
(Hanna et al., 2010), and similarly long delays in Australia (Eastwood & Patton, 2002), and the United Kingdom (Hayes et al., 2011; Plotnikoff & Woolfson, 2009). Additionally, in the United Kingdom, around a third of trials are rescheduled (Plotnikoff & Woolfson, 2009), and similar rates of trials involving young witnesses are subject to adjournments in New Zealand (Hanna et al., 2010). Difficulties during this period of delay include nightmares, sleep difficulties, bed wetting, loss of appetite, suicide attempts, self-harming behaviours, self-hatred, fear of further victimisation by the offender, depression, anxiety, inability to concentrate on school work, stigma and peer exclusion, family tensions, relationship difficulties, and fears related to not testifying well (Eastwood & Patton, 2002; Hayes et al., 2011). Young witnesses reported that this delay prevented them from moving on from the abuse as they felt pressure to remember details in order to give evidence (Eastwood & Patton, 2002). Hayes and colleagues found that when parents identified the needs of their child, almost 94% identified worries about court and over half identified stress symptoms while waiting to go to the court.

Fear of encountering, or having to give evidence in the presence of the defendant is a particularly salient aspect of trial-related distress for young people, both prior to and during the trial (Goodman et al., 1992; Hayes et al., 2011). Half of the parents interviewed in Northern Ireland identified a need for the protection of their child from intimidation by the defendant or the defendant’s family or friends during the pre-trial period (Hayes et al., 2011). For those who have to testify in the presence of the defendant, this is commonly experienced as the most anxiety provoking aspect of participating in a trial (Plotnikoff & Woolfson, 2009). Eastwood and Patton (2002) found that in Australian states where young witnesses gave evidence via CCTV, fears of seeing the defendant were less apparent than in those states where screens are more commonly used. However, even in Australian states where young witnesses are protected from direct contact with the defendant by use of CCTV or screens, fear of seeing the defendant during the trial either in or outside of the court room was reported by young witnesses as being distressing, and relief and gratitude was expressed when protected from this. The use of screens, although appreciated by young witnesses, did not prevent them from being disturbed or distracted by the defendant when giving evidence.

Young witnesses report that giving evidence-in-chief and being cross-examined are both stressful, but that cross-examination is particularly distressing and confusing (Eastwood & Patton, 2002; Hayes et al., 2011; Plotnikoff & Woolfson, 2009). Eastwood and Patton
reported that in their study “the overwhelming area of concern for all children was the experience of cross-examination and the attitudes and behaviour of defence counsel” (p 59). Witnesses described feeling upset and angry as a result of the behaviour of defence counsel who were described in several studies as being “sarcastic”, “aggressive”, “intimidating”, “rude” or “cross” (Eastwood & Patton, 2002; Hayes et al., 2011; Plotnikoff & Woolfson, 2009). Sixty-five percent of young witnesses interviewed in Northern Ireland identified the defence lawyer as talking over their answers and trying to put words in their mouth (Hayes et al., 2011). Similarly, Plotnikoff and Woolfson found that over half of young witnesses interviewed described the defence lawyer as trying to make them say something that they did not mean, or putting words in their mouth.

Confusion during examination has also been identified as problematic by young witnesses. Over half of young witnesses from the United Kingdom sample reported problems of comprehension as a result of the complexity of the lawyers’ language or pace of questions (Plotnikoff & Woolfson, 2009). In Northern Ireland around half of young witnesses interviewed reported they did not understand some questions asked of them in court, and this was problematic across all age groups (Hayes et al., 2011). These findings are unsurprising given the high rates of complex and developmentally inappropriate questioning used in courts, which is discussed in more detail later in this chapter.

The majority of young witnesses across the aforementioned key qualitative studies reported that the defence lawyer accused them of lying (Hanna et al., 2010; Hayes et al., 2011; Plotnikoff & Woolfson, 2009). This is supported by transcript analysis studies which indicate that accusations or implications of lying are common during cross-examination of young complainants (Blackwell, 2007; Davies & Seymour, 1998). Accusations of lying are described as particularly distressing by young witnesses and one of the worst aspects of court involvement (Back et al., 2011; Eastwood & Patton, 2002). The impact that accusations or implications of lying during the cross-examination of vulnerable witnesses have in heightening their distress has been recognised by judges and lawyers (Henderson, 2015b).

Young witnesses’ reports indicate that the perpetrator being found guilty and facing specific consequences (particularly rehabilitative treatment and imprisonment) was of importance, but that financial compensation was not (Back et al., 2011). Young witnesses expressed anger and disappointment at trial outcomes that did not involve a conviction, and highlighted the implication of not being believed that was associated with a “not guilty”
verdict (Eastwood & Patton, 2002). When case outcomes involve acquittal of the defendant or a lenient verdict as opposed to a guilty or more severe verdict, young complainant witnesses have been found to be more negative about the legal system and their experiences of it (Goodman et al., 1992). These views persisted a decade after the trial, even when controlling for initial mental health, age, abuse characteristics, and testifying (Quas, Goodman, et al., 2005).

The significant difficulty and distress that child witnesses experience is reflected in their reports regarding willingness to participate in a hypothetical future trial. Eastwood and Patton (2002) found that the majority of those interviewed in Queensland and New South Wales said that they would not report sexual abuse again if it were to occur. This did not appear to be associated with the outcome of the trial given that a large proportion of those who said that they would not report were involved in cases that resulted in convictions. A greater number of those in Western Australia said that they would report abuse again, possibly reflecting the greater protection for young witnesses in this state at that time, including prerecording of entire evidence, which eliminates the stress of long delays to trial and having to give evidence during the trial. Similar to Western Australia, 62% of Northern Ireland participants (Hayes et al., 2011) and 65 % of United Kingdom participants (Plotnikoff & Woolfson, 2009) said that they would be willing to give evidence again. Interestingly, in Northern Ireland the overwhelming majority of those who said they would not give evidence again were complainants of sexual or violent offences (as opposed to witnesses in trials for other offences), likely reflecting the particularly complex challenges of court participation for those who have experienced sexual or physical abuse.

Given the impact of court involvement on young witness distress and wellbeing, supports for young witnesses when at court have been increasingly provided. Support from professionals is a significant theme in the experiences of young complainant witnesses in sexual abuse trials. Young witnesses in Sweden reported varied professional support but described this as necessary and expressed their wish for the support of a single professional throughout the entire legal process (Back et al., 2011). The importance of specialised support people was also reflected in the study by Hayes and colleagues (2011) in which the vast majority of both parents and young people indicated that the support person made either a lot of difference, or made it possible for the young person to go to court. Contact with a specialised support person, where this was provided, was the aspect of the court process that
was reported as the most helpful by most participants in the study by Plotnikoff and Woolfson (2004).

Although small in number, existing qualitative studies have provided richer understandings of the young witness experience. These studies indicate that several aspects of court involvement such as the delay to trial, fears surrounding the perpetrator, and cross-examination are distressing and that support is extremely important.

**Young Witnesses and Reliability of Evidence**

**Children as Reliable Witnesses**

Historically young witnesses’ evidence was regarded as unreliable (Klemfuss & Ceci, 2012). However, a significant body of empirical research produced in recent decades suggests otherwise, concluding that when appropriately questioned, children are able to produce reliable evidence (see reviews by Brown & Lamb, 2015; Ceci & Bruck, 1993; Pipe, Lamb, Orbach, & Esplin, 2004). Conversely, certain styles of questioning, particularly that which is suggestive in nature can increase the likelihood of inaccurate reporting from children (Zajac & Hayne, 2003, 2006).

From approximately age seven, children’s memory for salient events is similar to that of adults (Pipe et al., 2004). Even preschool aged children are able to accurately recall events, especially those which are distinctive (Pezdek & Taylor, 2002). Delay between an event and questioning about that event may decrease the accuracy of children’s reports of peripheral event details, however details central to an incident typically remain intact (Gobbo, 2000).

**Impact of Stress on Reliability of Evidence**

The distress that is commonly reported as being characteristic of the court experiences of young witnesses, particularly during testifying, has implications for the quality of evidence that they are able to provide. Distress has a negative effect on memory and communication ability and increases vulnerability to suggestion (e.g., Nathanson & Saywitz, 2003; Quas & Lench, 2007; Saywitz & Nathanson, 1993). Stress associated with the courtroom setting or unsupportive interviewing styles has been shown to have a negative impact on memory retrieval (Nathanson & Saywitz, 2003; Quas & Lench, 2007; Saywitz & Nathanson, 1993). When compared with children questioned in a small, private room, children being questioned
in a mock courtroom showed greater heart rate variability – an indication of stress – and impaired memory performance as well as more errors in direct questioning and greater acquiescence to misleading questions (Nathanson & Saywitz, 2003; Saywitz & Nathanson, 1993). This suggests that the courtroom setting itself may contribute indirectly to inaccurate recall performance and that a reduction in the stress experienced by young witnesses is a necessary component of achieving good testimony.

**Best Practice Interviewing**

Communicative competence in the legal context involves the ability of adults to elicit reliable information as well as children’s abilities to respond appropriately. Effective communication is dependent on the questioner’s ability to communicate in a non-threatening and developmentally appropriate manner, as well the child’s capacity to translate memory into language, deal with issues of non-comprehension, reason, and distinguish fact from fantasy (Saywitz, Nathanson, & Snyder, 1993). A significant body of research has established the interviewing practices that maximise children’s ability to provide full and accurate accounts of events, including those involving abuse (see Brown & Lamb, 2015 for a review). Broad, open-ended, and free recall questions, are consistently found to be more effective than closed questions, in facilitating narrative productivity and accuracy of content when interviewing children (Lamb, Orbach, Hershkowitz, Horowitz, & Abbott, 2007; Waterman, Blades, & Spencer, 2004). Preschoolers and those with developmental delay may require more structure and scaffolding when interviewed, including cues and prompts to elicit greater detail (Hershkowitz, Lamb, Orbach, Katz, & Horowitz, 2012). Children may also need open-ended directive questions and more prompts, when reluctant to volunteer emotionally laden or embarrassing material in response to open questions (Leander, 2010).

Based on the knowledge that exists, clear and accessible guidelines for questioning child witnesses have been produced such as the National Institute of Child Health and Human Development (NICHD) Protocol (Lamb, Hershkowitz, Orbach, & Esplin, 2008) which has been the basis for New Zealand’s evidential interviewing process over several decades. However, the principles and practices employed in interviews conducted by specialist and trained interviewers for evidential purposes, are not yet reflected in the questioning of young witnesses within the courtroom setting, particularly during cross-examination.
Questioning in Court

Research findings regarding best practice appear to have had only limited impact on the manner in which examination proceeds in the courtroom, both internationally and in New Zealand (see Henderson, 2012, 2012; Zajac, O’Neill, & Hayne, 2012 for reviews). Research involving analysis of transcripts of the testimony of young witnesses in New Zealand courts indicate that lawyers (defence lawyers more so than prosecution) employ language that is often developmentally inappropriate and beyond the communicative and cognitive capabilities of young witnesses (Davies & Seymour, 1998; Hanna et al., 2012; Zajac & Cannan, 2009; Zajac, Gross, & Hayne, 2003). Defence lawyers are typically more leading and closed in their questioning than are prosecutors and forensic interviewers (Davies & Seymour, 1998; Hanna et al., 2012). Cross-examination is typically characterised by closed, leading, complex and confusing questions and typically involves utterances containing double negatives, complex relational concepts (such as time), as well as legal terms which are poorly understood by young witnesses (Davies & Seymour, 1998; Hanna et al., 2012; Zajac & Cannan, 2009; Zajac et al., 2003). Complex vocabulary and syntax is also common (although less so) among prosecution (Zajac et al., 2003).

Studies involving transcript analysis of courtroom testimony suggest that lawyer questioning predicts children’s response productivity, with closed and leading questions being responded to with limited, unelaborated, and less accurate answers (Andrews & Lamb, 2017; Klemfuss, Quas, & Lyon, 2014; Zajac & Cannan, 2009; Zajac et al., 2003). Furthermore, in response to complex, and grammatically defective or ambiguous questions, children rarely request clarification, are likely to comply with leading questions, with a majority changing some aspect of testimony under cross-examination (Zajac et al., 2003).

Children may be unable to monitor their level of comprehension and inform the adult questioning them that they have not understood the question, and may therefore acquiesce or attempt an (often poor) answer (Waterman et al., 2004; Zajac et al., 2003; Zajac & Hayne, 2006). Teaching children to say when they don’t understand a question or know an answer, has been found to mitigate the impact of questioning on accuracy, suggesting that difficulty expressing non-comprehension or uncertainty exacerbates issues of inaccuracy (Waterman et al., 2004).
This research analysing courtroom transcripts indicates that the styles of questioning used in court, particularly during cross-examination, are developmentally inappropriate, complex, and damaging to the accuracy of a young witness’ evidence. Zajac (2009) states that “the questioning style often used during cross-examination directly contravenes almost every principle that has been established for obtaining complete and accurate reports from child witnesses” (p.163). This is, in part at least, reflective of limitations in lawyer expertise concerning the use of language that is developmentally appropriate for young people, and their limited knowledge of how to adjust their language when questioning young people (Henderson, 2003). However, it also reflects the widely accepted aim of cross-examination which is not to elucidate full and accurate accounts or uncover the “truth”, but rather to present a defence argument through discrediting and obfuscating a witness’ testimony (Henderson, 2001). This is achieved through accusations of poor eyewitness ability, accusations of dishonesty, suggestive and leading questions, and questioning that may be deliberately linguistically complex (see Zajac et al., 2012 for a review).

Rather than a process of open enquiry, cross-examination is typically conducted with the intention of controlling witness responses (Henderson, 2001). Texts which guide legal practitioners in cross-examination (e.g., Eichelbaum, 1989; Salhany, 2006), promote the use of precisely the language that is so damaging to young witness accuracy, as a means of controlling the dialogue between lawyer and witness. Salhany (2006) states that,

Most importantly, questions should be framed in such a way that they elicit either a “yes” or a “no”. A child will probably answer “yes” to a question that suggests a yes answer and “no” to one that suggests a no answer” (p. 103).

Similarly, Eichenbaum (1989) asserts that “…open-ended questions are disastrous in cross-examination…keep control of the witness. Control comes in part by asking precisely phased leading questions…”

These long accepted notions of cross-examination act as a barrier to the use of best practice interviewing of young witnesses in the criminal court context.
The New Zealand Context

Court involvement as a threat to the wellbeing of vulnerable witnesses has been repeatedly evidenced, and may serve to reduce the willingness of young witnesses to participate in the legal process. When they do participate as witnesses, the distress they experience, and the styles of questioning used by lawyers, compromise the ability of young people to give full and accurate evidence. Without the participation of young witnesses, particularly in cases of sexual abuse or assault where the child is usually the sole witness, trials would be unable to take place. It is therefore in the interests of the justice system that children and their caregivers are willing to participate in this process and that young complainant witnesses are able to give quality evidence.

Legislative and Procedural Measures for Young Witnesses

Growing recognition of the potentially negative impact of court involvement for young witnesses has resulted in the development of both legislative change and procedural initiatives (see Hanna et al., 2012; Robinson, 2015 for reviews of these innovations in jurisdictions internationally). Such innovations are aimed at protecting the wellbeing of the young person by reducing the stress of court participation, and increasing the ability of the young person to participate in the process in a manner that is in the interests of both the individual and the justice system. Government guidelines for agencies working with child witnesses (New Zealand Government, 2011) stress the importance of all possible steps being taken to minimise any negative impact of involvement in the criminal justice system that young witnesses may experience. There are currently a number of protections in New Zealand for young and vulnerable witnesses.

Since the 1980’s in cases for offences of a sexual nature the court is closed to the public when the complainant testifies (Criminal Justice Act 1985), and the complainant is able to elect a person to support them during their testimony (1985 amendment to the Crimes Act). Also during the 1980s, child witnesses were granted name suppression (s 139A Criminal Justice Act 1985), as were victims of specified sexual offences (s 139 Criminal Justice Act 1985).

Alternative modes of giving evidence have been one of the primary protections offered to young witnesses. The development of multidisciplinary approaches to child abuse investigations in the 1980s resulted in the practice of video recording evidential interviews so
that these were able to be used for investigative and evidential purposes. The Evidence Amendment Act 1989 allowed such videos to be used as a child’s evidence-in-chief, and also made provision for a child to give all their evidence via CCTV or from behind a screen. This has become common practice in trials for sexual offences, and those involving young witnesses. The Evidence Act 2006 extended eligibility for alternative modes of testifying to “any appropriate practical and technical means… to enable the judge and the jury (if any), and any lawyers to see and hear the witness giving evidence” (s 105(1)(b)). The purpose of this, as stated in the Act was to reduce the stress of testifying. Although the prosecution must seek direction from the court as to how a child complainant will give evidence and be cross-examined, this is not mandatory for child witnesses who are not complainants (s 107 Evidence Act 2006). A judge can however, “either on the application of a party or on the Judge’s own initiative, direct that a witness is to give evidence in chief and be cross-examined in the alternative ways set out in section 105” (s 103).

Also provided for by this legislation, although not stated explicitly, is for the young witness to have their entire testimony, including cross-examination, pre-recorded, and to have all examination questions relayed by an intermediary (also referred to as a communication assistant) in combination with using CCTV. These provisions have rarely been used in New Zealand to date, with pre-recording of cross-examination and use of communication assistants having been determined in case law as only permitted in exceptional cases.

Currently most child complainants of abuse are forensically interviewed by a specialist Police or Child Youth and Family interviewer and this recorded interview is used as evidence-in-chief in court. A witness typically views their evidential interview in the week prior to when they attend court, as arranged by the Police Officer in Charge, with the intention of refreshing the witness’ memory. CCTV has become the default mode of testifying for young witnesses in New Zealand. The use of CCTV allows a witness to give evidence live, but from a separate location – which is to date, a room within the court building, although the legislation does not restrict the place from which such evidence may be given. The judge is responsible for planning breaks for the child witness during their testimony.

Regardless of the mode of evidence, child witnesses are cross-examined by defence counsel. The Judge, irrespective of a witness’ age, “may disallow, or direct that a witness is not obliged to answer, any question that the Judge considers improper, unfair, misleading.
needlessly repetitive, or expressed in language that is too complicated for the witness to understand” (s 85 Evidence Act 2006). Rates of judge intervention have, however, been found to be low (Blackwell, 2007; Hanna et al., 2010).

Court Education for Young Witnesses is a service that is offered to witnesses under the age of 17 in New Zealand. It is provided by the Ministry of Justice, via victim advisors who provide young witnesses with information about the court process. Court education involves a visit to the court room and is intended to familiarise and educate the witness, helping them to be more confident and better understand the court process and their role in it. Victim advisors provide support for young witnesses during the trial, and are available to discuss the trial outcome with a young witness and their caregiver(s). The Officer in Charge may also fulfil this role, and is likely to be the main point of contact prior to the trial, in particular advising the witness and family members of the progress of their case.

Counterintuitive expert evidence is intended to educate the jury regarding common misconceptions pertaining to CSA, and has been regularly admitted in CSA trials in New Zealand since 2008. A review of counterintuitive evidence in New Zealand, written by those experts who provide it (Seymour et al., 2014), argues the rationale for the provision of such expert evidence is the aforementioned variable knowledge of sexual abuse among jurors, and jury eligible people (Blackwell, 2007; Cossins, 2008; Cossins et al., 2009; Quas, Thompson, et al., 2005), and the use of such misconceptions by defence counsel to discredit child witnesses. Counterintuitive evidence has been shown to be effective in improving jurors’ understandings of CSA and addressing common misconceptions (Goodman-Delahunty, Cossins, & O’Brien, 2010; Goodman-Delahunty et al., 2011). Although counterintuitive evidence is not a provision aimed at reducing stress for the young witness, one of its effects appears to have been on the lines of questioning employed by defence lawyers. For example, where evidence is presented in counterintuitive briefs that delay of disclosure and continuing relationship with the alleged offender are common in young people who have been subjected to sexual abuse, defence lawyers appear less likely to pursue these misconceptions in cross-examination in an effort to discredit the witness (Seymour et al., 2014).

**Ongoing Issues Regarding Young Witnesses: A Gap Between Policy and Practice**

Despite existing legislative and procedural measures available to assist children who testify in New Zealand criminal courts, research paints a concerning picture of trials
involving young witnesses. A study using data from trials involving child witnesses in 2008 and 2009 concluded that available measures were inconsistently implemented, and subject to regional variation in practices (Hanna et al., 2010). The delay to trial was found to be long – 15.6 months (477 days) on average. Almost half (47%) of young witnesses aged 13-17 gave their evidence-in-chief live in court, as opposed to via pre-recorded forensic interview, and over one third (35%) of children who underwent a forensic interview did not view their forensic interview before trial. One third of children (33%) did not participate in the Court Education for Young Witnesses programme, 42% had to come to court on more than one day to give evidence, 30% did not testify with a trial support person and 64% began giving evidence in the afternoon on their first day of testifying.

Standards of forensic interviewing in New Zealand have been found to be generally high (Hanna et al., 2010) although there does exist room for improvement (Wolfman, Brown, & Jose, 2016). In contrast to this, research involving analysis of court transcripts in New Zealand, mostly of the examination and cross-examination of sexual abuse complainants, suggests that questioning in the court is far removed from that which is known to facilitate accurate evidence among young witnesses. As described earlier in this chapter, research in New Zealand analysing court transcripts has found that the majority of questions used in cross-examination of children and adolescents are closed, leading and complex (Davies & Seymour, 1998; Hanna et al., 2012; Zajac & Cannan, 2009; Zajac et al., 2003).

The intervention of judges in inappropriate questioning by lawyers appears to have increased over past decades (Davies & Seymour, 1998; Hanna et al., 2010). However, judge intervention appears to remain limited and does not adequately moderate the unsafe nature of questioning (Blackwell, 2007; Hanna et al., 2010). Where the judges reported reasons for intervening in questioning in the aforementioned studies, their interruptions were in relation to the manner (rather than complexity) in which questions were put to the young witness. Difficulties in language or expression were seldom commented upon.

The Call for Reform

There has been an ongoing call for further reform within the New Zealand context. Over the past decade, a number of research papers (e.g., Hanna et al., 2010; Zajac, Garry, London, Goodyear-Smith, & Hayne, 2013), Ministry of Justice reports (Ministry of Justice, 2010) and Law Commission reports (New Zealand Law Commission, 2015) have reached
similar conclusions as to the issues regarding young witnesses in New Zealand and have proposed similar recommendations for improvements. The authors of these reports highlight the need to reduce exposure of young witnesses to delays, and improve communication with children in court – problems that continue to impact on the quality of evidence that a young person is able to provide (see Hanna et al., 2010). Recent changes that have taken place in other jurisdictions but not in New Zealand, include pre-recording of young witness’ cross-examination in addition to pre-recording of their evidence-in-chief (e.g., Western Australia, England and Wales, Israel), education for lawyers about appropriate questions and greater judicial policing of witness examination (e.g., England and Wales), and appointment of a third party communication assistant or intermediary to assist lawyers and the young witness to communicate effectively (e.g., England and Wales, Israel, South Africa; Henderson, 2012, 2014, 2015a, 2015b, 2016).

A presumption in favour of pre-recording a young witness’ entire evidence, particularly those who are complainants, has been suggested in New Zealand. This would involve a special hearing (in which CCTV is still able to be used) which takes place without a jury present and is recorded. This recording is then used at the trial at a later date, at which the child is not required to be present. A number of trials in Auckland in 2010, utilised pre-recording for young witnesses, the first of which was R v Sadlier, 2010. However, as a result of two appeals in 2011 in relation to pre-trial cross-examination (MvR (CA 335/2011) and RvE (CA 339/2011)), the Court of Appeal has established case law that while the pre-recording of children’s entire testimony is within jurisdiction it should be restricted in its use to rare circumstances.

A means of enhancing the communicative competency of young witnesses during testimony is to employ the expertise of communication assistants, or intermediaries. The potential for use of intermediaries in New Zealand criminal court trials involving young witnesses has been explored in depth by Hanna and colleagues (Hanna, Davies, Henderson, & Hand, 2013), and has been employed in the Youth Court and Criminal Courts in some trials in recent years.

Conclusions

The literature discussed thus far highlights a dilemma in that for effective provision of justice, particularly in cases of sexual abuse, it is crucial that young complainants be involved
in justice processes, yet court involvement poses significant challenges for young witness wellbeing and quality of evidence. In addition, qualitative research which involves interviews with young people who testify as complainant witnesses as well as their caregivers paints a particularly clear and concerning picture of the impact of the court experience on these young people. Some authors have described the justice system as being traumatising for and abusive of the child witness (Eastwood & Patton, 2002). Additionally, the evidence provided by young witnesses remains less than ideal, not least due to court processes and an approach to cross-examination which is far from best practice and compromises quality of evidence.

Despite a raft of legislative measures, recommendations and information available about best practice interviewing, there remains a striking gap between these innovations and the reality of court involvement for young witnesses. Several authors (e.g., Hanna et al., 2010) have argued that without a change in the culture of the court, there will be an ongoing conflict between the role of cross-examination as a means to argue a defence, and the goal of employing questioning styles which elicit best evidence from young and vulnerable witnesses. Change may not require further legislative change; nor does legislative change necessarily produce tangible change in courtroom processes. Innovation is perhaps most likely to occur as a result of leadership form those professionals who manage trial process. This was the challenge accepted by the Whangarei judges in producing their protocol for child witnesses.

The Whangarei Young Witness Pilot Protocol

The Whangarei Young Witness Pilot Protocol (see Appendix A) was implemented by judges in the Whangarei region in late 2014, and was intended to operate within existing legislative and resourcing frameworks. The protocol was developed with the aims of minimising the negative impact of court involvement on young witnesses and increasing the quality of evidence that they are able to provide.

With these intentions, and the management of stress and fatigue in mind, the protocol states that where possible, young witnesses will watch their evidential DVD prior to the start of the trial, as opposed to viewing it as part of the trial at the commencement of their courtroom evidence-in-chief. They will not be brought to court until required to give viva voce evidence, and will not give evidence beyond 3 p.m. Additionally, young witnesses will be provided with frequent breaks during the time they are giving evidence. This is intended to
manage witness stress and fatigue and thus protect the quality of the evidence that they can provide. This usually involves several short breaks of 2-3 minutes in length and a longer break every hour. Whereas courts in New Zealand generally give a 15 minute recess, this aspect of protocol is similar to the new English practice of “minibreaks” of 2-3 minutes where the screens are switched off (except for the judge’s screen), but jurors, judge and lawyers remain in the court (Plotnikoff & Woolfson, 2015). This measure recognises the shorter attention span of children and teenagers comparative to adults, and aims to promote better evidence as well as reduce witness stress. In addition, the CCTV room from which young witnesses give evidence was also given a child-friendly upgrade.

The protocol also states that lawyers should not use tagged questions, questions containing a double negative, questions which contain two or more propositions and leading questions which suggest an answer, and that judges will intervene should such questions be employed. This aspect of the protocol is informed by research which demonstrates that complicated or tagged questions contribute to confusion for children and vulnerable witnesses and result in unreliable evidence.

Additionally, any counterintuitive evidence, which is now common in sexual offence trials in New Zealand (Seymour et al., 2014) and/or medical evidence is to be called at the beginning of the trial. This is intended to improve the effectiveness of counterintuitive evidence in addressing the misconceptions regarding sexual abuse that are held by jurors.

The Current Research

This research aimed to better understand the experiences of young complainant witnesses and their families, to examine the recent implementation of the Whangarei Young Witness Pilot Protocol, and to advise, if appropriate, on future innovations. It involved two studies, both of which were qualitative in nature. Given that such research has not previously been conducted in a New Zealand context, it was important that the two studies were not limited to areas of focus that were indicated by overseas literature to be of importance, or that the research team expected to be relevant, and a qualitative approach allowed for such scope. The research needed to be practical and accessible to those whom the findings were intended to inform in order to have the greatest chance of contributing to positive change. Thus, the research team met with judges and others in positions of influence several times over the
course of the research to foster a relationship wherein support for the research could be garnered and findings and their implications could be relayed and discussed.

The research questions guiding this body of work were as follows:

- How do young complainant witnesses experience the court process?
- How do parents understand their child to have experienced the court process?
- How do parents of young complainant witnesses experience their involvement in criminal court trials for sexual offences?
- What are the perspectives of practitioners involved in criminal court trials involving young witnesses as to the Whangarei Young Witness Pilot Protocol?
- What further change do young witnesses, parents of young witnesses and practitioners believe would better support the wellbeing of young witnesses and enhance the quality of evidence that they are able to provide?

These research questions sat within a broader consideration of whether changes to court processes for young witnesses can be effectively implemented without legislative change.

Study One (Chapter Three) was concerned with the experiences of young complainant witnesses involved in trials for offences of a sexual nature and their parents or caregivers. This study focussed on experiences of court involvement (including the pre-trial period), and related formal support services and informal support. This study involved interviews with four young witnesses and ten parents or caregivers. The purpose of this study was twofold. Firstly, given that a study like this has not yet been conducted in New Zealand, it was intended to better understand the experiences of young witnesses and their families for the purposes of informing change and development in court processes and supports so that these are appropriately targeted to their needs. Secondly, the study was intended to allow for young witnesses and their caregivers to be participants in changes to court processes which directly affect them such as the Whangarei Young Witness Pilot Protocol. This study was limited to young complainant witnesses (and the parents and caregivers of such witnesses) involved in trials for offences of a sexual nature. This decision was made because the majority of young witnesses in New Zealand are complainants in trials for sexual offences, and these young people are particularly vulnerable for a multitude of reasons previously discussed in this chapter. If court innovations are able to better accommodate and protect the wellbeing of young witnesses in such trials, it is likely that they will do so for all young witnesses.
Because the Whangarei Young Witness Pilot Protocol was in the very early stages of implementation at the time of recruitment, aspects of this protocol applied to the trials in which only some young person and parent participants were involved. It was not the intention of the current research to draw conclusions about the experiences of those involved in trials using the protocol as compared to those involved in standard trials. Rather, the intention of this study was to provide a snapshot of young witnesses’ experiences in the current court climate in New Zealand.

Study Two (Chapter Four) was concerned with the professional response to the Young Witness Pilot Protocol. This study aimed to understand professional perspectives regarding the protocol, barriers to the success of the protocol and areas for further development. It was considered important that this research assessed the attitudes of legal professionals and judiciary, as historically, there have been significant gaps between policy and practice regarding young witnesses, and it is the attitudes of these professionals that ultimately facilitate or hinder changes in court processes. Study Two involved individual and group interviews with 29 practitioners involved in court trials with young witnesses including judges, lawyers, police, victim advisors and court support staff. It was intended to provide an improvement-oriented formative piece of research whereby the strengths and weaknesses of the Whangarei Young Witness Pilot Protocol as perceived by professionals, were considered, in its initial phase of implementation. This research project acted as part of the development process itself, providing for consultation with practitioners and creating a pathway for feedback to judges from other practitioners. It was also intended to answer the broader question, of whether change in court processes was possible without legislative change.

Study Two was limited to professional perspectives as at the time the research was conducted too few young people had been involved in trials utilising the protocol, and most trials did not employ all aspects of the protocol. It should be seen as a first step in longer term, and broader evaluation of the protocol.
CHAPTER TWO:

METHODOLOGY

The current chapter outlines the theoretical framework that informs this research, the rationale for selecting a qualitative methodology, methods of data analysis employed, issues of trustworthiness, and ethical considerations.

Theoretical Framework

With the values of social justice and social responsibility at its core, this research had a clear agenda to inform and support positive change for young witnesses in New Zealand courts. More specifically, the research was intended to contribute to innovation in the court process and the further development of the Whangarei Young Witness Pilot Protocol in particular.

This research can be likened to action research as described by Seymour and Davies (2002) in that its purpose was to assist change, and a highly collaborative approach was adopted with this goal in mind. Collaboration and consultation with those professionals who were involved in the research, particularly the judges who developed the protocol and had responsibility for its implementation, was an integral part of the research process. This approach enhanced the relevance of the research to the stakeholders at hand which contributed to their interest and investment in the research and its findings.

This research also falls under the umbrella of advocacy research. Advocacy research is intended to assist efforts to generate improvements in people’s lives, and typically has an agenda for reform (Padgett, 2008). This research was intended to support the development of changes to court processes in order to better protect the wellbeing of young witnesses. It was intended to offer feedback to judges and others in positions of power in a format likely to be heard and given thoughtful consideration, and to ensure that the perspectives of young witnesses and their families were central to this.

In terms of theoretical perspective, I approached this research from a framework of pragmatism (McCaslin, 2008), whereby the design and implementation of the studies were guided by the aforementioned intention and purpose of the research: “To a pragmatist, the
mandate of science is not to find truth or reality, the existence of which are perpetually in dispute, but to facilitate human problem-solving” (Powell, 2001, p. 884).

**Qualitative Research**

Qualitative approaches are useful in areas where research is limited as they provide scope for exploration of responses that are not expected thus facilitating expansion of the literature (Bowling, 2002; Liamputtong, 2013). This was important because there is a distinct lack of qualitative research focusing on the experiences of young witnesses, or the perspectives of practitioners who facilitate trials involving these witnesses.

Qualitative research is particularly useful when attempting to understand the experiences of participants and their perception and interpretation of these (Richards & Morse, 2007). Qualitative research may also provide a means of understanding the experiences of people whose perspectives tend to be marginalized or discounted (Willig, 2001). The voices of young complainant witnesses are marginalised - as children, as victims of sexual abuse, and as participants in a legal process designed for adults. In adopting qualitative methods, breadth of experience and perspective was allowed for, and participants were able to talk about that which was important to them, increasing the relevancy of the research to participants. A qualitative approach allowed for the complexities and nuances of court involvement for young witnesses, to be reflected in the data and findings.

The orientation from which this research was conducted, was that of critical realism (A. M. Clark, 2008), which acknowledges “the ways individuals make meaning of their experience, and, in turn, the ways the broader social context impinges on those meanings, while retaining focus on the material and other limits of ‘reality’” (Braun & Clarke, 2006, p. 81). That is, in researching the perspectives and experiences of participants, I acknowledge that the participants, and myself, in addition to the political, social, historical and cultural context influence the “reality” described in this research.

**Interview Process**

The interview schedule for Study One (see Appendix E) was initially shaped by understandings of “best practice” court processes and had a lot of content around specifics of court procedures. However, it became clear that questions that best allowed young people and parents to talk about their experience were those that were broad and open-ended. Much of
the initial interview schedule was quickly discarded with a small number of questions being utilised to guide the interview process.

Similarly, as a result of child wellbeing being a major focus in the literature that I reviewed prior to undertaking the study, this was the primary focus of the interview schedule for Study One. However, it became apparent that parent and caregiver participants wanted to talk about their own experiences and discussed the importance of their own wellbeing for the wellbeing of their child, sometimes in much greater depth than direct talk about their children. More time in the interviews was therefore given to discussing the parent experience than was anticipated.

I entered the interviews with the intention that the research would contribute to informing change and development within court processes for young witnesses. As a result of reviewing existing research I had some preconceived ideas about the areas of change that parents and young people might identify as most stressful or challenging. However, I endeavoured to be open to new information and ideas that I had not previously encountered in the literature or prior interviews.

The interview schedule for Study Two (see Appendix H) was specifically focussed on the Whangarei Young Witness Pilot Protocol, and although semi-structured in its nature, was less flexibly applied than the interview schedules for Study One. The interview schedule included professional perspectives of each aspect of the protocol, and impressions of the intentions and impacts (both positive and negative) of the protocol, with a particular focus on the wellbeing of young witnesses and the evidence that they provide. Participants were asked whether they thought that there were any barriers to the success of the protocol being implemented and achieving its aims, whether the protocol posed any problems for the delivery of justice, and whether there were any further changes that they thought could or should be made.

Data Analyses

Data analysis in the current study was guided by methods of thematic analysis as described by Braun & Clarke (2006). Thematic analysis involves identifying, analysing and reporting on patterns, or themes within the data and is a commonly used method of qualitative analysis (Guest, MacQueen, & Namey, 2012).
Following the guidelines described by Braun and Clarke (2006), transcripts were read and re-read in a process of familiarisation. Individual pieces of data were then coded. A code identifies a feature of the data that is of interest to the analyst. Codes were then collated into themes and a thematic map was created. A theme, as defined by Braun and Clarke “captures something important about the data in relation to the research question, and represents some level of patterned response or meaning within the data set” (2006, p. 82). The transcripts were reread, to check that the themes identified were appropriate in the context of the entire data set. The thematic map was reworked and refined as needed.

For Study One, thematic analysis was used to explore young witnesses’ and their parents’ descriptions of their experiences of court involvement. An inductive approach was adopted whereby themes were data-driven, with no prescribed limits or areas of focus. This was considered important so as not to limit findings in what is an under-researched area. However, given that the study was interested in contributing to improvements in the experience of court for young witnesses, care was taken to cover participant accounts of stressful and supportive aspects of the court process in interviews and this is reflected in the questions that were included in the interview schedule. In analysing the data the intention was to provide a rich thematic description of the data set.

For Study Two, the analysis of the data gained from interviews and focus groups with professionals diverged somewhat from standard thematic analysis. Rather than aiming to code and identify themes for the content of the entire data set, this study involved coding data pertaining to particular areas of interest. This involved units of data relating to each aspect of the protocol being collated and then analysed for patterns in the data within each category. In Study Two, data were also coded in relation to two questions: “What factors are necessary for the success of the protocol?” and “What future innovations are needed to support the wellbeing of young witnesses and improve the quality of evidence that they are able to provide?” Analysis of the codes within these areas of interest was then conducted thematically, as per Braun and Clarke’s (2006) description. The reason for approaching analysis in this manner for Study Two was that the aim of this study was to provide direct feedback to those in positions of power as to the perspectives of professionals, in a way that could be easily applied to the development of the protocol. Similar approaches to analysis and presentation of data are evident in similar research efforts (e.g., Davies & Hanna, 2013; Eastwood & Patton, 2002).
To reduce the potential impact of bias, and increase the “trustworthiness” of data analysis (Morrow, 2005) codes and themes were reviewed by my supervisor throughout the process of analysis. He viewed the codes and the thematic map and collaborative discussions were had to rework and refine the themes. This process helps to ensure that conclusions drawn by the primary researcher are logical and represent the data. Additionally, verbatim quotes from the participant responses were included in the report of the findings to directly connect my interpretations with what the participants actually said.

**Subjectivity and Reflexivity**

The processes of data collection and interpretation are influenced by theoretical, personal, interpersonal and emotional factors (Mauthner & Doucet, 2003). Because the researcher is integral to data collection and analysis (S. Merriam, 2002; Willig, 2001), the researcher’s experience and assumptions have the potential to impact upon these processes. For this reason peer review (as described above) was an important means of best ensuring the trustworthiness of the data analysis (Morrow, 2005). Additionally, it is important for the researcher to reflect critically on what they bring to the research. In acknowledging and reflecting on the researcher as part of, and as impacting on the research process, the research and its findings can be more thoroughly understood.

This area was new to me both from an academic and a personal perspective. I have not been a victim of sexual abuse, have not being involved in a court process as a complainant witness or otherwise, and am not a parent. I do not have any legal or court related professional experience. As a result of this my understandings of court processes and expectations of the experiences of young witnesses and their families prior to conducting interviews, were shaped by the literature I had read and informal discussions with professionals in the field.

As a training psychologist, I felt a constant conflict between being a clinician and being a researcher. Initially I was concerned that my interviewing style prioritised a desire for the participant to feel heard and understood over a focus on collecting a breadth of research-relevant information from the participant. However, over time I increasingly came to believe that in giving participants an opportunity to tell their story and be heard, they talk about the things that are most important to them, and that these are the things that are of most interest from a research perspective. It also was the approach that best aligned with the advocacy
intentions that shaped the research. I became increasingly confident in my ability to balance focussing interviews on court processes and allowing space for participants to talk about the aspects of this that were most important to them.

**Ethical Considerations**

Ethical approval for the two studies that comprised this research was granted by the University of Auckland Human Participants Ethics Committee. Approval was also granted by the Ministry of Justice Research and Evaluation Team Sector Group. For Study Two, approval was sought from and granted by the New Zealand Police Research and Evaluation Steering Committee due to the involvement of Police staff as participants.

Although interviews with professionals were relatively straightforward and free of complex ethical considerations, this was not so for interviews with young witnesses and to a lesser extent their parents. Research with children who have experienced sexual abuse is particularly ethically complex. As highlighted by Mudaly and Goddard (2009),

The critical issues that arise in this type of research have to do with balancing the rights of children to be protected from any possible trauma and harm and their rights to be consulted and heard about matters that affect them (p. 262).

Failure to consult young witnesses regarding their experiences of the justice system and how this could be improved is of concern for two reasons. Firstly, not only are those determining the processes of the justice system violating the rights of such children to consultation (United Nations, 1990), but secondly, they also risk making incorrect assumptions about the needs of young witnesses, and the most effective ways of minimising their distress.

Nevertheless, in offering participation (involving discussion of court processes) to young witnesses, who are inherently vulnerable because of their age, and because of the abuse that they have experienced, the current research poses potential risks to these young people. The protection of the welfare of participants was therefore a primary consideration in the study design. The primary ethical issues of consideration in the development and implementation of Study One were informed consent/assent, non-interference with legal processes, safety and risk, protection of privacy, and cultural considerations. A number of
measures (discussed below) were incorporated to address these issues. The procedures for Study Two are covered in Chapter Four.

**Informed Consent/Assent**

To best ensure informed consent/assent the research was designed to allow for the greatest number of opportunities for participants to be fully informed about the research and to dissent from participation. Because it was not possible or ethically appropriate for the research team to have access to the details of potential participants, an indirect recruitment process involving recruiters offering interested potential participants a Permission to Contact Form (See Appendix C). Although initially Crown Prosecutors were the sole recruiters, HELP Auckland staff and victim advisors were also added as recruiters upon ethical and Ministry of Justice approval. It was agreed that victim advisors and HELP Auckland staff were the most appropriate people to offer participation (and provision of information via the Participant Information Sheet; see Appendix B) to potential participants, due to the nature of their relationship and contact with young witnesses and their families. It was hoped that this relationship would offer an opportunity for potential participants to discuss the research with someone whom they trusted, who had concern for their wellbeing, and who was not directly involved in the research.

The initial phone call made by the primary researcher to potential participants who gave their consent for this was to provide a further explanation of the research and an opportunity for questions to be answered. Following this, the person was asked if they would like to participate. Verbal consent/assent (and an opportunity to dissent from participation) was also gained again on the interview prior to signing the Consent/Assent Form. Prior to this the Consent/Assent Form was reviewed with the participant to check for understanding and provide an opportunity for any further questions to be answered. It was emphasised to participants that they could dissent from participation at any time during the interview.

**Avoidance of Interference with Legal Processes**

As advised by Chief District Court Judge Jan-Marie Doogue contact was not made with participants who had given permission for the research team to contact them until at least six weeks following a not guilty verdict or in the case of a guilty verdict, six weeks after sentencing. This was to allow for the appeal period to have passed, thus minimising the risk of interviewing a witness involved in a trial where the conviction or sentence was then
appealed, and in particular, to avoid the risk of interviews being viewed as contaminating the evidence at appeal.

**Safety and Risk**

Although sexual abuse itself was not the topic of the interviews, the court process and the abuse experience are inextricably linked, and issues such as seeing the offender at court are emotionally laden. Additionally, research involving young witnesses in other jurisdictions indicated that involvement in the court process itself is likely to have been a very difficult and even traumatic experience. The same is true, albeit to a lesser extent, for parents of victims. Given the traumatic nature of the initial victimisation experience for which the participant or their child is a complainant witness, as well as the possibly stressful nature of involvement in the courts, it was expected that in discussing their court experience, some participants might experience some level of psychological distress.

A number of provisions were taken to minimise the likelihood of distress arising and to manage distress when it did arise. These measures were also intended to protect the wellbeing of parent participants. An unexpected outcome of this research discussed in Chapter Three was the vulnerability that parents expressed and the emphasis that they placed on their own experience. Consequently these measures turned out to be very important and although undoubtedly lesser than those of child participants, the vulnerabilities of parent participants in such research should not be underestimated.

It was stated on the Participant Information Sheets (see Appendix B) and Consent Forms (see Appendix D) for parents and participants over 16 years of age, that if an individual thinks that their own, or their child’s participation is likely to cause them significant distress then they should not participate in this study. Young person participants were offered the option of having a support person of their choice present for the interview. It was emphasised to young people and parents alike that this was the decision of the young person.

Having undergone training as part of a Doctorate in Clinical Psychology, I was experienced in identifying and monitoring distress and managing crisis intervention. Distress was monitored throughout the interview and when distress arose I moved to a less distressing topic, reminded the participant that they could discontinue the interview at any time, and gave them the opportunity to do so. At the conclusion of the interview, and after turning off
recording devices, a standard part of protocol was an interview debrief, including assessment of distress levels. Provisions were made for consultation with my research supervisor and clinical psychologist Professor Fred Seymour if a participant was identified as distressed, and for referrals to be made to HELP or the Miriam Centre if appropriate. No such further consultation or referrals were required.

For all young person participants, a follow up phone call was made the day following the interview. This was arranged at the conclusion of the interview. For all participants under 16 years of age, I phoned their caregiver the day after the interview took place, to enquire as to whether the child had experienced any post interview distress. Young person participants over the age of 16 were phoned directly. This provided an opportunity for to enquire as to their distress levels and provide any further debriefing as needed, and for referral to the Miriam Centre and Help Auckland to be offered if appropriate. It was planned that parent participants would also be phoned if they had been distressed during the interview. However, when undertaking interviews I decided that it was most appropriate to offer all parent participants a follow-up phone call due to the nature of the content discussed in interviews, and because most parents were at least somewhat distressed during the interview. A follow-up phone call was made to the majority of parent participants, and did not occur only in those cases where the parent participant declined this.

If risk of harm to self or others was disclosed then the interview was to be discontinued, risk assessed, and an appropriate course of action taken after consultations with Professor Fred Seymour, including the possibility of reporting to the appropriate authorities. For all interviews Professor Fred Seymour was available by telephone for immediate consultation if needed. One mother reported suicidal ideation, however risk assessment determined that she presented no risk to herself. Supports were discussed were discussed with this participant.

Although there was the potential for new abuse allegations and/or indication of current risk from others, this did not occur. If this were to occur, it was planned that I would firstly consult with the research Professor Fred Seymour. If deemed necessary I would report to the appropriate authorities. This was stated on the Participant Information Sheet and Consent Forms.
Protection of Privacy

Several steps were taken to protect the privacy of participants. Identifying details were removed from transcripts of interviews. Participants were assigned a number that was used to identify their transcript from that point forward. Transcripts and digital voice recorder files were password protected and stored on secure, encrypted storage devices at the University of Auckland. The data will be stored for six years. After this time, the data will be destroyed. Consent and Assent Forms were stored in a locked filing cabinet at the University of Auckland.

Young person participants were not offered the opportunity to edit the transcripts of their interview recordings. This was because in sending the transcript to them we could not be confident that another member of the family would not gain access to this, including a parent demanding to read the document. So as not to apply different practices with adults, parent participants were not offered the opportunity to edit the transcripts of their interview recordings either.

Careful consideration was taken in describing participants and using participant quotes so as not to include any information that could be identifying.

Cultural Considerations

In order to ensure a culturally sound and safe experience for Māori participants, a Māori interviewer was available to conduct interviews with these participants if they wished. In addition, Dr Erana Cooper (Ngapuhi, Ngati Hine), an experienced Māori researcher and clinical psychologist was consulted regarding this project. The presence of Māori in the research team was intended to enable an opportunity for Māori to be in control of at least some aspects of the research and to allow for the research to be carried out in the most culturally appropriate and respectful manner. Although two participating families identified themselves as Māori, they declined the offer of a Māori interviewer.
CHAPTER THREE:

STUDY ONE

The Experiences of Young Complainant Witnesses in Criminal Court Trials for Sexual Offences

For effective provision of justice, it is important that young witnesses are involved in justice processes. However, participation may be detrimental to their wellbeing (Quas, Goodman, et al., 2005) and presents challenges for gaining their full and accurate evidence (Andrews & Lamb, 2017; Klemfuss et al., 2014; Zajac & Cannan, 2009; Zajac et al., 2003).

Child sexual abuse is the primary reason for children appearing as complainant witnesses in New Zealand criminal courts (Hanna et al., 2010). In such cases, a child complainant’s evidence may be critical, as additional evidence, whether medical or from other witnesses, is frequently lacking (Blackwell & Seymour, 2015). Several aspects of the justice process have been identified as difficult and distressing for young witnesses, particularly those who are complainants. These include delay to trial, lack of understanding of the justice process, cross-examination, and trial outcomes (Eastwood & Patton, 2002; Hayes & Bunting, 2013; Plotnikoff & Woolfson, 2009).

Interviews with young complainant witnesses reveal significant distress and anxiety while awaiting trial (Eastwood & Patton, 2002; Hayes & Bunting, 2013; Plotnikoff & Woolfson, 2009). Pre-trial distress is likely exacerbated by long delays between reporting to the police and going to trial. Such delays are common, with studies finding average pre-trial delays of approximately 18 months in Australia (Eastwood & Patton, 2002) and 15 months in New Zealand (Hanna et al., 2010). In addition, trials are frequently rescheduled, thus adding to delay and uncertainty. In the United Kingdom, around a third of trials are rescheduled (Plotnikoff & Woolfson, 2009), and this is also common in New Zealand (Hanna et al., 2010). Young witnesses’ reports of difficulties experienced during this period of delay include nightmares, suicide attempts, self-mutilation, self-hatred, fear of further victimisation,

---

2 This chapter has been submitted to Psychiatry, Psychology and Law for publication. Authors of this paper are Isabel Randell, Professor Fred Seymour, Dr Emily Henderson, and Dr Suzanne Blackwell.
depression, inability to concentrate on school work, fear of returning to school following the
trial, and fear of not testifying well (Eastwood & Patton, 2002; Hayes et al., 2011). The
effects of involvement in court processes include short and long term adverse outcomes in
terms of wellbeing and functioning (Goodman et al., 1992; Quas, Goodman, et al., 2005).
Even after controlling for a number of factors, testifying is associated with poor adjustment a
decade after the trial (Quas, Goodman, et al., 2005).

Fear of seeing the defendant is a particularly salient aspect of court related distress for
young people (Eastwood & Patton, 2002; Hayes et al., 2011; Plotnikoff & Woolfson, 2009).
Even in jurisdictions where young witnesses are protected from direct contact with the
defendant by use of closed circuit television (CCTV) or screens, seeing the defendant during
the trial (either in or outside of the court room) is reported by young witnesses as being
distressing, and relief and gratitude was expressed by those when they were informed that
contact would not occur (Eastwood & Patton, 2002). Eastwood and Patton comment that in
failing to protect the child witness from the alleged perpetrator, the justice system perpetuates
power relationships between child and abuser and risks further trauma.

Poor understanding of court processes, including roles and responsibilities of court
staff and participants contributes to distress among young witnesses (Quas, Wallin, Horwitz,
Davis, & Lyon, 2009). Although legal knowledge improves with age, difficulties in
understanding are common even for older witnesses (Cooper, Wallin, Quas, & Lyon, 2010;
Quas et al., 2009).

The aspect of court involvement that has been subject to the greatest research interest
is that of testifying. Young witnesses report that both evidence-in-chief and cross-
examination are stressful, and that cross-examination is particularly distressing. The language
employed by lawyers is often experienced as confusing, and lack of comprehension adds to
young witnesses’ reports of stress (Eastwood & Patton, 2002; Hayes & Bunting, 2013;
Plotnikoff & Woolfson, 2009). Consistent with this observation, examination of New Zealand
trial transcripts has identified that lawyers, and particularly defence, frequently use closed,
leading and complex questions, and language which is beyond the communicative and
cognitive capabilities of young witnesses (Davies & Seymour, 1998; Hanna et al., 2012;
Zajac & Cannan, 2009; Zajac et al., 2003). In addition, accusations of lying and aggressive
cross-examination are common (Blackwell, 2007; Davies et al., 1997; Davies & Seymour,
1998; Hanna et al., 2010) and this is experienced by young witnesses as especially upsetting
Stress associated with the courtroom setting or unsupportive interviewing styles has been shown to have a negative impact on memory retrieval (Nathanson & Saywitz, 2003; Quas & Lench, 2007; Saywitz & Nathanson, 1993) suggesting an impact of stress on the quality of evidence young people are able to provide within the trial.

In response to these concerns, a number of legislative changes and other innovations aimed at minimising the distress of court involvement for young witnesses and increasing the quality of evidence that they are able to provide, have been introduced in New Zealand. These have, in most cases, mirrored those implemented in jurisdictions elsewhere and include pre-recorded evidence-in-chief, support in the form of victim advisors and education for court, and provision of CCTV or screens when giving evidence in court (see Ministry of Justice, 2010 for an overview of current provisions for child witnesses).

Despite such innovations, concerns remain about witness distress and associated quality of evidence (e.g., Hanna et al., 2010; New Zealand Law Commission, 2015). With the intention of further addressing these concerns, the Whangarei Young Witness Pilot Protocol was implemented by judges in the Whangarei region in late 2014. The protocol operates within existing resourcing frameworks and was not reliant on legislative change (see Randell, Seymour, Henderson, & Blackwell, 2016 for details of the protocol). The discussion surrounding innovations relevant to young witnesses in New Zealand has lacked qualitative research considering the experiences of these young witnesses and their family members, and the current study represents a first step in addressing this deficit. Participants included both those who had appeared in trials conducted under the protocol and those who had appeared in standard trials. The present study is predicated on the assumption that a better understanding of the experience of young witnesses and their family members will assist in the development of innovations in New Zealand such as the Whangarei Young Witness Pilot Protocol.

Method

Participants

This research involved semi-structured interviews with young complainant witnesses and their parent or primary caregiver involved in trials for sexual offences in District Courts in Auckland and Whangarei that had occurred in 2014 or 2015. For the purposes of this research, a “young person” was defined as being under 18 years of age at the time of the trial.
With the intention of better ensuring that young participants were well supported, only young witnesses whose parent was also willing to be interviewed were eligible for participation. Use of the term “parent” throughout this report refers to a parent or primary caregiver. Parents were able to participate whether or not their child was interviewed.

As recruitment progressed, it became apparent that more parents than young witnesses were willing to participate. In some cases, parents informally reported the reason for this being that their child did not want to talk about their experiences and, in other cases, parents did not want their child to participate as their experience of court had been taxing and they did not want them to have to discuss this any further. In total, ten parents and four young person complainant witnesses were interviewed.

Nine of the ten parent participants were biological parents (6 mothers and 2 fathers), one was a step parent, and one was a family member in a caregiver role. The children of parent participants who participated in court as young witnesses were aged between 8 and 17 years old at the time of the trial. Some parent participants had more than one child involved in the trial as a complainant witness. For one parent participant the trial had not eventuated due to a last minute guilty plea. The young witness participants were all female and were pre-adolescent or adolescent at the time of the trial. In all cases the defendant was a person known to the young person such as a parent, step parent, other family member or family friend. In all but one case the defendant was found guilty on some or all charges. Further demographic details of participants and trial details are not included for the purposes of protecting their identities.

**Interview Schedule**

Given that such research has not previously been conducted in a New Zealand context, it was important that the study was not limited to preconceived areas of focus indicated by overseas literature or researcher assumptions. Participants were encouraged to themselves identify aspects of their experience that were of importance to them. Nevertheless, a semi structured interview schedule was developed that invited comments related to each stage of the court process (pre, during and post). This included questions about the best, worst, least stressful, and most stressful aspects of court involvement, factors that increased and decreased any stress experienced, supports, understandings of what was happening throughout the trial, and any positive or negative impacts of participating in the court. In addition to their own experience, participants were asked for any advice they had for
people who work in the courts to make the process better, and any advice for other young people and for families going through this process. Interviews with parents covered both the parent’s experience and their perspective on their child’s experience.

**Procedure**

Ethical approval for this study was granted by the University of Auckland Human Participants Ethics Committee. Approval was also granted by the Ministry of Justice Research and Evaluation Team Sector Group.

Initially crown prosecutors recruited participants for the current study. However, after the obtaining of ethical and Ministry of Justice approvals, Court support staff at HELP Auckland (an Auckland sexual abuse counselling agency) and the Whangarei and Auckland Courts’ Victim Advisors made initial contact with potential participants in the majority of cases. Recruiters met with or phoned young people and their parent following their involvement in a trial. A Participant Information Sheet was provided and reviewed, and if interest in participation was expressed, a Consent Form for provision of consent for contact to be made by the primary researcher was completed.

Consistent with ethics provisions, such contact was not made until at least six weeks following a not guilty verdict or in the case of a guilty verdict, six weeks after sentencing. This was to allow for the appeal period to have passed, thereby minimising the risk of interviewing a witness when the case had not yet been concluded. Thus the risk of interviews being viewed as contaminating any subsequent evidence was averted.

The primary researcher contacted potential participants to provide further information about the research, and allow them an opportunity to ask detailed questions about the research. If they then decided to participate, they were offered the option of interview in their home, or at alternative university or counselling settings available to the research team. Young person participants were offered the option of being interviewed alone or with a support person present. Participants were emailed a Consent Form that they were able to review prior to the interview. For those under 16 years of age, consent from a parent was required in addition to assent from the young person. Participants received a $25 voucher in appreciation of their time and involvement.

Interviews were approximately one hour in length. All interviews were conducted by the primary researcher. Prior to beginning the interview, a clear explanation of the interview
process was provided to participants, including topics in the interview schedule, and a discussion of confidentiality and use of data for the purposes of this research. The Consent Form was then reviewed and signed before proceeding further with the interview. It was made clear that participants could stop the interview at any time, and that if they did not wish to answer any particular question, they could say “I don’t want to answer that”, and their wish would be respected. Interviews were audio recorded.

**Data Analysis**

All interviews were transcribed verbatim by a professional transcriber who had signed a confidentiality agreement. The transcripts were then de-identified through removal of all person and place names.

Interview data was analysed using thematic analysis following the process recommended by Braun and Clarke (2006). Data relevant to the research questions were first coded and entered into a spreadsheet. A code identifies a feature of the data that is of interest given the research question. The codes were then collated into broader themes. A theme, as defined by Braun and Clarke “captures something important about the data in relation to the research question, and represents some level of patterned response or meaning within the data set” (2006, p. 82). To improve the trustworthiness of the analysis, codes and themes were reviewed and refined by the primary researcher and supervisor until consensus was reached (Morrow, 2005).

**Findings**

Nine themes regarding the experiences of young complainant witnesses and their family members were evident in the data as follows.

**Pre-Trial Delay Makes Everything Worse**

For almost all families the delay period between reporting an offence and the trial was an aspect of the entire court process that had the most significant negative impact.

The delay up to the trial was, was ghastly. It was absolutely shocking and yeah, if I could do anything about it I would. That’s just not fair on kids. Not at all… I just think that’s disgusting to make kids wait that long. You know, it’s hard enough for
them to, to come out and tell their story and yeah, to have to wait that long it’s just, it’s just wrong. They need to do something with that. - Parent 7

Some parents noted the significance of the length of pre-trial delay in relation to the life-span of a child.

The waiting. The waiting was definitely the worst part. The time that it took for it, two and a half years is a huge amount of time for a child. She was, it just, it was her eighth birthday, the day before her eighth birthday that she disclosed and then it was May, she was 10, two and a half years. - Parent 5

The pre-trial delay period was variously described by parents and young people as “nervewracking,” “harrowing” and “horrendous” and as exacerbating the significant stress and mental health difficulties that they experienced. Relationships and schooling were both affected by the stress of the delay period and contributed to this stress. Some participants spoke about significant absences from school, due both to court related obligations and mental health difficulties. This impacted on their ability to be settled at school, and to manage schoolwork, peer relationships and queries from peers about the reason for absences.

Yes, my 17 year old doesn’t go to school because she had to go over a bridge, and attempting suicide four times she was a real worry for the school. They were always on guard. They always had to check where she was. She was in the red flag and it got too hard for her to even concentrate without having panic attacks, or panic seizures. And it was just easier for her not to be ruining everybody else at that school, and she couldn’t focus … she had to stop. - Parent 1

Many participants attributed the negative impact of the pre-trial delay period as being the result of young people being unable to move forward with their lives until completion of the trial; a feeling of life being “on hold”. Some parents described the constant presence of the trial in their minds and the minds of their children, and some emphasised how incredibly long this period of time is in the life of a child.

[If the pre-trial period had been shorter] I think it would have made a huge difference, the emotions wouldn’t just keep building… it was a constant conversation, so it kinda, as it drags on it takes over your life more and more. - Parent 6
Many participants spoke of the emotional “rollercoaster” associated with anxiety about the trial, engagement with practicalities and logistics relating to the upcoming trial, continual reminders of the offending and the upcoming trial, and the knowledge that they had to maintain memory of details of the offending.

It came down to my daughter. The biggest impact is her health and wellbeing and the delay was huge on her because she was scared, she didn’t want to talk, she didn’t know what was going to happen and she had to re-dredge up, she just wants to forget about it and put it behind her. And that couldn’t happen because it was two and a half years later. - Parent 5

Delay to trial exacerbated existing tensions in families where certain family members supporting the complainant and others supporting the defendant:

When I rang to say I’m sorry about [a relative] passing away, she just said “Don’t bother coming to the tangi [funeral]” and hung up on me. - Parent 5

You always have this fear and some anxieties going on around oh, somebody’s gonna ask you, someone in your family is going to, or they’re going to throw some derogatory comments about it you know? And then, I mean it happened on a number of occasions, you know, so it would make the social event not so nice to be around…you’ve gotta start reevaluating whether you attend these things. - Parent 10

When asked specifically what would make the process better for young witnesses and their families, half of parents highlighted the need to address the delay to trial given its role in exacerbating the stress and distress that young people and their families experience.

**Uncertainty is Distressing and Being Prepared is Important**

Uncertainty about aspects of the trial played a significant role in the stress of court involvement for young people and their families. The court process was foreign and intimidating to young people as well as their families and many described anxiety arising from the uncertainty of what the trial would involve. This included fears that young witnesses had regarding whether they would have to sit in court, the types of questions that would be asked, as well as practicalities such as court dates and times and organisation of school and work around this. One young person said that although she had people available to answer her questions, the court process was so foreign that she did not know what to ask.
Some witnesses and families commented on the timing of information about the trial process whereby they received a lot of the information close to the court date but felt “left in the dark” up until then. This is likely because education for court is provided for young witnesses in the weeks or days preceding the trial.

We were left in the dark a little bit for the whole time and then it, kind of, got closer, like, a few days and then everything, kind of, started up and we were rushing around. So it would’ve been absolutely wonderful if we could’ve gotten more advice prior … We just went along our normal life and we were on edge because we didn’t know what was going to happen. - Young Person 1

It is notable that as a result of a lack of understanding or knowledge, young people made incorrect assumptions about the court process. This included that they would have to give evidence in the court room, that they would be giving evidence in an open court and that parents and other family members would hear them giving evidence. Some of these were informed by television programmes:

It’s not as scary as you’d think and it’s nothing like you would see on the TV shows … You don’t absolutely have to sit in the court room. No one gets up and walks around and everything and gets in your face. - Young Person 1

Although the extent to which families felt well prepared for the court process varied significantly, preparedness was seen as relieving anxiety and stress. Preparedness typically occurred through contacts they had with professionals involved with their case. However, half of the parents experienced changes to personnel, particularly police, for reasons such as staff resignations and maternity leave. Such changes disrupted the provision of information and support. Parents described the process of building a trusting relationship with someone and then having to rebuild this with someone else.

We went through three policemen … we trusted in the first one, and then he disappeared … I didn’t know the rest of his process, and I thought, will it just get lost and will we be left, you know, all by ourselves flapping in a room. Not knowing what was gonna happen, or even any of the court process that you have to do. You know, when you walk in, which side do you sit on, all of that. – Parent 1

The court visit was described as a useful and positive part of preparation for the trial by several parents and all young witnesses interviewed. For one young person who had
Initially wanted to give evidence in court, this visit allowed her to make an informed decision regarding this. After seeing the proximity of the witness and defendant in court she decided to give evidence via CCTV. Notably, preparation through having to come to court on multiple occasions was also helpful to her confidence about participation in the court process, although the procedural delays that caused this were perceived negatively.

Some participants commented on the importance of preparedness for cross-examination in particular. Preparation for aggressive questioning and accusations of lying from the defence lawyer was described as reducing the distress experienced by the young person in relation to such questioning, and enabling them to give better answers. However even when prepared, for some young witnesses, cross-examination was still unexpectedly difficult.

They told us a lot of times but we didn’t expect it to be that, like hard. – Young Person 4

**Cross-Examination is Stressful**

For young people, cross-examination was an extremely stressful aspect of the court process. There were three main aspects relating to cross-examination which contributed to their experience of stress: the confusing nature of the questions, the manner of the defence lawyer, and not feeling believed or being accused of lying.

Young people said that cross-examination questions were confusing, vague and at times irrelevant. Some young people described feeling like the defence lawyer was deliberately trying to confuse them.

The defence lawyer on the other side he was really vague and used a lot of double negatives and that kind of just got under my skin a little bit. I, kind of, felt like I was being accused even though I understand that that’s his job and everything … He just confused me with the way that he asked his questions, yeah, and so I had to sit there and, kind of, think about it. – Young Person 1

Some described feeling pressure to answer questions quickly, and that the defence lawyer would then answer for them rather than allow them the time to answer.
He was pushy. He’d push you to the answer, he wouldn’t wait much longer. He’d ask you a question, like, say the answer ... So we had to correct him a lot of times. – Young Person 3

Young people described the defence lawyer as “mean,” “rude,” “offensive” and “a bully.” Parents also reflected negatively on the manner of the defence lawyer:

They said that they've never seen a lawyer hound a kid like he was hounded and he, he toughed it out, yeah … the lawyer was trying to get him to say that I was telling him what to say, and he was saying things like “Oh did Daddy tell you that [the defendant is] a liar?” - Parent 3

I mean she does your typical teenage stuff, you know, but she’s a good girl otherwise, you know. I guess nothing in the way that the defence tried to make her sound like … That’s what she shared with me, yeah she shared that with me and I also got that when I was on the witness stand. That the light that they were trying to put her in was not, was not a positive light. I guess, I guess when you're the defence that’s your job I guess, is to try and make the victim look like it’s their fault …Yeah that’s, that’s where I was telling you she’d come down and felt like she was being picked on and all that kinda stuff. – Parent 10

All young people reported being accused of lying and feeling disbelieved by the defence lawyer.

Just being like accused of lying for something that is, why would I get up in front of everyone and make this big deal over nothing? I just felt real bullied because he’s like, my dad’s defence lawyer, and I'm just like 15 … “I put it to you that, you know you made up this story … blah, blah, blah.” It just really annoyed me because, I don't know, I didn't want anyone not to believe me. – Young Person 2

Some participants did comment on the fact that the judge did intervene when a lawyer asked confusing questions, and that they were appreciative of this intervention. These participants described the judge as “protective” or as “tough” on the defence lawyer.

There was a few times that jargon got used by the lawyer, which is completely confusing to any adult let alone a child. And the judge would go “No, no you reword
that,” and was straight in there, “You’re not going to say it like that, you’re going to make her understand what you’re saying.” And he was brilliant. – Parent 2

**Having a Voice is a Positive Aspect of the Trial**

The importance of young witnesses having a voice was an important positive aspect of the court process for many young people and families. This was described as the opportunity to tell their story and have it heard. One parent commented on the importance of her child having this voice when it was previously silenced or undermined by the alleged offender.

… not only did they get justice … but for us, it was being heard. Incredibly private case, but out there, and it’s not a secret anymore, and she can deal with it. – Parent 8

Most young witnesses also spoke to this: telling their story was a positive part of the court process in terms of “letting it out” and being heard.

It’s that relief knowing you said as much as you could, you stood up for yourself as much as you could. – Young Person 2

**The Possibility of Seeing the Defendant is Stressful**

The possibility of seeing the defendant was a concern that was evident throughout all aspects of the trial from pre-trial delay through to sentencing. Many parent participants spoke about fear of, or distress associated with contact with the defendant and their family during the pre-trial period. These concerns included their child’s anxiety in relation to seeing the defendant, the strong emotional response to seeing the defendant if this did occur, and being unable to publicly say anything about the alleged offending or defendant identity prior to the trial.

Every time I saw him I thought, “Oh I wonder if I could just let my foot slip on the accelerator?” You know, that’s how crazy my thoughts were. ’Cause it’s like, you know, no-one was moving fast enough to have him moved out of the township. Even after we told on him, you know, they just didn’t make him leave the town. – Parent 9

For some families, fears of retribution from the defendant or those close to the defendant were a significant stressor:
I think it was the fact that when he was on bail at his grandma’s we were totally vulnerable to him. And so the nerves were in your mouth about what’s he going to do before he gets to trial … that’s why that year to get into court was so mentally draining on them. “He’s coming to get us; he’s coming to get us.” Every sound at night, it was just like, I was exhausted. – Parent 8

A notable exception to this was one parent who described the delay period as “wonderful,” and a positive time because the defendant was on bail and the conditions of this prevented contact with the child thus ensuring their safety and minimising family stress.

Pre-trial anxiety about seeing the defendant and their supporters included the fear of seeing them at court. Even when aware that they would be giving evidence via CCTV, some young people expressed the fear that they would bump into the defendant at court or see them via the CCTV cameras:

[They said] that we won’t see him … But I was still wary of it. – Young Person 4

When contact with the defendant and their family did occur, it heightened the distress experienced by young witnesses and their families, particularly when the alleged offending was intra-familial and disclosure had resulted in family divisions.

When [the defendant and father of the complainant] came out he just gave me this like really evil look and that really just put me down for like the whole week. I was really just like really upset and like, it was just horrible, because just that look just showed to me that he didn't care and that he wasn’t sorry at all for, you know. And he was just angry at me for being in the situation he is now, rather than feeling remorse. - Young Person 2

For many families, sentencing was a time where they felt less protected from contact with the defendant and their supporters. This was due to having to sit in close proximity to the defendant and their supporters in the court during sentencing and the chance of encountering them outside of the court. Some parents feared altercations between the defendant and supporters of the defendant (e.g., an offending father and supportive step father).

But it’s really hard having to sit within like arm’s reach sometimes of the person that has offended… ’cause you’re sitting there and then they walk in and sit like right
behind you and it’s just an uncontrollable feeling. It may seem small but it’s actually quite big inside. – Parent 6

However, in two cases parents reported a positive experience for their children as a result of attending sentencing. In both these cases the defendant had been found guilty on at least some of the charges:

I took the two oldest to the sentencing, for its closure … It was important for them to get their closure by actually seeing that it was him, that they’d done all this work for. – Parent 1

And little ’un said to me “I want to see him,” so I grabbed her and pulled her forward so she could see him. You know, even at her young age she wanted to look him in the eye. Up until that point she hadn’t, and I don’t think she should’ve. But once she knew her journey with that had come to an end then it was okay to, you know, and that’s the nicest feeling in the world when he’s been found guilty and you see him get taken downstairs by that prison guard, you know. – Parent 2

For Parents, Putting on a Brave Face and Being a Supporter is Challenging

The role of parents as a key source of support for young witnesses, and the immense challenges that accompanied this role was a salient theme. Parents provided both practical and emotional support for their children throughout the court process. They spoke about feeling a significant responsibility for explaining the court process to children, answering their questions and addressing their worries, ensuring that the information they received was age appropriate, and protecting their children from distressing or unnecessary information.

I didn’t want them to suffer in the unknowing. I didn’t want them out in deep waters and not knowing what to do. – Parent 9

Additionally, parents were faced with the challenges of supporting children who had experienced an often significant trauma and, as a result, were experiencing complex mental health and behavioural problems, including in some cases self-harm and suicidality. Parents described the need to maintain normality and routine in the face of what was often a time of significant upheaval and chaos for families. This was due to, for example, the aforementioned family distress and mental health difficulties, an alleged offender being removed from the home, and immediate, or extended, family conflict as a result of the sexual abuse disclosure.
But just do it, ’cause you gotta have a strategy to still bring your family up in amongst chaos. And its absolute chaos, it’s crazy. But you still gotta be normal, no not normal, you gotta be consistent, every day, get up and do it, every day, get up and do it. - Parent 8

Almost all parents highlighted the importance of prioritising their child and their role in supporting them. “Putting on a brave face” represented a sentiment among parents that it was their “job” to support their child, be strong and coping, and maintain a stable home environment - yet they themselves typically struggled to cope. Parents spoke of their own emotional struggles relating to learning of the offending, often with increasing detail emerging over the pre-trial period, guilt, and relationship deterioration. Parents often felt that they were not coping, were “emotionally drained” and “running on empty.”

I’ve got three children and I have to have a positive stable home environment to support them through just day to day life, you just fake it really as a mum. I don’t mean fake it but you just have to provide you know … You have this huge amount of guilt but you have to function and provide for the children. So how do you cope? You just have to. – Parent 5

Most parent participants spoke about a lack of support for them as parents. This referred to both formal support and informal support (particularly in cases where extended family did not believe or support the young witness). Some parents spoke about finding the support and information that they needed because they were assertive or courageous. Parents who were also witnesses spoke about a lack of support at court as the victim advisor was, appropriately, there to support the child.

And I think that was probably, yeah we’re looking after the child but maybe the Mum needed to have been looked after there. – Parent 2

**Young Witnesses Feel Exposed by the Court Process, and Family Members Feel Exposed to Details of the Offending**

Either feeling exposed as a young witness, or being exposed to unwanted details of the offending as a parent or other family member, was something that participants found distressing. Participants primarily talked about young witnesses feeling exposed during sentencing, where it was no longer a closed court and others, including extended family members, were present.
The worst thing about the whole court thing was that it wasn’t a closed court [during sentencing]. When they were reading out the victim impact statements, I know they don’t know who it is but you can tell when the person is crying, or when the judge is talking to you and they look at you. I didn’t like it at all, ’cause it was so, it’s private … it’s too private … ’Cause it’s like embarrassing enough for everyone else to hear it, and then just for members of the public. And having to walk past them afterwards … I didn’t like it. – Young Person 2

Some parents spoke about how they or other family members were exposed to details of the offending either through hearing the evidential interview or testimony as a support person, or when attending the sentencing.

The hardest part for her [young witness] was that she asked me to be her support person, and we rocked up to the court, she had to re-watch her evidential video to freshen her mind because it had been a long time. And she didn’t laugh, but she turned around and said “It’s not a family movie,” you know, “We don’t need to all bloody watch it” sort of thing. And that was really hard because she had told us what had happened, but when I was in that room I heard a lot more than I actually thought had happened. – Parent 2

Support is Critical

Both practical support and information, as well as emotional support were identified by all participants as being of importance. The sources of support that were of most importance for families varied and included police, the crown prosecutor, counselling, school staff, friends and family members. However, the support of victim advisors and HELP Auckland court support staff specifically, was identified by every parent and child interviewed as involving both practical and emotional support. It was apparent that for almost all families, the support provided by victim advisors and court support staff was viewed as critical to their ability to manage the court process.

Victim advisors and court support staff were seen as warm, non-judgemental and understanding. They were able to assist families in feeling comfortable, ease their fears, and were available to offer whatever support was required. The support they provided varied in nature and was specific to the needs of the family. Some parents spoke about the victim advisor as standing in for them when they were unable to be with their child in court as they
were also a witness. A young person spoke about how her court support person provided hugs when her mother could not be there, and what an important role this played in supporting her while at court. In a practical sense victim support staff were available to answer questions, provide information and assist with the organisation of things like petrol money to assist long distance travel to court.

She was absolutely awesome. Couldn’t say anymore. She had empathy for the children. She was more like a mother figure to my youngest. If I couldn’t be there, she would be the person that I would put there to soothe their fears. She was wonderful…
- Parent 1

When asked about advice that they would have for other parents who were going to experience the court process, several parents mentioned support. This included getting as much support as possible, getting counselling and parenting support quickly, and trusting and utilising support people associated with the court process such as police and victim advisors.

Several participants raised the idea that some level of peer support, either at the court or outside of court, would have been helpful. Parents believed that other parents who had been through similar court experiences could be a beneficial source of information and support, and could normalise the process. Suggestions regarding this included groups that met face to face, and facebook groups. Some young people thought that it would be useful to have messages of advice and encouragement from other young people who had been through the process, maybe in the form of a booklet. One family who met other complainant witnesses in the same trial at sentencing found this to be hugely beneficial.

**Families Place Importance on the Verdict and Sentence**

The verdict and sentence were of great significance for families. Guilty verdicts and sentences that the family felt were appropriate were experienced positively. Not guilty verdicts were experienced extremely negatively. Because significant weight was placed on the sentence and verdict, waiting for the outcome was an anxiety provoking aspect of the court process for families.

What if they found him not guilty? What if that she, you know all of her efforts, all of her truth goes to waste. So I was kind of quite, I was extremely nervous I’d say. - Parent 4
Some parents described the main concern around the verdict and sentencing as being the safety of their child. A prison sentence could provide significant relief due to its guarantee of safety, whereas not guilty verdicts or short prison sentences raised fears for the protection of the young witness.

We got the call … some guilty, a couple not guilty, about a big amount was hung … And he said what happened and I said “That’s really quite shocking, but what happens now? Where does he go?” ‘Cause the first question the kids are going to ask is “What happens to him? Is he going to be let out?” – Parent 1

A guilty verdict was also considered by one parent as important in validating the child or young person’s story and counteracting disbelief from the community.

The best thing was hearing that he was guilty on all charges and that relief … because there was a lot of people who didn’t believe these girls. And we lost a lot, you lose a lot of friends because it’s people you know. And yeah, even if he doesn’t serve his term or as much as I want him to rot, for everybody to know that those girls were telling the truth and he has been punished, and because they told the truth the justice system worked and it done the right thing, then can’t thank God enough really. – Parent 2

Two parents and most young people identified the importance of a guilty verdict, and a sentence which the family were satisfied with. These outcomes were associated with a sense of “closure,” “justice,” and allowing people to move forward with their lives. Disappointment with the sentence was associated with less emotional closure.

So after that [the sentence] it was like, relief, to the point where [one sibling] fell down, legs wobbly, collapsed, the whole lot, [second sibling] cried, [third sibling] went “Good, not long enough”… but it changed after a few days and she was a bit “Oh my goodness me, he won’t be able to touch me anymore” … So everything’s done now, we don’t have to worry and we sort of clapped our hands and started on Monday and decided “Now what’s our next move?” - Parent 1

**Discussion**

The experiences of young witnesses and parents in the current study to a large extent mirror the experiences of those in other jurisdictions (Back et al., 2011; Eastwood & Patton,
2002; Hayes & Bunting, 2013; Hayes et al., 2011; Plotnikoff & Woolfson, 2009). Although aspects of the process were experienced positively, several factors appeared to contribute to significant distress for both young witnesses and their parents. Responses from participants indicate that there is significant scope for further change to better facilitate young witness participation in the justice process in a manner that better protects their wellbeing.

The negative impact of pre-trial delay was the most consistent theme in the current study, raised by almost all participants as the most difficult, or one of the most difficult aspects of their court experience. The experience of pre-trial delay as distressing and having broad and significant negative impacts on young witnesses is consistent with similar research elsewhere (Eastwood & Patton, 2002; Hayes & Bunting, 2013; Hayes et al., 2011; Plotnikoff & Woolfson, 2009; Plotnikoff, Woolfson, & Marshall, 2007). The delay period is particularly stressful due to anticipation of the trial, uncertainties about trial date, and the trial being constantly on the mind of the young witness and thereby preventing them being able to “move on” with life. The significant impact of the delay period on mental health and wellbeing, education, and relationships was evident in the current and international studies. Reducing pre-trial delay would have a profound impact on witnesses, mitigating many of the factors that young people and families associate with the distress of court involvement.

Reducing pre-trial delay would also minimise resources needed to effectively support a young witness and their family during the pre-trial and trial period. Approaches to minimising pre-trial delay in other jurisdictions include prioritising such trials for early hearings, and/or pre-recording young witnesses’ evidence including cross-examination. Adopting pre-recording of all evidence for young witnesses has been found elsewhere to eliminate the need for young people to attend court at all in the vast majority of cases (see Hanna et al., 2010 for a review). In New Zealand, provisions for pre-recording of evidence already exist under section 105(1)(b) of the Evidence Act 2006, and the first application to pre-record a child witness’ entire testimony was approved in 2010. However, two appeals in relation to pre-recording of cross-examination in 2011 determined that pre-recording should be restricted to special, and by implication, rare circumstances. Lawyers’ and victim advisors’ experiences of the nine cases in which entire testimony had been pre-recorded were largely positive (Davies & Hanna, 2013) and professionals interviewed in relation to the introduction of the Whangarei Young Witness Pilot Protocol, raised this as a solution to the problem of pre-trial delay (Randell et al., 2016).
Reports of distress and confusion in relation to cross-examination were consistent with other qualitative studies (Eastwood & Patton, 2002; Hayes & Bunting, 2013; Hayes et al., 2011; Plotnikoff & Woolfson, 2009) and reflective of research involving analysis of court transcripts in New Zealand, which indicates that lawyers use developmentally inappropriate language and confusing questioning (Davies & Seymour, 1998; Hanna et al., 2012; Zajac & Cannan, 2009; Zajac et al., 2013, 2003). Participants’ descriptions of defence lawyers as “aggressive,” “rude” or “mean” as well as the experience of being accused of lying were also common experiences of young witnesses in international studies. It is unsurprising, given that shame and fear of disbelief are often reasons for young people delaying disclosure of sexual abuse (Alaggia, 2010; Paine & Hansen, 2002), that being accused of lying when testifying results in significant distress. Despite these concerns, particularly in relation to cross-examination, having an opportunity to have a voice and be heard was highlighted by many participants in the current study, consistent with existing research which indicates that young people “want to be participants in the legal process rather than passive objects of that process” (Back et al., 2011, p. 50).

Young witnesses’ experience of cross-examination as described by themselves and their parents suggests that despite legislative provision for judge intervention in such questioning (s 85 Evidence Act 2006), this is not occurring to an extent that sufficiently protects young witnesses. Low rates of judge intervention have been found in previous research in New Zealand, although such research indicates that there has likely been an increase in judge intervention over time (Blackwell, 2007; Davies & Seymour, 1998; Hanna et al., 2010). In addition to greater reliance on judge intervention in inappropriate questioning of witnesses, another solution to the confusing nature of court room language, and in particular that of defence lawyers is the greater use of intermediaries (Plotnikoff & Woolfson, 2015), referred to in New Zealand legislation as “communication assistants.” The use of specialist intermediaries has been advocated in New Zealand as a means of mitigating the barriers to quality of evidence caused by confusing questioning, or developmentally inappropriate language (e.g., Davies, Hanna, Henderson, & Hand, 2011).

Fear and distress related to seeing the defendant before during and after the trial were common among participants in the current sample. Such fears were also evident in a Northern Irish sample, in which nearly half of parents identified that managing intimidation by the defendant or their family and friends while waiting to go to court, was a primary need of their children (Hayes & Bunting, 2013). Research in Australia indicated that in states where young
witnesses gave evidence via CCTV, fear of seeing the defendant was less apparent than in
those states where screens are were not commonly used. In states where CCTV and
prerecording of evidence were used, young witnesses identified a major benefit of this as
being protection from the possibility of seeing the defendant at court (Eastwood & Patton,
2002). It is notable that the fear of seeing the defendant at court was still salient in the current
sample despite use of CCTV being the norm for young witnesses in New Zealand.
Additionally, once at court, families reported feeling safe from the defendant. This suggests
that not enough is being done early in the process to inform young witnesses and their
families about the protections that will be in place for them to mitigate the possibility of
seeing the defendant and their supporters at court. The provision of such information as early
as possible would likely contribute to a reduction in pre-trial anxiety.

A notable exception to feeling protected from the defendant when at court, was during
sentencing where the risk of interactions and altercations with the defendant and their
supporters was possible. Sentencing was also a time where young witnesses felt exposed, and
families felt privy to distressing information about the offending that they did not expect to
hear. This suggests that more needs to be done to adequately inform families about the nature
of sentencing so that they can make informed decisions about attendance. The use of CCTV
during sentencing may also be a means of allowing families to “attend” sentencing without
being present in the court room.

The verdict and sentence were of importance for participants. For families in the
current study, a not guilty verdict implied disbelief of the witness’ evidence, and a light
sentence implied lack of regard for the severity of the offending. Very similar findings were
evident in an Australian study in which all participants in cases where there was a not guilty
verdict expressed strong anger at the outcome. Acquittals exacerbated fears of not being
believed, and disappointment and disgust was expressed at light sentences (Eastwood &
Patton, 2002). Quas et al. (2005) found that testifying when the defendant subsequently
received a not guilty verdict or a light sentence, in contrast with cases where there was a
guilty verdict and significant sentence, predicted poorer mental health several years following
a trial. This highlights the potential gravity of verdict and sentencing for many.

The importance of specialised support people, particularly victim advisors, was
evident in this study and was also reflected in the Northern Ireland research of Hayes et al.
(2011). In both cases the vast majority of participants indicated that a specialist support
person made either a significant difference in their ability to manage the court process, or made it possible for the young person to go to court. Plotnikoff and Woolfson (2004) found the majority of young witnesses in their United Kingdom sample identified contact with the supporter as the most helpful aspect of the court process. Despite the importance of victim advisors as a source of support for participants in the current study, victim advisors were reported by participants to be most available as a support to a witness very close to the time of the trial. The availability of a support person to a young witness and their family from the time of reporting the offence to the police, until the trial including sentencing, would likely help to ease the stress of the pre-trial delay period and the uncertainties that are associated with awaiting trial and trial outcome. This support person could provide education for court, answer questions and address concerns, inform the family of available support services and provide referrals where needed, and liaise with other professionals such as police and the crown prosecutor.

Parents in the current study were key support people for their children. These parents reported significant difficulties coping with multifaceted challenges related to involvement in the court process and supporting their children through this. For young people who have experienced abuse, parent support is a key moderator of adverse outcomes regardless of circumstances of testifying (see van Toledo & Seymour, 2013 for a review), and is associated with increased functioning during court involvement (Goodman et al., 1992). Lack of parent support increases risk for adverse mental health outcomes during and immediately following the trial (Goodman et al., 1992) as well as being predictive of ongoing adverse outcomes (Quas, Goodman, et al., 2005). Parents whose children disclose sexual abuse have a need for information, emotional support, support in relation to their own victimisation, if relevant, and parenting assistance (see van Toledo & Seymour, 2013 for a review). Their needs are likely even greater when a disclosure is coupled with an impending court case. Greater support for parents of young witnesses in New Zealand would not only provide some relief to parents, but in light of the research cited above, provision of such support is likely to promote the wellbeing of young witnesses throughout the pre-trial period, the trial itself and its aftermath.

In the absence of, or in addition to, the face to face support of complainant witnesses and family members, development of an online education for court programme would likely be of significant benefit. Given that court education is only provided close to the trial, such a resource would allow those with internet access to seek and revise information as and when they wished. This would likely ease some of the uncertainty and anxiety in the pre-trial
Limited to the current research include the lower than expected number of participants. As with previous similar studies (e.g., Hayes et al., 2011; Plotnikoff & Woolfson, 2004, 2009) it proved difficult to recruit young people in particular. Furthermore, it is not known to what extent the current sample of young people and parents was representative of the wider population involved with such trials. For example, it is possible that the recruitment process may not have attracted those who have had particularly bad court experiences as they may have been regarded by victim advisors - who were the point of contact in recruitment - to not have the emotional capacity to discuss their experiences. Alternatively, those who had negative experiences may have been more motivated to share their stories. It is notable that the rate of convictions was high in trials that participants in the current study were involved in. Despite this consistency in trial outcome, a range of experience was apparent among the participants interviewed.

This study is the first of its kind in New Zealand, and represents an opportunity for those making decisions regarding court processes to better understand witness experience and consider this when change that has direct effects for young witnesses. It is apparent that although there are some positive aspects of the trial process, several factors contribute to considerable distress for young complainant witnesses in sexual abuse trials and their parents.

During the period in which the current research was being undertaken, two pilot specialist sexual violence courts were in the process of being established, one in Auckland, and the other, an extension of the Whangarei initiative. These courts have established guidelines based on the Whangarei Young Witness Pilot Protocol. As highlighted by authors of similar research (Plotnikoff & Woolfson, 2004), Article 12 of the UN Convention on the Rights of the Child (1990) states the right of children to participate in decision making about processes that are relevant to their lives and influence decisions that concern them. This argues for there being an ethical responsibility for those who influence court processes to seek and consider the voices of young witnesses in their decision making. Currently there is no system for feedback from young witnesses and family members to be routinely obtained. Further qualitative research into the experiences of young witnesses, and that which better addresses the practical problems of recruitment, is needed to contribute to an evaluation of
the Auckland and Whangarei sexual violence courts, and inform ongoing development of processes that reduce the negative impact of court involvement and improve the quality of evidence that young people are able to provide.
CHAPTER FOUR:

STUDY TWO

Evaluation of the Whangarei Young Witness Pilot Protocol

For effective provision of justice it is crucial that young witnesses are involved in justice processes, yet participation may be detrimental to their wellbeing and presents challenges for gaining their full and accurate evidence.

Historically young witnesses’ evidence was regarded as unreliable. Over recent decades empirical research has established that children are able to be reliable witnesses in criminal court contexts and the conditions that facilitate best evidence have been identified (Lamb, Orbach, Hershkowitz, Esplin, & Horowitz, 2007). From approximately age seven, children’s memory for salient events is similar to that of adults (Pipe et al., 2004) and they are able to present reliable evidence when conditions facilitate this (Brown & Lamb, 2015; Ceci & Bruck, 1993; Pipe et al., 2004). However, communicative competence in the forensic context involves the ability of adults to elicit reliable information as well as children’s abilities to respond appropriately. Effective communication is dependent on the questioner’s ability to communicate in a non-threatening and developmentally appropriate manner, as well the child’s capacity to translate memory into language, deal with issues of non-comprehension, reason, and distinguish fact from fantasy (Saywitz et al., 1993).

A further concern to that of the reliability of young witnesses’ testimony is the negative impact of testifying on their wellbeing. Young witnesses are vulnerable to negative outcomes not only because of their age and their unfamiliarity with trial processes, but also because of the traumatic nature of the alleged offence about which they are giving evidence. Consequences include experience of stress within the trial itself and lasting impacts beyond the duration of the trial (Goodman et al., 1992; Quas, Goodman, et al., 2005).

Growing recognition of the potentially harmful impact of court involvement for young witnesses has resulted in innovations intended firstly to protect the wellbeing of the young person by reducing the stress and potential trauma of court participation, and secondly, to

---

3 This chapter was disseminated as a report in August 2016. Authors of this paper are Isabel Randell, Professor Fred Seymour, Dr Emily Henderson, and Dr Suzanne Blackwell.
increase the ability of the young person to participate in the process in a manner that is in the interests of both the individual and the justice system. In New Zealand these innovations have included giving evidence-in-chief via pre-recorded video/DVD, alternative modes of testifying including closed circuit television (CCTV) and screens, allowing the court comprehensive powers to control inappropriate language in the questioning of young witnesses, allowing a support person to be present during the young witness’ testimony, and education for attending court. However, despite such reforms in trial processes common across western jurisdictions many young witnesses continue to experience their involvement in trials as stressful, distressing and confusing, as evidenced in studies in Australia (Eastwood & Patton, 2002), the United Kingdom (Hayes & Bunting, 2013; Plotnikoff & Woolfson, 2009), and New Zealand (unpublished report by the present authors). Young witnesses report pre-trial anxiety, fear of seeing the defendant at court, and distress while testifying. Limited understanding of trial processes and of the language used during questioning contributed to this distress, with cross-examination being particularly stressful.

Language in the court has been a particular focus of research. Lawyers, and especially defence lawyers, have been shown to employ language that is often developmentally inappropriate and beyond the communicative and cognitive capabilities of young witnesses (Davies & Seymour, 1998; Hanna et al., 2012; Zajac & Cannan, 2009; Zajac et al., 2003). Children may be unable to monitor their level of comprehension and/or unable to inform the adult questioning them that they have not understood the question; rather they acquiesce or attempt an (often poor) answer (Waterman et al., 2004; Zajac & Hayne, 2003, 2006). Lawyers make frequent use of closed, leading and complex questions rather than those that are open-ended (Davies & Seymour, 1998; Hanna et al., 2012; Zajac & Cannan, 2009; Zajac et al., 2003). The problem with this is that complex, closed and leading questions significantly reduce the productivity and accuracy of responses of children (Klemfuss et al., 2014; Zajac & Cannan, 2009; Zajac et al., 2003; Zajac & Hayne, 2006) whereas open-ended, free recall questions are more effective in both facilitating narrative productivity and accuracy of content (Lamb, Orbach, Hershkowitz, Horowitz, et al., 2007). When detail is not elicited with the use of open-ended questions, directive questions such as “When did that happen?” are preferable to closed questions (Lamb, Orbach, Hershkowitz, Esplin, et al., 2007). Directive questions are often needed with young people given that they may be reluctant to volunteer emotionally laden or embarrassing material in response to open questions (Leander, 2010).
Furthermore, stress has a negative impact on memory retrieval, and in turn on the quality of evidence from young witnesses (Quas & Lench, 2007). Thus, by reducing witness stress along with increasing courtroom communicative competence greater accuracy in young witness’ testimony should ensue. Yet, despite an increasing consensus as to what is needed for young people to give accurate evidence the extent to which court settings facilitate this remains a challenge. For example, although the findings regarding best practice for questioning children has been incorporated into interviewing children for pre-recorded evidence-in-chief, such findings appear to have had only limited impact on the manner in which examination proceeds in the courtroom, both internationally (Henderson, 2012; Robinson, 2015; Stolzenberg & Lyon, 2014) and in New Zealand (Henderson, 2012). Recent changes that have taken place in other jurisdictions, but not in New Zealand, include pre-recording of young witness’ cross-examination in addition to pre-recording of their evidence-in-chief (e.g., Western Australia, England and Wales, Israel), education for lawyers about appropriate questions and greater judicial policing of witness examination (e.g., England and Wales), and appointment of a third party or “intermediary” to assist lawyers and the young witness to communicate effectively (e.g., England and Wales, Israel, South Africa) (see Henderson, 2012, for changes in England and Wales specifically see Henderson 2014, 2015a, 2015b, 2016).

The Whangarei Young Witness Pilot Protocol (see Appendix A) was implemented by judges in the Whangarei region in late 2014, and was intended to operate within existing legislative and resourcing frameworks. The protocol states that where possible, young witnesses will watch their evidential DVD prior to the start of the trial, will meet with the judge, defence lawyer and crown prosecutor prior to giving evidence, will not be brought to court until required to give evidence, will not give evidence beyond 3pm and will be provided with frequent breaks during the time they are giving evidence. The protocol also states that lawyers should not use tagged or otherwise confusing questions, and that judges will intervene should such questions be employed. Additionally, any counterintuitive evidence, which is now common in sexual offence trials in New Zealand (Seymour et al., 2014), and/or medical evidence, is to be called at the beginning of the trial. Counterintuitive evidence is specialised educational information for jurors and has been shown to be effective in correcting jurors’ child sexual abuse misconceptions (Cossins & Goodman-Delahunty, 2013). Research with mock jurors suggests that such expert evidence presented early in the trial may
have more impact on jury members than later presentation (Goodman-Delahunty et al., 2011).

The following report forms a preliminary evaluation of the Whangarei Young Witness Pilot Protocol. This research involved interviews with a range of professionals involved in trials with young witnesses as to their perspectives of the protocol. The findings are considered within the current New Zealand context as well as a large body of existing literature and empirical research. This report is intended to inform the further development and refinement of the protocol.

Method

Participants

This research involved semi-structured interviews with a range of professionals involved in criminal court trials with young witnesses. Participation was offered to all judges, crown prosecutors, defence lawyers, victim advisors, court support staff, police investigators (Detectives) and investigating supervisors (Detective Sergeants) involved in trials that have adopted the Whangarei young witness pilot protocol. Following the adoption of the protocol by a judge in the Auckland District Court during time this research was being undertaken, some Auckland participants from these professional groups were also interviewed. A total of 29 professionals were involved in the research.

Interview Schedule

A semi-structured interview schedule was developed following initial meetings with some professionals who would later be involved in the evaluation, from a review of the related literature, and from consideration of the protocol itself to ensure that all relevant issues would be covered. The schedule included questions concerning participants’ perspectives of the new protocol including what was and was not working well, and their views on positive and negative impacts of the protocol in respect of the wellbeing of young witnesses and/or their families, quality of evidence, and the delivery of justice. The schedule also addressed participants’ perspectives of which aspects of the court process young people experience as difficult and/or stressful and which they experience as positive and/or supportive. Views of barriers to the success of the protocol in achieving its aims, barriers to the successful adoption of the protocol, and ideas about further changes were also explored.
**Procedure**

Ethical approval for this study was granted by the University of Auckland Human Participants Ethics Committee. Approval was also granted by the Ministry of Justice Research and Evaluation Team Sector Group and the New Zealand Police Research and Evaluation Steering Committee.

Participants took part either in individual meetings, or in the case of police and crown prosecutors, in group interviews. Participants were only involved in group interviews with others in the same professional role.

Potential participants were provided with information about the research, including a Participant Information Sheet (Appendix F) and a Consent Form (Appendix G). If interest was expressed by them, they were contacted to allow them an opportunity to ask questions about the research and to arrange an interview time and place. Consent Forms were reviewed and signed on the day of the interview prior to it commencing. All interviews took place at the participants’ employment premises. The majority were conducted by the lead researcher, Isabel Randell, with some interviews conducted jointly with, and one solely by Professor Fred Seymour. Each interview lasted one to one and a half hours. A digital audio recorder was used to record interviews.

Prior to beginning the interview, a clear explanation of the interview process was provided including the purposes of this research, the topics to be covered, and confidentiality procedures. The Consent Form was then reviewed. It was made clear that participants could cease participation at any time, and were under no obligation to answer any questions. It was clearly stated on the Participant Information Sheet and Consent Form, that participation was voluntary. Individual interview participants were able to withdraw their interview data at any time without giving reasons, up until two weeks after the interview. Group interview participants were free to withdraw their participation at any time up until the conclusion of the interview (and were able to leave during the interview), however, given the “group” nature of the interview, these participants did not have the option to withdraw their contributions.
Data Analysis

All interviews were transcribed verbatim by a professional transcriber who had signed a confidentiality agreement. The data were transcribed, coded, and de-identified through removal of all person and place names. Each participant was assigned a number that was used to identify their transcript from that point forward.

Data were coded with a focus on areas of interest: the different aspects of the protocol, factors necessary for the success of the protocol and future innovations needed. Pieces of transcript data relating to each of these areas were compiled and then analysed thematically as per Braun and Clarke’s (2006) description. A validation process was included whereby a second research team member reviewed the data and consensus was reached as to what was included in the report of findings. In reporting findings, quotes selected to illustrate points made by participants where appropriate. Professional groups were identified in relation to overarching comments in the data, but not in relation to specific quotes.

Findings

Findings are reported in respect of each aspect of the protocol, with a particular focus on the dual and related aims of the protocol - minimising the negative impact of court involvement on young witnesses, and improving the quality of evidence that they are able to provide. This is followed by a discussion of broader themes evident in interviews regarding factors that were important for the success of the protocol both in Whangarei and Auckland. Finally, participants’ views on future innovations are presented.

The Protocol

Young witness will view their evidential DVD prior to the trial commencing

The protocol makes provision for young witnesses, where possible, to view their evidential DVD prior to the start of the trial, as opposed to viewing it as part of the trial at the commencement of giving their evidence-in-chief. In practice, this usually occurs the day before examination. The rationale for this, as reported by judges, included that it is neither fair, nor conducive to best evidence, for young witnesses to testify immediately following watching their evidential DVD. This was based on judges’ observations of young witnesses viewing their evidential DVD at the same time as court, and the significant distress, agitation and embarrassment they appeared to experience.
One participant commented that watching the evidential DVD on a day prior to giving evidence allowed for viewing it in a more relaxed manner and for breaks to be provided if needed.

Watching it is easy now because it means if they get a bit distracted they can just stop, go to the toilet, have a walk round, then come back and watch it again. So it’s a lot more relaxed.

Police officers and crown prosecutors were largely in support of this measure and also noted the discomfort and embarrassment that young witnesses experience while watching their evidential DVD.

She was obviously 2 years older now, she was watching her 5 year old self talking about her body parts and she wouldn’t use those words anymore. And she felt embarrassed about the subject matter and how she presented herself in that interview. Police officers said that a further advantage of the young witness watching the DVD on a day prior to giving evidence was that it allowed time to for prepare and become familiar with the court and relevant people, thereby resulting in a decrease in their anxiety.

I’ve had ones where they arrive on the Sunday … and then we make a day of it basically. It’s only a few hours really but, that day was a travel day, you go and meet the crown solicitor, we go and have a look through court, do the court orientation and have a talk and look at their DVD. And the next day they come in fresh, familiar with the environment and the people that are going to be talking to them, and they’ve had a bit of time to get an idea of what’s going to happen when the other lawyer speaks to them. So they’re a bit more prepared I think and had a decent amount of time overnight to, to get rid of those worries and concerns.

I had one really reluctant witness and because I had to get her up on the Friday to watch her video, I ironed out all of that on that day. Whereas beforehand I might not have … But she came up and watched the video, spent nearly a whole day here on the Friday, and then by the time she’d gone she was just way better.

However, both crown prosecutors and police officers expressed some reservations about this aspect of the protocol, believing that in some cases it could diminish the level of formality required to ensure that the young witness was sufficiently focussed on the DVD. In
particular, watching the DVD in a more relaxed environment, where breaks were allowed, was thought to potentially decrease the obligation, or motivation for some young witnesses to focus on the difficult content of the DVD.

I saw her afterwards and said “Did you watch this carefully?” She said that she felt embarrassed and she didn’t really want to watch it again, which is a natural reaction. And the officer in charge said that she was quite fidgety and didn’t really concentrate a lot … if she was watching it whilst we were watching it in court, the judge can watch her on the screen … maybe because it’s a much more formal environment she may have sat and watched it a little bit more closely.

There is striking that balance between creating a relaxed environment that the child can sort of feel comfortable watching the interview, but then also creating an environment where the child realises that it’s serious and they need to sit and watch and concentrate.

In practice, it appears that not all witnesses viewed their DVD before trial. Decisions about when they viewed the DVD were based on what was determined most appropriate and comfortable for the witness, with consideration of practicalities.

Again its one size doesn’t fit all … it’s about each case, there are no set rules. It’s about what works for each one.

Crown prosecutors supported a need for flexibility with this aspect of the protocol, suggesting that at times it may be more appropriate for a young person to watch at the same time as the court if this would result in the best engagement of the young person with the content of the DVD, particularly if the witness was very resistant to watching the DVD.

I wondered if there could be any flexibility, because sometimes it is that you get complainants, particularly the slightly older ones who are just adamant they don’t want to watch it and they dig their heels in. And really it gets to the point where you say “Well actually when you come to give your evidence you have to watch it at the same time we’re watching it and then you’re going to get asked questions about it.” And that might be the only time you manage to get them in a room watching it. So again that sort of discretion in conjunction with the officer in charge that we know when we’re going to have a complainant that really does actually need to sit and watch it at the same time as we do.
Police also commented that some adolescent witnesses have expressed a wish to start cross-examination after watching their evidential DVD. A judge reported that they applied this aspect of the protocol to almost all cases but allowed exceptions when it was not what the witness wanted. Thus some flexibility exists depending on witness preference.

**CCTV room**

The Whangarei closed circuit television (CCTV) room underwent a number of improvements to make it more child-friendly. This included painting the room, including artwork, and adding toys and games. A victim advisor reported that there had been community input in the design and development of the room, including involvement of young people from a local school.

It was apparent that although the room itself is of huge importance and has been vastly improved, the victim advisor plays a significant role in ensuring that that room is best utilised to meet the needs of the child. This included altering the toys in the room according to the young person’s developmental level and finding and playing music that the young person likes. A victim advisor emphasised the importance of this room feeling like it was the child’s space.

The improvements to the Whangarei CCTV room were non-contentious, with no participant interviewed expressing any opposition to this.

**Meeting with judge, prosecution and defence**

The young witness, as outlined by the protocol, will be introduced to the presiding judge, crown prosecutor and defence counsel. This takes place either in the court room or in the CCTV room depending on the child’s preference as advised by the victim advisor. Several participants discussed the evolution of this aspect of the protocol, from initially always meeting in the courtroom, to currently meeting in the CCTV room in most instances. This evolution occurred as a result of victim advisors voicing their concern that some young witnesses experience visiting the court room as intimidating. Crown prosecutors agreed that meeting in the CCTV room was more appropriate as entering the courtroom could be unduly distressing for the witness.

… you could see the discomfort they were having, and it did seem to defeat the purpose of having a mode application.
Depending on the age of the young witness this meeting, as described by the protocol, involves the presiding judge explaining the CCTV equipment, and what the judge will see, demonstrating the equipment (for younger children) and ensuring that the young witness understands that he or she can see the judge at all times, that the judge can see him or her, and that all that is required if the young witness has concerns or worries, is to say something to the judge. Such information may have previously been imparted by victim advisors as part of the court education process, but the judge’s discussion is aimed to provide further information and reassurance.

Victim advisors now discuss the potential meeting with the young witness to determine their preferences. Young witnesses are not required to meet with the judge if they do not wish to do so. In practice, judges reported that young witnesses mostly opt to meet with them.

Participants noted variation in whether lawyers were in attendance at this meeting with the judge, which was attributed both to a trend for the defence not to want to meet with the child and to judges preferring to meet the child without lawyers present. Judges and crown prosecutors expressed concern about the potential for the judge being viewed as biased in the favour of the young witness if a member of the defence was not present during the meeting with the young witness. Concern was expressed by some participants about the risk of appeal if a judge meets alone with the witness. However, judges believed that defence lawyers were not concerned about this, and that this was a reflection of trust in local judges not to do anything improper.

A participant viewed their meeting the witnesses as allowing for rapport building, and saw this as beneficial for the witness and professionals involved with the trial.

I think that anything which makes the child or vulnerable person more comfortable in court has got to be a good thing. So long as it doesn’t come at the expense of the very real protections that the defence needs. And I certainly can’t see any harm at all in that … And if your aim is to build rapport with the witness then, you know, obviously there’s a benefit to you if you get an earlier opportunity to appear something other than the big bogyman or woman.

However, some crown prosecutors questioned the rationale of a young witness meeting a defence lawyer who would then seek to undermine them during cross-examination.
With the exception of the above concerns, participants were supportive of this aspect of the protocol, and saw it as being successful.

We go in and they have a little talk and show them the camera and everything again, and it’s really lovely. It’s really nice, and it has made a big difference.

The role that this meeting could play in putting a child at ease with the judge, and in promoting the ability to indicate to them if they did not understand a question, or were struggling during were their evidence, was central to participant support of this aspect of the protocol.

It’s for the first time that I’ve said “Hey, if you don’t understand say so”…because you know for us [crown prosecutors], we’re sitting in the room looking at the witness on the screen, trying to interpret whether they’re understanding. And of course they can’t see us, there’s no appeal to us. So now they’ve got someone to say out loud to that’s sitting in the room with them effectively, on the screen, “Hey, I don’t understand,” or “Hey, I’m tired.”

The manner in which this meeting is conducted was emphasised by a participant who spoke about the importance of seeking and considering the young witnesses preferences with care, seeking their consent, and then for the judge and lawyers to be aware that an authority figure entering the witness' safe space may feel intrusive for some. They said that young people may find it difficult to speak out about their fears, or to say “no” when they do not want something. They considered that meeting a judge can be intimidating for a young person and highlighted the need for judges to be calm, take their time, and be physically on the child’s level (i.e., not towering over them) in order for the meeting to achieve its purpose. Similarly some victim advisors, while in support of this measure, also spoke about the importance of the manner and intention of the judge in order for the meeting to have a positive impact. This included genuinely wanting to be there, some level of informality, such as introducing themselves by their first name, friendliness; “a smile, or a tone of voice.”

In general it appears that meeting the judge is an aspect of the protocol that has wide support, and is functioning effectively. The manner in which this is offered to the witness to ensure their informed choice in the process was considered to be important, as was the manner in which judges and lawyers engage with the young person at the meeting.
**Child not brought to court until required to give evidence and no evidence given beyond 3pm**

The protocol states that the young witness is not brought to the court until required to give viva voce evidence. Although not specified in the protocol, this is usually the morning of the second day of the trial. The protocol also suggests that the young witness is brought to court about half an hour before his or her evidence starts in order to be settled and comfortable with the CCTV room. The protocol also states that judges will not allow young witnesses to commence giving evidence in the afternoon and will not permit their evidence to go beyond 3pm. This is intended to manage witness stress and fatigue and thus protect the quality of the evidence that they can provide.

Having witnesses give evidence at the beginning of the day is intended to minimise the waiting time at court, and related distress. Positive comments regarding this aspect of the protocol, in combination with the young witness having viewed the DVD prior, were attributed to two main factors. Firstly, as intended, not requiring a young witness to be at court until they give evidence resulted in a significant decrease in waiting time at court. Some participants said that they had gained positive feedback from young people about not having to wait for long periods. Secondly, this aspect of the protocol was described as increasing structure and certainty in terms of days and times that the witness and family members will be required at court. This was particularly important when they had to travel from outside of Whangarei.

It’s certainly a lot better for them now than it ever was I think. And it goes back to that structure doesn’t it … it’s about being able to say to them, “This is what’s going to happen” and know to a fairly good certainty that is what is going to happen. Alright, you might not be able to say to them, “You’re definitely going to be finished today,” but you will at least be able to know when you’re going to start rather than they sit around the whole day on the Monday and still not get on.

Both the increase in certainty about when they would give their evidence and decrease in waiting were perceived by participants to have decreased stress and anxiety for children and their supportive parents/caregivers. A victim advisor stated that certainty was reassuring for parents which results in their children feeling more positive about the process. Stress associated with waiting time was described by one participant as being due to the unusual and confined environment of the court environment and the uncertainty that this engenders. She
said that outside of court a young witness would feel normal, but once inside, there was the anticipation and anxiety around what would happen and when.

In practice, police officers said that it could be difficult to organise multiple child witnesses, and could be logistically difficult for families as well. However, police believed that this aspect of the protocol was usually manageable and reported it having worked well in trials.

So we had the first victim in on the Monday morning, at the court, in the room where she was going to be on the following day, just to watch her DVD and then she went home, which worked really well. And then the following day while she was giving evidence her sister was in another room watching her DVD. And then when the first one was finished they both went home together. And then the following day obviously it was just the second sister, so it, although there was a bit of movement, it worked really quite well and it suited them. Because they weren’t constantly having to sit there for hours on end.

Crown prosecutors stated the importance of judges allowing for the prosecutor to call witnesses in the order that they choose. Calling witnesses in the order they wish, while at the same time organising for young witnesses to give their evidence in the morning, could result in short days at court. Crown prosecutors expressed concern about the tension between meeting this aspect of the protocol while retaining their control over witness presentation given pressure on judges to make efficient use of court time and resources.

… it might be pulling stumps really quite early on some days and what not, and so long as we’ve got the backing and acceptance by the Judge and we’re not going to get pressure of “Well haven’t you got another witness you can call instead?” No, tactically there might be reasons I want to call the witnesses in this order. Are we going to get that accommodation from the courts or not?

Crown prosecutors also spoke to this as a shift in attitude, saying that although previously there was pressure from the court to use time extremely efficiently regardless of detriment to the witness, this was no longer the case.

Flexibility was raised as being necessary, in relation to giving evidence at the start of the day and not giving evidence beyond 3pm. Police commented on the range of needs and age variation within the young witness population and questioned whether the morning is
always the most appropriate time for teenagers to give evidence, especially if they have been required to travel from elsewhere that same day.

I did wonder about it at first because, because they were classed as a child but they were 16 and 17 and then the actual idea of them being better in the morning rather than afternoon I don’t think is necessarily accurate for someone in their late teens…

[the protocol] tries to encompass a whole lot when you’re talking about children from 5 right up to 17.

If it’s not a particularly long interview and they’re there in the morning watching it and it’s finished by, you know, 11 o’clock, there’s probably no reason that they couldn’t start by 12, 12.30 or something like that.

Although there is general approval of this aspect of the protocol, participants highlighted a need for flexibility to accommodate a range of circumstances.

So if you’re halfway through cross-examining Mary and it gets to 3 that’s the end of it, and we go home. She comes, comes back tomorrow. On the one hand, if you ask Mary, she will almost inevitably say, “Oh well, I want to carry on.” But again, research establishes that that’s what a child will say, but that’s actually not, not really what’s best for that child. And so, I think the environment has helped.

The variation in the needs of young people, and related concern with inflexible application of the protocol was raised: “Some kids want to get on with it and get it over as opposed to coming back.”

Frequent breaks

The protocol states that young witnesses should be provided with frequent breaks during evidence. This usually involves several short breaks of 2-3 minutes in length and a longer break every hour. Whereas courts in New Zealand generally give a 15 minute recess, the protocol is similar to the new English practice of “minibreaks” of 2-3 minutes where the screens are switched off (except for the judge’s screen), but jurors, judge and lawyers remain in the court (Plotnikoff & Woolfson, 2015). This measure recognises the shorter attention span of children and teenagers comparative to adults, and aims to promote better evidence as well as reduce witness stress.
Judges expressed the need to be active in offering regular breaks, given the tendency for witnesses not to request breaks, even when they would benefit from them. Other participants accepted this aspect of the protocol as desirable for managing the stress and distress of cross-examination. Breaks were understood to maintain both focus and emotional wellbeing of young people and thus strengthen the quality of evidence that they are able to provide.

Yes there should be frequent breaks, because at the end of the day, I know as a defence counsel, it’s better to cross-examine a young person at the end of the day, because they’re flagging, even if they have been sitting there all day not saying very much, you know.

There was some variation in participants’ reports of whether breaks were primarily witness or judge initiated, but there was a general consensus that judges were routinely implementing this aspect of the protocol.

I can say in all the experiences if the judge has thought that it’s gone on for a bit long, even an hour or so, or the victim looks like they’re fading, then the judge has intervened every time.

Frequent breaks were a relatively non-contentious aspect of the protocol among participants. However, both crown prosecutors and defence counsel raised the concern that frequent breaks may be viewed negatively by, or be irritating to the jury. Both parties expressed concern about the impact that this might have on the jury’s perception of their case, and the potential for their case to be viewed in a more negative light.

When they get tired and they say they want a break it’s often when, you know, questions are getting hard and then it looks bad. The jury go “Oh, here we go.” Or they’ve got upset, and then they come back, answer two questions and say they need a break again and the jury are oh yeah, here we go, they’re trying to get out of it or they don’t want to answer that question.

However, a judge said that they believed that with an explanation, this would not be an issue.

That is something that’s caused me some real concern and I suspect the other judges as well. Because jurors are busy people it’s very important that you tell the jury right at the start, now look, this is how we’re going to do it. We do this in every trial.
involving children, nothing to do with the defendant, nothing to do with the prosecutor, I’m the judge, I make these directions because this child is young. And that way I’m absolutely convinced that a jury will not in fact draw any adverse inference.

Police talked about the difficulty of managing their interactions with young witnesses during longer breaks where a child was distressed (as against their attention flagging). This included worry that defence may assert that police had been conversing with a young witness during cross-examination and assisting them with answers, and the risk of thereby of having a trial aborted. Police emphasised the care that had to be taken in maintaining an appropriate level of distance to avoid criticism from the defence, but to also offer the distressed witness some emotional support.

It feels like you’re sort of cutting them off a little bit because you’ve just got to distance yourself because they’re under, are under cross… I feel like I’ve sort of kicked a puppy sometimes.

But you’d always be conscious that you have to get your witness back in there. ’Cause it’s not a nice place, and the more breaks you have if someone’s, you know, I’ve heard of a lot, “No I’m not going back in.”

Again, the need for flexibility in applying this aspect of the protocol was raised, with participants suggesting that attention needs to be given to the individual needs of any given witness, including the ability of a child to assert their need for breaks, and also the extent to which they require breaks or would prefer to continue.

**No complicated or tagged questions**

The protocol states that “within the limits of [their] knowledge of linguistics,” judges will endeavour to stop counsel asking tagged questions, questions containing a double negative, questions which contain two or more propositions and leading questions which suggest the answer. This aspect of the protocol, they reported, is informed by research which demonstrates that complicated or tagged questions contribute to confusion for children and vulnerable witnesses, thus resulting in unreliable evidence. It is also thought that forceful questions may result in acquiescence due to children and young people not wishing to argue with an adult in a position of authority.
Children are very hesitant to contradict an adult, and if you have defence counsel thundering at a child, “You are not telling the truth are you?” there is a very good chance that some children will say “No.” Simply because they’re too frightened to say, “Yes I am.”

This rationale for this part of the protocol was reflected in interviews with judges who highlighted that inappropriate questioning potentially had an impact on young witnesses’ wellbeing but also and importantly, had an impact on best evidence.

… if you don’t allow the children to give evidence properly then you are doing a disservice to justice.

Judges said that defence questioning may not be designed to attain best evidence but rather to control a narrative, confuse the witness, and “create a hazy picture.” Defence counsel may regard such strategies as the best way to create doubt in the minds of the jury (see Henderson, 2001; 2015c).

The need for change in questioning of children was also a response to international developments.

I mean things go on in our courts, cross-examining our children that would never be countenanced in England, would never be countenanced in South Africa. Wouldn’t be countenanced in some states of Australia. So we are a long, long way behind.

Victim and court support staff were supportive of this measure and described cross-examination as the most distressing part of the court process for young witnesses. The stress of cross-examination for young witnesses, particularly in sexual abuse trials, was attributed to feeling blamed or made to feel responsible for the abuse, and of other related things such as delay in disclosure, thus triggering feelings of guilt, self-blame and shame that are common among sexual abuse victims.

One participant described aggressive cross-examination as counter to good evidence as it shuts down and re-traumatises complainants.

I’ve seen the difference between a lawyer who can calmly ask questions of a person … so that they actually got the best from that person through their questioning … But I’ve also seen a lawyer who is quite flamboyant and his manner is quite loud, which is scary for children. And quite theatrical, so that child closed down … and didn’t want
to answer any questions … Yet if he’s asked in a calm, even monotone way, he would have got far more out of her than how he did it.

Judges believed that the protocol was achieving its aims, reporting that since its introduction there has been increasing awareness among defence as to appropriate questioning and that care is now being taken to question more appropriately. This was attributed in part to defence lawyers disliking frequent judge intervention due to its potential to reflect badly on the defence in the eyes of the jury. Some defence lawyers said that they avoid excessive use of inappropriate and aggressive questions regardless of the protocol due to the increasing protection of young witnesses by judges over past decades as well as the negative impact that this kind of questioning can have on the jury perspective of the defence case.

Because judges won’t let you do it, and even if you push the limit it is very easy to end up alienating the jury by making somebody young and vulnerable cry.

Defence lawyers did not regard the restrictions on their questioning as necessarily having an unfavourable impact on trial outcome.

But I will say this, the first time I did it … Interestingly the victim impact report came back saying that court was not the terrible experience that she’d anticipated. “Everybody was very helpful and including even [the defendant’s] lawyer who tried to make it easy for me to answer the questions.” And I have to say with that case I don’t think the result would’ve been different, even if I’d been able to ask more tagged questions. I don’t think that the evidence would’ve been any less, of lower quality … but it sure made a difference to the way the witness perceived things.

There was however, some concern about this aspect of the protocol among defence lawyers. This included opposition to the premise of this aspect of the protocol that less stress leads to better evidence. Instead, it was asserted by a defence lawyer that there needed to be an element of fear, and that increased comfort will not result in “truth”. However, other defence lawyers asserted that young witnesses should be helped to feel comfortable, and thereby would be more able to answer questions. Given that this was their belief and practice they felt that the protocol provision was unnecessary and unduly restrictive.

The conflict between facilitative questioning and questioning aimed to confuse and even intimidate the young witness was expressed as follows:
Well you see, they have a real conflict … because on the one hand they’re officers of the court, but on the other they have a duty to their client. And of course they are employed by the client in the hope that they can be successful and will walk away from the court having been found not guilty. Therefore it’s not necessarily in defence counsel’s best interests to get the best evidence.

Defence lawyers said that the experience of cross-examination was inevitably onerous, particularly in trials for sexual offences where there is a need to test evidence and this is largely reliant on the testimony of the child. Defence lawyers raised the obligation they have to put the defence case to the witness.

That’s why we have defence lawyers, to look at the prior inconsistencies or indeed any inconsistencies, and test the story, test the evidence as best we can … inevitably testing is an onerous thing, and I don’t think that we can get away from court being onerous … And of course one cannot help be offended when somebody is suggesting that you’re making stuff up. But that’s the only way we can test the evidence under the current system. And I’m a fan of the adversarial system I have to say.

Asking non-leading questions was seen some lawyers to be time consuming and likely to result in the witness being on the stand longer.

But it also means that a young person can be on the stand longer. Because it’s preferred that you don’t ask double ended questions, it’s preferred that you don’t lead a witness, it’s preferred that you don’t put more than one concept in the question and you break it down.

Leading questions were also seen as necessary in prompting children around information that was in their video or statement which they may not be able to otherwise accurately recall.

You know, we’re told and trained to keep it tight … if you can keep it tight you reduce the risk of witnesses blurting things which could result in the trial being aborted and the poor complainant having to come back yet again to give evidence. Not only do you look daft and unfocused but you run the risk of ending up with some stuff which is inadmissible, unhelpful and perhaps so illegitimately prejudicial that the trial gets aborted.
One participant argued that tagged questions were part of normal and easily comprehensible speech and were useful and necessary for tailoring cross-examination to be focused on relevant evidence. This lawyer said that some of the simplest ways of asking questions were forbidden under the protocol.

Yes, I think that if clearly a witness doesn’t understand a tagged question, well then it’s up to the Judge to intervene. But tagged questions are the kind of thing that we use all the time, don’t we? We do it with our children, don’t we? We tell our children, “I told you not to do that, didn’t I?” And children have absolutely no difficulty understanding this. To suggest that anybody has any difficulty understanding this is quite beyond me.

Interestingly, one participant said that the protocol undoubtedly decreases the negative impact of the court process on the young person and that it is easier on defence lawyers too because sexual offence trials take a toll on such lawyers.

The victim impact report came back saying that it was bad enough being raped by my step-father but the worst part of the whole experience was being cross-examined by the lawyer … To see that I had caused her as much trauma as she said, in fact more trauma than the rapist himself, it didn’t give me a nice feeling when I went to bed that night.

**Judge intervention**

According to some participants, judicial intervention was increasing, but there was room and need for judges to intervene more and that aggressive questioning of young witnesses by defence lawyers continues to occur. Judicial intervention was understood to be dependent on the extent to which a judge understands this aspect of the protocol and is able to apply it confidently. However, judge intervention was seen by defence lawyers as potentially limiting their right to cross-examination, and this aspect of the protocol seemed to be the issue of greatest importance to defence lawyers interviewed.

Potential barriers to increased judicial intervention were raised. Firstly, concern was expressed that repetitive intervention may communicate to the jury that the judge believes the complainant. Secondly, several participants mentioned that this aspect of the protocol carries a risk of appeal, which would cause additional stress for the young witness and family due to further delay and potential for a retrial.
It seems this whole process is really threatened by the appeal … when I hear some judges correcting the defence lawyer, or advocating for the young person … I’m always mindful of, there might be grounds for an appeal, you know, if the judge comes across as not fair, that could be grounds for an appeal.

Judges expressed the belief that an appeal was an expected outcome of an increase in judicial intervention at these early stages and that a Court of Appeal decision relating to this part of the protocol had the potential to be hugely valuable.

Several participants spoke about a lack of understanding among both judges and lawyers as to what constitutes acceptable and unacceptable questioning, and a need for clarity around this.

One participant described these provisions within the protocol as unnecessary given that there was already adequate guidance for judges and lawyers under the Evidence Act.

If the judges think that they need a protocol because they’ve got broken, crying, exhausted witnesses all around the place well then I suggest that they read the Evidence Act and run their courts according to that.

A Judge agreed that judicial power to control questioning had existed prior to the protocol but said that previously judges were not managing questioning as closely as they are now.

**Counterintuitive evidence and medical evidence preferably called at the beginning of the trial**

The protocol encourages the prosecution to call counterintuitive evidence, followed by medical evidence if any, at the beginning, rather than towards the end of the trial. This is intended to decrease the extent to which misconceptions regarding sexual abuse influence a jury’s understanding of the evidence. The rationale for this is that if counterintuitive and/or medical evidence is given towards the end of the trial, jury members who carry misconceptions (e.g., that delay in reporting sexual abuse indicates that it is a false allegation, or that lack of medical evidence means sexual abuse probably did not take place) are likely to interpret witness evidence according to their misconception rather than take a more neutral and open minded view of the evidence. Having formed a view already, based in part at least on misconceptions, subsequent counterintuitive and/or medical evidence is less likely to have influence on their decision making.
It is in my view absolutely crucial because … if you don’t educate the jury before they hear the child or children give evidence, they will hear defence counsel make quite a thing of the fact that [the young witness] didn’t say anything to Mum when it occurred, they continued to go on family holidays, they sent the abuser Christmas Cards and Birthday Cards. And the jury will be thinking, “Oh come on.” And by calling the counter intuitive evidence at the end, it’s too late. The jury has already formed a view that this child cannot possibly have been abused.

The protocol expresses the intention to convene a conference at least a week before the trial in which counsel will be asked to indicate the general areas they intend to cover with the child, for example, dead end disclosure, delay, and continued association with the abuser. The purpose of this is to ensure the expert covers the relevant areas but avoids areas that will not be relevant to the trial. Judges spoke about the development of these pre-trial directions conferences in which both prosecutors and defence were expected to outline material of relevance for counterintuitive evidence that would be covered. This was instigated in order to address concern regarding the potential for the crown prosecutor to be “blindsided” by the defence. The protocol states that “counsel will be warned that if they stray into areas not signalled at the pre-trial conference they will risk either being stopped or having the expert re-called.”

However, both defence and crown prosecutors raised the concern that because unexpected things always emerge during evidence being given, counterintuitive evidence was most appropriate after prosecutor-led evidence is completed. This was also seen as necessary to avoid criticism for leading counterintuitive evidence that wasn’t relevant at the trial. Both prosecution and defence lawyers stated that in a complicated, changeable case, this could affect the trial rights of either the defence or the complainant.

I think that counterintuitive evidence invariably needs to be tailored to the evidence, and perhaps is far more appropriate for an explanation of the evidence being given after the evidence has been given. Because what is in a statement and what emerges in cross-examination or evidence-in-chief is often different. And if I can say this, when was the last time you went to court and there weren’t any surprises? The answer is that court is full of surprises, and a day with no surprises is a very surprising day indeed.
Both prosecutors and defence questioned the impact that this measure was having on juries, and said that although the assumption was that earlier in the trial was better, this was simply an assumption.

Is there a difference, and is it working for juries? Is it better or not with us calling this evidence before we’re actually calling the complainant now? I guess it’s an assumption that juries are more informed if it’s at the beginning. But whether that’s a reality I guess is questionable.

Several other participants queried the rationale of counterintuitive evidence being given at the beginning of the trial, suggesting that it was unnecessary, or might have negative outcomes.

Because that’s the worry, like with your one, if you call the counterintuitive first, by the time you then have a week of [trial] – “And you still gave him Christmas cards,” “You really love him,” blah blah blah. And then by the time you’ve finished the complainants the counterintuitive evidence has been lost in the whole mix of everything in some ways. It feels that that could happen.

The necessity of this measure was questioned by both defence lawyers and prosecutors. Defence lawyers said that this measure was unnecessary and potentially patronising to the jury. Crown prosecutors said that they would, in their opening, cover the content that would be addressed by counterintuitive evidence anyway and that this aspect of the protocol means that the jury will not, later in the trial, hear from the expert who would reinforce the evidence. Crown prosecutors highlighted the benefits of counterintuitive evidence being given towards the end of the trial being that irrelevant counterintuitive evidence is avoided, and also that consequent criticism from the Court of Appeal is avoided.

Crown prosecutors emphasised that decisions about how evidence is presented to the jury should lie with them.

But surely it should still be my decision what I think will work best with the jury to explain my case… Surely I can decide when and how I’ll do my show to best explain it to the jury, not the judge.

A related aspect of this issue is, as judges explained, that often counterintuitive evidence took the form of a statement of agreed facts which was read to the jury, and queried whether this was an effective means of communicating this information to jurors.
The Supreme Court rather, put a spanner in the works a little bit because they, they produced a decision not too long ago that said, that maybe counterintuitive evidence ought to be by way of agreed statement… Well we all know that reading evidence to a jury isn’t, isn’t really very good. You need a live witness. But they haven’t said they can’t do it and so it’s a work in progress.

**Implementing Change**

*What does the protocol add?*

Several participants spoke of how the protocol did not represent a significant change to trial processes in practical terms. For example, with the exception of watching the EVI, other aspects of the protocol were described as already happening in certain courts under certain judges. Additionally, several participants said that the Evidence Act provided sufficient guidance for judges and lawyers and that the protocol was superfluous to this. It was also commented that judges have always had charge of their court and did not need a protocol to take the actions that it outlines, particularly breaks and control of questions.

So you know, maybe it’s a good thing to remind judges of the need but I mean do we really need to have a protocol for them to realise that they’re in charge of their own court?

However, judges spoke about how although there has always been scope for the provisions of the protocol within existing legislature, the protocol is aimed at a cultural shift among the judiciary, and reflects growing concern for issues of wellbeing and best evidence and a questioning rather than acceptance of the status quo. Crown prosecutors and a victim advisor described the protocol as part of a forward movement in which the child was better accommodated by the court process.

**Factors that are Important to the Success of the Protocol (in Whangarei and Elsewhere)**

Participants were asked about factors which they thought were necessary for the success of the protocol in other courts. Three main themes were evident in interview data in relation to this – leadership from the judiciary, education, and flexibility.
Leadership from the judiciary

Strong leadership and commitment from judges, including enthusiasm and considerable, in depth understanding of the protocol was seen as central to protocol success. Participants stated that it was essential that judges are consistent in their adoption of the protocol as the validity of what is being done is seemingly decreased when lawyers see significant variation among judges.

I’ve had enquiries from other judges [elsewhere in New Zealand], but I am exceedingly worried that real damage will be done if we do not get unanimity.

There was some variation in opinions about whether judges in Whangarei had been consistent in their approach. Crown prosecutors said that the protocol was inconsistently implemented, and that upon its initiation judges seemed uncertain and that there was mixed uptake and different aspects of the protocol would be applied in different trials. Police, however, said that judges were largely consistent and strict on protocols. It is notable that the group interview with crown prosecutors occurred several months prior to that with police staff and that this discrepancy in reports of judge consistency may be the result of an increased familiarity with, and consistent application of the protocol over this time period.

A court support person said that she did not believe that there were barriers to the success of the protocol in courts outside Whangarei, if there was strong leadership by the judiciary.

Not if it is the way it is Whangarei. It seems that is really held by judges … if it was held and heard by the crown, or the officer in charge, I would doubt that it would be sustainable and won’t do a lot, but as long as it’s held by the people who have the most authority in the courtroom, yeah, I’m really hopeful for that.

Education

There was expression of a need for education around the protocol including for judges, lawyers and police. One major criticism of the protocol was its lack of detail in some of its components, for example, question forms that were considered inappropriate, and education and training were seen as necessary to contribute to increased clarification, and to address both the “Why?” and “How?” concerns of participants regarding the protocol. That is, education was seen as necessary in facilitating an in-depth understanding of both the
research base that informs the protocol and the rationale(s) for the protocol, as well as practical knowledge of how to meet the practical requirements of the protocol.

And I think it needs to be explained to defence lawyers more clearly, or to all lawyers for that matter, more clearly, what the protocol really is … because we don’t really know. Most of us have latched on to this policy that we can’t cross-examine the way we used to, we have to do it in a different way.

Participants believed that education around the protocol, including its evidence base and purpose was necessary to avoid resistance. Resistance from the defence bar in Northland was thought to have been contributed to by inadequate education provided.

If you don’t educate the defence and the prosecution and the judges then your protocol won’t work. It will be resisted unreasonably.

Participants said that circulation of research based articles by the judges was insufficient and that thorough training was required.

But if it was presented in proper seminars, funded properly and requirement even that people actually who are going to practice in this area, prosecution or defence, actually attend them, get a few hours in it, and the research based information is given to them, you’ll get less resistance.

Education and training concerning questioning of witnesses was considered particularly important.

Complicated or tagged questions, yes well that’s the stand out problem and the training issue … here we don’t have any training, we just have the Evidence Act and a huge range of practice.

One participant suggested that interactive training with actors would be beneficial.

If this is to have any impact, we need to have a half day where some expert shows the lawyers and judges how to do it … And then followed by the reason why it’s preferred that you do it this way, rather than that way … there needs to be some clarity around how the judges expect the questions to be put. And whether their expectations of how questions are put are accurate.
Flexibility

Despite a call for clarity and consistency, the need for flexibility was a pervasive theme throughout discussion of all aspects of the trial and raised across all professional groups. Judges suggested that flexibility was intrinsic to the protocol and that it was expected that there would be modification to suit the trial and young person. However, the level of concern raised by other participants suggests that the translation of this intention into practice was unsuccessful, or that the potential for flexibility had not been successfully communicated to participants.

There were two primary reasons underlying a concern about flexibility. Firstly, and most predominantly, flexibility was discussed as being necessary to best meet the varying needs of young witnesses.

Some are vivacious, chirpy and don’t seem phased. Others are a complete wreck. Others are not that bright, but feel like they’re failing when they give their evidence because they don’t know the answers … So I don’t think there is a tick the box, this will work for every witness in every way.

One participant stressed the importance of very careful consideration as to what is appropriate for any one child given that children and young people are unlikely to voice their preferences or fears to people in positions of authority. Victim advisors and court support staff highlighted the importance of gaining informed consent from young witnesses where the protocol allows for flexibility, and suggested that this provides an opportunity to re-empower victims of sexual abuse.

I think if it’s going to be a protocol, don’t narrow it down to a specific idea of what it should be, or the ideal. Because each child is different … I don’t know if a protocol can be written in such a sort of a vague way.

Secondly, flexibility was discussed as being necessary to allow for a process that is appropriate for the justice system. Inflexibility, particularly in terms of when complainants watch EVIs and in what order witnesses are called was seen by prosecutors as problematic in that it prevents adaptation based on the particular case or prosecutorial direction.

This flexibility was seen by one participant as needing to be managed by judges, and the importance of judge discretion in managing several variables in court was considered key.
And every day in court is different, it’s like a day at sea, no day is the same. And rather than fettering the discretion of judges we should be celebrating that discretion because, you know, because all witnesses are different. Judges get paid enough and get trained enough to be able to do that, and have done.

**Future Innovations**

Participants were questioned as to further changes to court processes that they thought were necessary in trials involving young witnesses. There was one dominant theme in relation to this question which was discussed across all professional groups: the need to address pre-trial delay. Changes discussed to address pre-trial delay and the stress associated with this included specialist courts for trials involving young witnesses, and prerecording evidence. Police participants also discussed the importance of not exacerbating the effects of delay for young witnesses by assigning the trials they are involved in as back up trials.

The pre-trial delay period in New Zealand is approximately 15 months (Hanna et al., 2010). Participants across all professional groups raised the pre-trial delay an aspect of the trial process that needed to be addressed. Without addressing the delay, the protocol was seen as limited in its ability to have a significant positive impact on the wellbeing or evidence of young witnesses. Reasons for this included the depreciation in quality of evidence as young people are less able to recall details of the alleged offence, the loss of a young witness’ motivation and emotional investment in trial participation over time, and the impact on mental health and wellbeing that this delay causes. The delay was described by judges as “appalling” and “unacceptable”. This delay period was seen by most participants as being a primary contributor to the distress that young witnesses and their families experience in relation to the trial process. The Whangarei Young Witness Pilot Protocol was viewed by some participants as inherently limited in achieving its aims of minimising negative impact of the court process on wellbeing and evidence because it does not address this major issue.

And just to have that perpetual wait, just for them is just endless. That, to me, that’s one of the really difficult things that we’re up against…

Participants spoke about the delay period as extremely stressful and full of uncertainty, and as having a significant impact on the mental health and wellbeing of young witnesses and their families and consequently on schooling and relationships. Police said that the impact of the delay period is more significant than that of the trial.
They can’t really heal until the court case is over can they? Because they’ve got to go through it all again.

The stress that the delay period causes for young witnesses and families was in part attributed to an inability to “move forward” from the offending.

And [they are] reliving it every time you’re, you’re contacting them. And you contact them to say that I’ve got nothing more to say, we’re waiting for this trial date.

Participants spoke about an inevitable decrease in quality of evidence during the delay period. This was attributed to memory being less reliable after such a significant length of time. One participant spoke about one young witness who had a delay of 2 years, with the trial happening when she was age 7.

It’s a lifetime in her eyes, yeah. And when you think about her life that she can remember, it’s pretty much all of it. Going back to what she remembers before she was 5, there’s probably not a whole lot.

Participants also spoke about the effect of pre-trial delay in diminished engagement by young people in the court process due to a need to ‘mentally move on’, resulting in less interest, investment and motivation in relation to trial participation.

I think the biggest thing with kids is, the main time where they are emotionally invested in the whole thing, and the thing that is most upsetting is when they actually disclose…And then I think once kids have done their EVI’s, a lot of them think okay, that’s it, I’m done, you know, they almost check out. A lot of them don’t seem particularly invested in the court process or the outcome of a sentence. They’re just glad that what was happening was wrong and they finally told someone.

Police participants spoke about the stress of the delay for young witnesses being exacerbated by such trials being assigned as back up trials. Allocating such trials as back up trials was described as heightening uncertainty and anxiety for the young person and family. Additionally, the common situation of a trial not going ahead after the anxiety of preparing to go to court was seen as unfairly distressing for young witnesses. Police said that although they did not want to give young witnesses back up trials and saw these as inappropriate, they agreed to this aspect of trial scheduling if it meant that there was a chance that they would get a trial sooner.
They should never be backups … Because how can you, how can you then build somebody up to then all of a sudden on the Monday turn round to them and say, “Oh you’re not needed, you’re not going to be needed this week.” You’ve already got them to the point of maybe they are going to be required.

They simply just get worked up and worry themselves sick up until the time and then just not knowing. It’s a lot easier to manage if we can say, well on this date this will be happening, rather than just take up well you might be, you might not.

**Addressing the problem of delay to trial**

Two solutions to addressing the delay and its impact were identified by participants: separate courts and pre-recording of evidence.

**Separate courts**

The possibility of a separate court for child witnesses was raised by professionals as a means of reducing delay.

*What if there was dedicated weeks like within a session we said right those 2 weeks are dedicated to sex trials, those 2 weeks are dedicated to non sex trials.*

*I mean they did domestic violence courts, maybe we should be looking at things like that, you know, child abuse courts for our children.*

Some participants suggested that an additional benefit to this would be specialist judges, lawyers and other court staff who had an interest in this area, and specialist knowledge as to the needs of young witnesses.

**Pre-recording of evidence, including cross-examination**

Prerecording of evidence, including cross-examination, was raised as a means of protecting a young witness from the negative impacts of a delay period and minimising the decrease in quality of evidence that this delay period contributes to. Several participants stated that prerecorded evidence was the only feasible way to reduce the impact of the delay period for young witnesses given that there are barriers to trials occurring in a timelier manner.

*In my view pre-recording is, is absolutely the way to go, because I do not see that we are going to do too much to the delay between offence and trial. We’ve just got too*
much work. We just can’t do it. But if we pre-record, then so far as the child is concerned, he or she gets on with their life. They’re done, and then when we get to the trial we’ll deal with it. I do not believe that it’s going to be a disservice to justice.

Many participants expressed support for pre-recording of evidence. Pre-recording evidence was seen as a means of reducing the aforementioned negative impact that the delay period has on the wellbeing of young people and families and the quality of evidence they are able to provide.

One participant said that there would be pros and cons to reducing delay via pre-recorded evidence, given that some delay can provide maturation and supports such as counselling that can allow a young person to be better equipped for court.

For young people that were really ready to come forward and, you know, own everything and that’d be fantastic. For some others who, and especially children, are not comfortable with naming body parts and are still full of self-blame and shame and fear, I do think that when they have that opportunity to be prepared, when they’ve been through counselling … they’re actually much stronger to go through the process and cross-examination, after this delay.

Several participants expressed hesitance about the pre-recording of evidence related to concerns regarding the possibility of later cross-examination being necessary if further evidence came to light, thus defeating the protective purpose of pre-recorded evidence and potentially creating additional stress for a young witness.

And I think that’s, in, it’s almost defeating the purpose if you, you know, tell them, you may be able to get on your, on with your life, but you may not be able to as well.

However, some participants stated that in jurisdictions that employ pre-recorded evidence such as Western Australia, it was rare to recall a child after they have given their evidence. Further, a judge stated that if re-call were to occur it would typically be to answer a limited number of questions, and while this would likely result in some anxiety for the child it would only be a short period between being advised that further questions would be asked and cross-examination taking place.

A barrier to pre-recorded evidence raised by judges was a recent Court of Appeal decision (M v. Crown 2011) in which the decision by lower court judges to disallow pre-
recorded cross-examination was upheld. However, judges did not see this as a permanent barrier to pre-recording of evidence being more widely available in New Zealand. Confidence was expressed that pre-recording of evidence is an inevitable next step for trials in New Zealand involving young people, and that it is simply a question of how this will come about.

Discussion

Despite a number of specific concerns, in a general sense the protocol was supported by the majority of participants who viewed it as working well and representing a significant shift in a positive and necessary direction. The majority believed that the protocol had valid intentions and was beneficial for young witnesses in terms of both wellbeing and quality of evidence. In support of these initiatives judges said that a fair trial should be fair for everyone, not just for the offender, and stated that the protocol does not interfere with the defendant’s right to a fair trial, but that in not allowing children to give best evidence, this is a disservice to justice.

Everything I think is geared against these witnesses giving good evidence. So the protocol came in and it tries to address some of that imbalance.

Participants said that positive feedback had been received from young witnesses and their families who had experienced trials for which the protocol was utilised.

I’ve got a victim impact statement that, from my last one where right at the end she just wanted to saying thank you to the judge and the prosecutor and the police and the victim advisor and how, how everything had gone. It was not nearly as bad as she thought it was, and it was and that. That sort of, quite showed that it, it all went as good as possible I guess.

Judges expressed a belief that the protocol had been successful in increasing the quality of evidence that young witnesses are able to provide. This was attributed to more focused witnesses as a result of shorter days at court, breaks, and giving evidence in the morning after having watched the evidential DVD the day before, as well as better understanding the questions they are asked.

Resistance to the protocol was largely from defence lawyers as a result of their belief their questioning could be limited. A judge said that feedback from defence was varied with
reaction that ranged from accepting to hostile. Several participants claimed that there was almost universal resistance from the bar. This resistance from defence lawyers who feel that the protocol limits their ability to cross-examination reflects a fundamental incompatibility between existing practice of cross-examination and best practice for eliciting full and accurate evidence from young witnesses.

Cross-examination as a means of testing and evaluating the reliability of evidence is challenged by research indicating that common cross-examination often contributes to unreliable evidence (Henderson, 2001). This reflects the reality that the widely accepted goal of cross-examination is to present a defence argument, often through discrediting of witnesses testimony, and often without regard to its accuracy. This is reflected in findings that leading and suggestive questions are far more likely to be posed during cross-examination than during evidence-in-chief or evidential interviews (Davies & Seymour, 1998; Zajac et al., 2003) despite the particularly negative impact of such questions on testimony accuracy (Andrews & Lamb, 2017; Klemfuss et al., 2014; Zajac & Cannan, 2009; Zajac et al., 2003) and likely reflects the aim to minimize and control witnesses responding (Mueller, C. B. & Kirkpatrick, 2012). The questioning styles that are experienced as particularly distressing by young complainant witnesses are also those that most closely align with the means by which defence counsel conduct cross-examination.

In respect of most aspects of the protocol, and across all professional groups, participants expressed a need for flexibility, clarity, and education in order for it to function effectively. The call for flexibility invites the question how are these decisions are made, and points to the necessity of a pre-trial conference. This would allow for the protocol to be applied with flexibility desired, as needed, on an individual basis. However, where judicial discretion exists to allow flexible application of legislative and policy initiatives, and/or where advocates are able to apply to the judge for variations in practice, the successful implementation of these initiatives is dependent upon the attitudes and knowledge of all parties to the trial process. Eastwood and Patton (2002) argue that reforms in Australia have been haphazard and discretionary, despite research indicating that discretionary provisions heighten stress through uncertainty and inconsistency. Provision for flexibility needs to be developed in a way that ensures decision making processes are consistently applied.

One aspect of the call for education around the protocol by professionals was a desire for a clearer rationale behind the changes. A lack of understanding of the rationale for
changes appeared significant to participants who held ambivalent or negative responses to various aspects of the protocol. For example, some professionals questioned the difference that counterintuitive evidence being given the beginning rather than the end of the prosecution case would make and the impact that this might have on the jury. This highlights the need for the protocol to be accompanied by an evidence-based rationale and education in order for professionals involved to fully embrace the change.

There is no disagreement as to whether court involvement has the potential to negatively impact young person complainant witnesses. Court involvement as a threat to wellbeing has been repeatedly evidenced, although the mechanisms involved in this relationship are complex. Nor is there any argument that the wellbeing of young people is not important or that reducing this threat to wellbeing should not be limited wherever possible. However, there have historically, and continue to be, a number of barriers and resistance to prioritising the wellbeing of young and vulnerable witnesses. Resistance is mostly concerned with whether reforms can be aligned with the provision of “justice”, and in particular the defendant’s right to a fair trial. Reforms to date have mostly been concerned with the mode in which young people give evidence, and changes have been largely accepted as having minimal if any impact on the rights of the defendant. Reforms have had less focus and impact on the style of questioning that young witnesses are subject to, yet this is arguably the area in which change is most necessary. Without acknowledgement of and mediation between the conflicting roles of cross-examination as presently practiced and witness protective measures, reforms aimed to address witness stress and quality of evidence will struggle to be effective. The Whangarei protocol has attempted to address the issue of examination and cross-examination, and this stands out as its most controversial component.

Pre-trial delay was identified by participants as an aspect of the court process that had the greatest negative impact on young witnesses and their families and the quality of evidence that they provide. Long delays between reporting to the police and the trial have also been identified as a significant source of stress in interviews with young witnesses in jurisdictions elsewhere (Eastwood & Patton, 2002; Hayes & Bunting, 2013; Plotnikoff & Woolfson, 2009). Although such an issue lies outside the scope of the protocol, it is apparent that without addressing this, the protocol, and similar such innovations will be limited in their effectiveness. Separate courts for young witnesses and/or crimes of a sexual nature were raised as possible approaches to addressing the impact of the delay.
A test of the protocol, or aspects of it, was seen by some participants to lie in the outcomes of any appeals to higher courts. Since the interviews were conducted a Whangarei case was taken on appeal from the Whangarei District Court (R v. Metu [2016] NZCA), and was considered by the Court of Appeal, in particular with respect to whether the judge had unfairly restricted the questions used in cross-examination. While experiencing reservations with the idea of a protocol and refusing to rule on the protocol itself, the court upheld the judge’s conduct of the trial in question.

The Whangarei Young Witness Pilot Protocol has for the most part been successfully implemented as reflected in its acceptance by professionals involved in trials with young witnesses. Although there is scope for further development and refinement, the protocol appears to be a strong foundation upon which future innovations can be built.
CHAPTER FIVE:

CONCLUSION

Young Complainant Witnesses

Young complainant witnesses and their experiences are at the centre of this research. The need for reform in courts in respect of young witnesses has been a topic of discussion in legal, psychological, academic and political, spheres for approximately the past 30 years. However, the discussion has far outweighed the action. When one understands what the court process involves it is almost incomprehensible that a child, particularly one who has experienced abuse could partake in the process without their wellbeing being compromised, or that the questioning that they are subjected to would not be experienced as stressful and confusing.

There is ample literature to suggest that the wellbeing and evidence of young witnesses is compromised and even damaged by court processes. However, despite this research and multiple Ministry of Justice and other reports stating and restating similar recommendations for change, these have rarely translated into practice. Although there is scope in legislation for provisions such as pre-recording of all evidence, communication assistants or intermediaries, and judge intervention in inappropriate questioning, currently this legislation is being utilised either not at all, or to a fraction of its potential in New Zealand courts.

The experiences of young witnesses, as told by them and/or their parents, have not previously been considered by researchers in New Zealand. There are several reasons why young witnesses’ experience as a topic of research is important, not least from the perspective of a human rights need and ethical responsibility (see in particular, Articles 3 and 12 of the United Nations Convention on the Rights of the Child, 1990). The Whangarei Young Witness Pilot Protocol was developed with the intention of addressing some of the issues surrounding the participation of young witnesses in courts. Although the protocol was created with acknowledgement of the literature concerning young witnesses and in consultation with experts in the area, there was no New Zealand based qualitative research to draw on and inform whether the protocol was likely to accurately target the main sources of distress for these young people.
One of the two projects in the current research asked young complainant witnesses and their parents to describe their experiences of court involvement, with a particular focus on aspects that were stressful, and those that were supportive. Although there were only four young person participants, parent participants also represented the experiences of their children and in turn, talked directly about their own experiences. In many ways, the findings of this research were similar to that of research in other jurisdictions (Back et al., 2011; Eastwood & Patton, 2002; Hayes et al., 2011; Plotnikoff & Woolfson, 2009), highlighting the delay to trial, cross-examination, and fear of seeing the defendant, as particularly distressing aspects of court involvement, and identifying specialist support staff as a critical source of support. Anxiety arising from uncertainty about a range of aspects of the court process was evident in these interviews, as was the value placed on preparation. This highlighted the scope for far greater information and preparative support than currently exists via the Court Education for Young Witnesses programme. Some of these areas of concern are addressed in the Whangarei protocol, but not all.

Having an opportunity to have a voice, tell their story and be heard in the judicial process was an important part of the court process for witnesses and their families. However, young witnesses also felt exposed, particularly during sentencing when details of offences, and victim impact statements could be heard by the public and family members. Similarly, family members found the experience of hearing details of offences, either as a support person during the trial, or by being present at sentencing, as distressing. Some of this is inevitable, such as parents hearing details of the offending they had not been exposed to previously. Some however is avoidable at least to an extent: for example, giving the young person and supportive family members the option to observe sentencing via CCTV rather than in the courtroom itself.

The outcome of the trial, including the sentence, was of importance to families and contributed to a sense of wellbeing and closure, or alternatively to distress for reasons of disappointment and/or fears about future safety. A guilty verdict contributed to families feeling validated and believed, and the efforts and stress of going to court being worthwhile.

Unlike previous research, the current study identified concerns that related to the parent experience. Parents spoke about the significant emotional strain that they experienced, and the difficulty of managing day-to-day parenting and supporting their child through the court process in the face of their own emotional difficulties. This suggests the need for
supports that are more holistic and better support parents, with the additional advantage that this may then assist them to better support their child or children.

The ability of young people, particularly children, to provide accurate evidence in court settings has long been debated. Despite an increasing consensus as to the conditions and styles of questioning needed for young people to give accurate evidence, the extent to which court settings are able to, and should facilitate this is contentious. Many of the issues raised in the current research, most notably the delay to trial and cross-examination are the same issues that were raised seven years ago by Hanna and colleagues (2010) and that have often been prior to that and since (e.g., Davies et al., 1997; Zajac et al., 2012). There has historically been, and continues to be, a lack of momentum in addressing threats to the wellbeing of young and vulnerable witnesses within the justice system. Even the comprehensive Law Commission report released in late 2015 concerning the justice response to victims of sexual violence made only a passing reference to children. In reflecting on their research based in Australia, Eastwood and Patton (2002) questioned “why the criminal justice system remains the legally sanctioned context for the abuse of children” (p. 111).

Barrier to Change

Why has change in the New Zealand justice system with regard to young witnesses been so sluggish, despite an array of legislative provisions and research which plainly states that currently we allow already vulnerable children to endure a process that is detrimental to their wellbeing, and we fail to provide the conditions for best evidence?

A fundamental barrier to change may be seen to reside in the nature of our adversarial criminal process, and resistance from legal practitioners to forego the practice of cross examination with which they are familiar. Cross-examination is considered in case law to function as an investigative interview (see Henderson, 2015c), yet in practice cross-examination often compromises the accuracy and reliability of the evidence that it is intended to assess. The common and accepted practice of cross-examination is as a means of persuasion and its practice therefore involves tight control of witness testimony, which is incompatible with the use of cross-examination as an investigative interview aimed at establishing the truth (Henderson, 2015c). Furthermore, even if the intention is to adduce best - meaning full and accurate - evidence, lawyers may lack the knowledge about how to question witnesses in a developmentally appropriate manner. Cross-examination, despite
being undeniably problematic, is perhaps the aspect of the court process that has been the most resistant to change in the face of calls for a system that better accommodates young witnesses. The barrier to reform in this area, as has been discussed by several authors lies in the culture of courts, far more so than a need for legislative change.

One of the key concerns that is raised in any discussion of change to cross-examination is the requirement for the defence to “put their case,” as well as the requirement of the justice system to function in the interests of justice, and allow the defendant a fair trial. This was a concern raised by professionals who took part in the project concerned with the Whangarei protocol. However, “putting the case” and asking questions of the witness that they are able to understand and answer fairly need not be mutually exclusive (Henderson, 2015c). Henderson (2015c) also describes how in England, there is a shift away from an emphasis on the obligation to put the case, in favour of approaches which best test the evidence. It is challenging, from a psychological perspective, to understand how a process that better aims at eliciting the “truth” and proceeding accordingly, could do anything but better approximate “justice.” Nor is it clear how the rights of the defendant would be threatened by a more accurate process of assessing evidence.

Legal professionals are not blind to the harmful impact of court involvement on young witnesses as reflected in their answers to a hypothetical question of whether or not they would be willing to have their own children participate in the court process (Alaggia, Lambert, & Regehr, 2009; Eastwood & Patton, 2002). In particular, of the legal professionals interviewed by Eastwood and Patton, not a single defence lawyer said that they would want their child to participate in the legal system in such circumstances. Defence lawyers appear to be in agreement with young witnesses and their families, that there is an absence of care and protection of the child in legal processes, yet the view persists by at least some defence lawyers that present practice is necessary and in the interests of justice (Eastwood & Patton, 2002).

Expecting lawyers to use questions and a manner of question delivery that better approximates best practice in evidential interviewing is asking that they, at least to some extent, abandon the notion of cross-examination having the primary purpose of discrediting the witness and presenting a defence case. It asks them to prioritise a focus on the accuracy and productivity of children’s evidence. This is a challenge when considering research that shows, for example, that use of suggestive questioning by defence lawyers is related to higher
rates of acquittals (Klemfuss et al., 2014). It is perhaps unsurprising that a push for such a drastic shift in practice and its philosophical underpinnings is met with some resistance.

Further barriers to progress and the speed of change may reside in more deeply rooted societal factors. It is only relatively recently that wider society has acknowledged sexual abuse as a real and pervasive problem. The persistent issues regarding the treatment of vulnerable witnesses in our courts can be understood to reflect the fact that children and women who disclose sexual abuse and assault have historically been treated with disbelief and suspicion (Kelly, 2002). Misconceptions about sexual abuse and assault are prevalent in society and are used in court for tactical reasons, thus perpetuating a mistrust of complainants. Historical concerns about children’s memory and vulnerability to suggestion have been pervasive, and lingered long after research suggested that such concern is unjustified.

The culture of silencing and shaming victims of sexual violence is prevalent and well documented. We live in a society that normalises and condones sexual assaults against females and places blame on the shoulders of the victim rather than the perpetrator (Gavey, 2013; Jordan, 2011). This culture is reflected and perhaps concentrated in the court setting, where we fail to adequately protect victims and subject them to accusations of lying. In the court, an inherent power relationship exists between judges and lawyers, and the complainant. Additionally judges and criminal lawyers are overwhelmingly male, and victims of sexual violence overwhelmingly female, although the process is undoubtedly equally as gruelling for male victims. Eastwood and Patton (2002) comment that particularly in failing to protect the witness from the perpetrator, the justice system perpetuates power relationships between child and abuser.

**Can Changes be Made Without Making Legislative Change?**

The second study within this thesis was concerned with current developments in court processes with young complainant witnesses at the Whangarei courts following introduction of the Young Witness Pilot Protocol. Because the Whangarei protocol operates within existing legislature, consideration of such an innovation raises the question of whether changes can be effectively made without change in legislation, in terms of their acceptability to professional groups involved, whether changes can in fact be successfully implemented and ultimately, whether changes made can achieve their intended impact.
In reality, legal provisions for most changes that are currently debated in New Zealand already exist. There are already provisions that allow for better supports and preparation for court, judicial management of inappropriate questioning, the use of intermediaries, and pre-recording of a witness’ entire evidence. It is not the absence of legislation therefore that is preventing these practices being adequately or consistently applied. Legislative change, where scope is provided for discretionary use, does not necessarily translate into practical change. Research in the United Kingdom revealed that although there was increasing use of protective measures for young witnesses, there was ongoing disparity between policy objectives and the delivery of such measures (Plotnikoff & Woolfson, 2009). Similarly, in Australia Eastwood and Patton (2002) reported that despite legislative reform, Australian courts remained an environment that was abusive to young witnesses. Eastwood and Patton argued that reforms in practice had been haphazard and discretionary.

The power to instigate change for young witnesses lies, for the most part, with judges. Prosecutors also can have influence where legislation allows for judicial discretion in the application of legislative and policy initiatives, by applying to the court for particular provisions to be approved such as use of CCTV or communication assistance. Defence lawyers also have choices as to how they conduct their case. The successful application of provisions for young witnesses is therefore dependent not only on the judge, but upon the attitudes and knowledge of all legal professionals involved.

The findings of Study Two resoundingly support the notion that significant and meaningful change can be made without legislative change. This provides an early New Zealand example of the type of cultural change that has been achieved in the United Kingdom (Henderson, 2015c). The Whangarei Young Witness Pilot Protocol represents a significant shift in the culture of one New Zealand District Court. It came about as a result of a commitment on the part of judges to utilise the potential of existing legislative measures, and judges taking seriously their ethical responsibility to protect young witnesses.

Interestingly, several participants in Study Two asserted that the protocol was unnecessary and that there was already provision for the change it generated in the Evidence Act 2006. Yet the protocol produced huge interest and debate among those professionals who were affected by it, and the same lawyers who argued that the protocol was unnecessary, also had complaints about an increase in judge intervention in questioning. It may be that the
protocol acted more as a means of communicating a shift in court culture to those who work in the area, and created an expectation of committed and consistent application of these measures. In this sense, the Whangarei Young Witness Pilot Protocol makes use of legislative measures already in place and creates an expectation for their use.

Perhaps the more useful question is not whether change can be made in courts, but how to do this, to best ensure its success. Practitioner participants in the current research were definite in their answer to this question. These participants outlined both practical and cultural barriers to the success of the protocol that were important to overcome. They indicated that strong leadership from judges, education as to the ‘why’ and the ‘how’ of the protocol and a level of flexibility in the application of the protocol were important in garnering support from legal professionals and other stakeholders, as well as allowing for the smooth operation of the protocol.

There is indication that the cultural climate of the justice system in New Zealand is currently supportive of relatively significant change for vulnerable witnesses. Justice Minister Amy Adams has been vocal in her support of changes, and following the recommendations of the Law Commission report into alternative processes for sexual violence, the District Court have established two specialist sexual violence courts, one of which is Whangarei. The Whangarei Young Witness Pilot Protocol initiative appears to have been a strong influence in the introduction of the pilot courts, which have been implemented with the full support of the Minister, the Ministry of Justice and the Chief District Court Judge. Cultural change appears to be a necessary element of any truly effectual change in courts, but such change may require wider support from related institutions in order to be of national significance.

**How Can Research Support Cultural Change in Courts?**

There is currently potential for a significant change in the culture of New Zealand courts as they pertain to young and vulnerable witnesses and it is therefore imperative, as researchers with an intention of advocacy, to ask how research can support this change. The experiences of this research team in undertaking the current study suggest that there is certainly a role of research in the process of cultural change in courts. It demands that those instigating change, in this case the judges in Whangarei, clearly articulate the intentions and commit to the changes that they are instigating. Because legal professionals typically play such a significant role in changes that occur, an enquiry into professional attitudes, opinions and experience are an important part of any research evaluating change. The current research,
in offering professionals affected by the changes of the protocol an opportunity to voice their opinions of these changes, served as consultation and feedback. It provided a communication channel between the practitioners whose work was, or would be, affected by the protocol and the judges who were leading the changes. This consultation process appeared to play a role in increasing the interest and investment of professional participants in the protocol.

The current research suggests that strong judicial leadership is critical to cultural change in courts and its practical manifestation. However, change in court processes to support young witnesses is unlikely to be intuitive to judges who have long been part of a system steeped in a firmly established culture and customs. Most judges have had former careers as defence lawyers and are thus socialised to traditional cross-examination. The development of the Whangarei Young Witness Pilot Protocol came out of ongoing discussions between judges and Emily Henderson, a lawyer and academic who deftly bridges the research and legal worlds. This is perhaps another role for researchers. There has historically been a chasm between the lessons learnt as a result of psychological research and practice in court. In building relationships and actively engaging with legal professionals in a way that is collaborative and supportive, researchers can help to counteract the disconnect that has historically existed between psychological research and legal practice.

Consistent with an action research approach, upon completion of this research, the research team was cognisant of the importance of these findings in providing a platform for meaningful discussion. The reports were distributed to professional participants and meetings were convened to discuss the findings with the judges who spearheaded the protocol. The research was also presented to the working party for the establishment of the sexual violence courts.

The current study is useful for future research in the New Zealand justice process for a number of reasons. Firstly, it sets a precedent for the acceptability of this type of research. Participation by professionals who work in the court was easily achieved, though this was less true for witnesses and their families. The reception to research findings, including those from young people and parents, and those professionals able to make change for complainant witnesses has been enthusiastic. This research illustrates that young witnesses and their families have a story to tell, and there is an audience who have power to make change and are willing to hear this story and place value on it. In general, this research indicates that there is
a place for a collaborative approach which bridges the chasm between psychological research and legal practice.

**What Future Change is Needed in New Zealand?**

This research indicates that young witnesses are experiencing court conditions that are far from those which are optimal to their effective participation. These findings point to the need for further changes beyond those that have been implemented within the Whangarei protocol. The profound negative impact of delay to trial, on young witnesses and their families, and the need to reduce this was one of the strongest and most prevalent issues raised by young witnesses, their parents, and practitioner participants. Although attempts have been made to address this issue through flagging and prioritising trials involving young witnesses (Ministry of Justice, 2010), delay remains unacceptably long.

Delay can be addressed by more effective case management so that cases involving young complainant witnesses get to court more rapidly. However, this has to date been ineffective, and may remain so as delay is affected by the availability of resources (courtrooms and judges) and legal procedural matters. It is in no person’s interests, and certainly not in the interest of good evidence to allow a child’s mental health and memory to deteriorate. An alternative strategy is available in pre-recording children’s cross-examination has a long history of use in Australia since the 1990s, and following a positive evaluation of pilots for pre-recorded evidence in the United Kingdom (Baverstock, 2016) it was announced in September 2016 that from 2017 prerecording of entire evidence, including cross-examination would be available to vulnerable witnesses (Ministry of Justice United Kingdom, 2016). In comparison to more contentious issues such as addressing styles of cross-examination, prerecording of all evidence including cross examination, is not an issue subject to longstanding cultural norms or resistance. In fact, it is endorsed by both legislation and by practitioners, including defence counsel, prosecutors, and victim advisors, who were involved in nine of the cases in which entire testimony had been pre-recorded (Davies & Hanna, 2013). These practitioners viewed pre-recording of evidence for the most part positively, not just for reasons of reducing stress and delay for young witnesses, but also because of earlier capture of evidence, efficiency of trials, and greater scope for judge intervention in inappropriate questioning (Davies & Hanna, 2013). Professional participants in the current study were also resoundingly in favour of prerecording evidence as a solution to addressing pre-trial delay. The greatest barrier to pre-
recording of evidence currently is the Court of Appeal decisions (MvR (CA 335/2011) and RvE (CA 339/2011)), that ruled against the broad application of this provision for vulnerable witnesses. Further appeals may result in changes in case law. Alternatively there remains the possibility of legislative change that establishes pre-recording as a presumption for young complainant witnesses.

A further future change that goes beyond the existing Whangarei protocol is leadership from higher courts in the expectations of cross examination, and greater use of intermediaries. The United Kingdom is an example of cultural change led in large part by a decision of a higher court. Henderson (2014) points out that judicial initiative, in particular four seminal Court of Appeal cases in the United Kingdom, played a critical role in a “subtle refocussing” of the aim of cross-examination with a shift toward prioritising communication with the witness, rather than presenting a case to the jury. These cases redefined what was considered acceptable in cross-examination, and limited developmentally inappropriate language, suggestive questions, and use of cross-examination to confront the witness, thereby requiring a significant shift in attitudes towards the role of cross-examination.

Changes in the expectation of cross examination needs to be accompanied however by comprehensive training for lawyers to support them in alternative styles of questioning witnesses, and training for judges to ensure that they are confident and competent to intervene when questioning is inappropriate. Perhaps, as raised by participants in the current study, one major hurdle is to clearly define how defence counsel can present their case in a way that is not damaging to the wellbeing or evidence of young witnesses.

Another means of improving questioning is greater use of intermediaries to monitor and intervene in language used in court. These communication assistants could be used to directly ask questions on behalf of lawyers, to rephrase questions in developmentally appropriate language, by intervening when questions that are beyond the communicative abilities of the child are asked, and bringing this to the attention of the judge (Davies et al., 2011).

In the probable event that any changes to the manner in which young witnesses are questioned in court will take time to implement, and in any case will continue to be imperfect, more needs to be done to prepare young witnesses for court appearances and in particular, for cross examination. The most emotionally damaging aspects of cross examination, that is not being believed and being accused of lying, seems to have less impact on young witnesses when they are prepared that this may occur and they understand that this
is part of the lawyer’s job and typical of their questioning. More extensive preparation for court than currently provided could include teaching children strategies for answering suggestive, or complex questions, and rehearsing ways of communicating that they have not understood a particular question (Zajac et al., 2012). Preparation for court programmes elsewhere use role play, or a ‘teddy bear court’ to familiarise young witnesses with court processes and to practice, for example, responding to confusing questions and asking for breaks, using a benign topic such as what they ate yesterday. There is some evidence that a brief intervention involving practice and feedback with cross-examination questions can lead to less changes to direct-examination responses and an increase in accuracy of reporting (Righarts, O’Neill, & Zajac, 2013).

There is also scope for an increase in other support systems such as that from sexual abuse counselling agencies, to contribute to the goals of enhancing the participation of young people in the justice system and assisting them to maintain wellbeing. The findings of the current study indicate that greater support for parents in the form of peer or other support would also be beneficial and that in failing to adequately addressing parents’ needs, a significant opportunity to better support children is being overlooked. Additionally, an online education for court resource which young witnesses and caregivers could access as needed would likely assist with the fears and uncertainty that they experience in the pre-trial delay period. An extention of the present court education and victim support services currently available to children and their supporting family members by giving access to victim advisors from the time charges are laid (as has recently been introduced in United Kingdom) would also help to address the sense of being “left in the dark” during this period.

**What Future Research is Needed in New Zealand?**

Although there is a significant body of literature that suggests aspects of the court process that are likely to be most distressing to young witnesses, there is a paucity of research in New Zealand and elsewhere which involves young witnesses in this conversation. The decisions about changes to court processes that affect young witnesses are typically made by those at the legislative level or by judges in court. There is a disconnect between the young people and their families who experience courts and the people who make decisions about how to best protect their wellbeing. Although these decisions are in general made in an informed way by consulting with professionals who are stakeholders, there is still some level of assumption. This was highlighted in the present research by the protocol initially
suggesting that young witnesses meet the judge and lawyers in the courtroom. As a result of young witnesses’ comments about this to victim advisors that this was uncomfortable for them, a change was made to the practice wherein judges now usually meet the young witness in the CCTV room.

It seems desirable for there to be a process of monitoring the experiences of young witnesses and providing a vehicle for their opinions and experiences to be provided to decision makers so that they can hear from the people who the changes are intended to affect, and those who work most closely with young witnesses. Future research in New Zealand should however allow for more direct reports of the experiences of young witnesses, told by them, rather than by parents or professionals. To achieve this end, problems of recruitment of young people would need to be overcome, possibly by allowing a greater period of data collection, from a larger number of regions throughout the country.

A comprehensive evaluation of the impact of innovations should evaluate the impact of such measures on young witnesses. Ideally this would involve a comparison of young witness experience with and without the innovations. The sexual violence courts provide a perfect opportunity for such research to take place in a methodical manner with the likelihood of there being enough participants to create an in-depth piece of research. Such research could provide a clear indication of the extent to which the targets of these changes – the wellbeing of young witnesses and the quality of the evidence that they are able to provide – are being met. Additionally it could provide opportunity to understand where gaps exist in addressing these issues and indicate future innovations that could be useful.

Hanna and colleagues (2010) noted that although their research was supported by government ministries and agencies, access to basic data regarding the treatment of child witnesses in New Zealand courts was a challenge. They stated they hoped that their research would “result in the systematic monitoring of the status of child witnesses in the system, not least to enable effective ongoing evaluation of any improved or new measures” (p. 6). There is still a need for systems of data gathering with the express purpose of keeping track of such information. This would allow for ongoing monitoring and evaluation of the wellbeing of young witnesses and the efficacy of current systems and innovations.

The parent experience was an unintentional area of investigation in the current research. Although not a surprising finding in hindsight, this is not has been focussed on in
prior research. There is a need for future research which seeks to identify ways to better support parents so that they are able to better support their children.

**Implications for Clinical Psychology**

Psychological research has formed the backbone of understandings of young witnesses. As previously discussed, it is clear that if those responsible for such research wish to not only contribute to a knowledge base, but also to see that knowledge used to better the status quo for young witnesses in courts, then, a collaborative approach is needed.

In offering a better understanding of young witnesses and their families, this research suggests a number of implications for psychologists working clinically with young people who attend court as witnesses. There is a need for cognisance of the significant and complex impact of court involvement on the wellbeing of young witnesses and their families, and the varying and complex needs of these families. Psychologists should be aware of the likely need to refer parents for additional support be it in regards to their own mental health, relationships, parenting or practical (e.g., financial) needs.

**Strengths and Limitations of the Research**

Qualitative research with young witnesses and their families has not previously been conducted in New Zealand. This research therefore represents an opportunity for those making decisions regarding court processes involving young witnesses, to better understand their experience and consider their perspective in change which affects them so directly and powerfully. The sample size of Study Two was large, given that its focus was the small New Zealand town of Whangarei. The participant group represented the majority of practitioners involved in trials with young witnesses and therefore provides very valuable feedback as to the reception of the Whangarei Young Witness Pilot Protocol among these professional groups.

The current study has some limitations. Most notably, it was extremely difficult to recruit young people. Difficulty with recruitment reflects the experience of previous research which notes the difficulty in obtaining interviews with young witnesses (Applegate & Mawby, 2004; Hayes et al., 2011; Plotnikoff & Woolfson, 2004, 2009). Previous researchers have contemplated the possible bias in such research, hypothesising that it may not attract those who have had particularly bad court experiences as they do not have the emotional capacity to discuss their experiences, or alternatively, it may attract those who have had
particularly bad experiences, and want the opportunity to talk about these. Although neither bias was evident in this study, it is not possible to say to what extent the sample is representative.

In the current study it was evident that recruiters used their knowledge of witnesses and their families to approach those who they thought would wish to participate and would not be overly emotionally distressed by participation. Future research should develop methods of recruitment whereby all witnesses are offered the opportunity to participate, and recruiters are well informed of the ethical considerations of the research design including offering many opportunities to dissent from participation and protection of the safety of participants.

The experience of recruitment in this project suggests that even where young witnesses are offered the opportunity to talk, they are reluctant, or their parents are not willing for them to participate. Anecdotal evidence suggests that this does not reflect an ambivalence or disinterest but rather it reflects just how difficult the process is. Ironically, it is possible that the more work that is done to create a less hostile, confusing and traumatic court process for young participants, the more willing they may be to discuss their experiences.

Because parent participants outnumbered the few young witnesses, much of the understanding of young witness experience in the current study was shaped by parent perspective of young witnesses. Interesting, this did incidentally mean that the parent perspective became an unexpectedly important part of the findings and suggested an area worthy of future investigation.

Although the parent and young witness sample was small, it is notable that there was a lot of consistency in the themes that families talked about indicating that it is unlikely that a very large sample is necessary to achieve data saturation. It would be useful if future research could reflect on the extent to which its sample is representative in terms court related factors such as length of length of delay, outcomes in terms of verdict and sentencing, time spent in court, and length of cross examination.

Because of the small scope of the pilot, and its infancy at the time of the current research, this research was limited in the questions that it could pose. By adopting general questions about the experiences of young witnesses and their families, and the perspectives of
professionals, the current studies allowed for broad enquiry. It was too early in implementation of the Whangarei Young Witness Pilot Protocol to interview children and families about their experience of the protocol in particular, or to compare the experiences of those who did experience trials with aspects of protocol implemented with those who did not.

**Conclusion**

Young complainant witnesses, particularly those involved in trials for sexual offences have complex needs. Research, including that conducted here, identifies an ongoing failure of the justice system to sufficiently recognise the vulnerability of young witnesses and to adequately protect them, particularly those who are complainants of alleged sexual offences. The Whangarei Young Witness Pilot Protocol, establishment of two specialist sexual violence courts and the perspectives of practitioners in the current study, indicate that the current climate in New Zealand is supportive of positive change for young witness.
APPENDICES
Appendix A

Whangarei Young Witness Pilot Protocol
Whangarei Young Witness Pilot Protocol

1. Where possible we want the child/vulnerable witnesses to view their evidential DVD prior to the trial starting.

   We considered that it was totally inappropriate for a young child/vulnerable witness to have to watch a DVD interview which can sometimes be very long and then have to face questioning first from the prosecutor and then cross-examination.

2. The child/vulnerable witness is not brought to the Court until required to give viva voce evidence.

3. In practice we try and ensure the child/vulnerable witness is there about half an hour before his or her evidence starts simply so he or she can be settled and become comfortable with the CCTV room.

   In this regard we are attempting to make the CCTV room child friendly and the Court has agreed to spend some money painting the CCTV room and we have other plans for decoration.

4. Experience shows that children’s attention span is somewhat shorter than an adults. Research has also established that even teenagers need frequent breaks.

   Overseas experience shows that the breaks need not be long and indeed two or three minutes is acceptable. During the short breaks it is not necessary to adjourn the Court but every hour a longer break is taken.

   Research shows that children do not function well in the afternoon and accordingly we do not allow children to commence giving evidence in the afternoon and will not permit evidence to go beyond 3pm if the child/vulnerable witness is giving evidence.

5. Before the trial starts the child/vulnerable witness is brought into the courtroom or on the advice of the victims’ advisor the judge and counsel go into the CCTV room, he or she is formally introduced to the prosecutor and defence counsel. Then, depending on the age of the child/vulnerable witness, the Judge explains the CCTV equipment, shows the child/vulnerable witness what the Judge can see. For a young child, we will often demonstrate the equipment. We ensure the child/vulnerable witness understands that he or she can see the Judge at all times, that the Judge can see him or her and that all is required if the child/vulnerable witness has concerns or worries is to say something to the Judge.

6. Research has clearly demonstrated that children will not give best evidence if asked complicated or tagged questions. In fact any question which suggests the answer is likely to either confuse the child/vulnerable witness or result in unreliable evidence.

   Tagged questions such as “Your father didn't touch her did he?” may tend to confuse witnesses or cause them to agree with the question when they might not without the tag.
Similar concerns arise with questions containing a double negative, questions which contain two or more propositions and where questions suggest the answer. Judges will be alert to these possibilities and will intervene where appropriate.

7. Until recently the common practice has been to call medical evidence and counter intuitive evidence towards the end of the trial. We are encouraging prosecutors in Whangarei to call counter intuitive evidence first followed by medical evidence if any. By adopting this approach the jury is educated before hearing the child/vulnerable witness’s evidence. This ensures that when the child/vulnerable witness is asked why they did not complain earlier or why they continued to associate with the abuser, the jury understands that this is not necessarily as significant as it may first appear.

Our concern has always been if the jury hears the child’s evidence first, by the time the counter-intuitive and medical evidence is heard, views have already been formed. Views once formed are difficult to change.

We intend to convene a conference at least a week before the trial. Counsel will be asked to indicate the general areas they intend to cover with the child, e.g. dead end disclosure, delay, continued association with the abuser etc. The purpose of this is to ensure the expert covers the relevant areas but avoids areas that will not be relevant to the trial (The CA have made it clear that counter-intuitive evidence should be tailored to the issues)

Counsel will be warned that if they stray into areas not signalled at the pre-trial conference they will risk either being stopped or having the expert re-called.

This measure is being taken because of the Crown Solicitor’s concern that if counter-intuitive evidence and/or medical evidence is called first defence counsel will sometimes try to “blind-side” the Crown. Apparently this has happened on one or two occasions.
Appendix B

Study One: Participant Information Sheets
PARTICIPANT INFORMATION SHEET

For parents of young person complainant witnesses

Project Title:

Experiences of young persons as complainant witnesses in criminal court trials for sexual abuse

Principal Researcher: Isabel Randell
Supervisor: Professor Fred Seymour

Dear Parent,

My name is Isabel Randell and I am a Clinical Psychology Doctoral student at The University of Auckland, School of Psychology.

You and your child are invited to take part in a study that Professor Fred Seymour (Clinical Psychologist) and I are currently carrying out, looking at the experiences of child and adolescent sexual abuse/assault complainant witnesses within the NZ court system. We are interested in the perspectives and experiences of both young people and their parents. The results of this research will make an important contribution to knowledge about the kinds of changes that would improve the experience of participating in court for young people and their supporters.

About the Study

Research shows that participating in court as a complainant witness, although sometimes positive, is often very distressing for young people and can be stressful for their parents. Although many changes have been made to improve court processes for young people in New Zealand, there are still many possible areas for improvement, to reduce the negative impact for young people and their families.

The aim of this study is to better understand experiences of both young person complainant witnesses involved in criminal court trials for sexual offences and their parents. This includes experience of the trial itself and support during this time. We are interested in which aspects of the process are experienced as difficult and/or stressful and which aspects of the process are experienced as positive and/or supportive. In addition, we are interested in your ideas about changes to the process that would be helpful to others.
What will participation involve?

Because your child has recently participated as a complainant witness in a criminal court trial, both you and your child are invited to participate in this research by being interviewed. You do not have to participate in this study, it is your choice, and you may withdraw at any time up until two weeks after being interviewed.

You may have friend or family/whanau support to help you understand this study. If you are happy to be contacted, then we will contact you to discuss the research with you, answer any questions you have and discuss with you whether you wish to participate. If you agree to participate, we will ask you and/or your child to sign a consent form and you and/or your child would be interviewed individually in person about your/their experiences of the court process.

We ask that children be given the opportunity to choose where they want the interviews to take place, so parents may need to provide a room at home that allows your child to speak confidentially. Both you and your child will be offered the opportunity to have a support person present in the interview with them. However, we ask that if young people wish to be interviewed alone then parents respect this choice.

Interviews will be about an hour long and we will do these at a time and place to suit you. Each interview will be audio recorded and the recordings will later be transcribed. This transcript will be coded with no identifying details. You/your child may stop the interview or ask to have the audio recorder switched off at any time and do not have to answer all the questions.

At the conclusion of the study, a summary of the findings will be made available to you if you are interested. You can request this on your consent form or by contacting Isabel Randell any time up to six months following your interview.

Storage of information

Recordings, transcripts and any other information related to you will be kept in a locked filing cabinet at the University of Auckland for six years, and will then be securely destroyed.

Will information be confidential?

Yes. All the information you provide will remain confidential within the research team. In addition, a University approved transcriber (who types up the interviews) will be required to sign a confidentiality agreement. Parts of what you and/or your child say may be quoted in research reports or presentations, however no material that could personally identify you will be used in any reports of this study.

Right to Withdraw from Participation

You are free to withdraw from the project at any time without giving reasons, up until two weeks after the interview. In this case please contact a member of the research team, and any documents related to you would be shredded.
Will I/my child find talking about the court experience upsetting?

You/your child will not be asked about the sexual assault or sexual abuse incident(s). You will only be asked to talk about your experience of the trial process (before, during and after the trial). Usually people find these interviews to be a positive and helpful experience. However, in the unlikely event that talking about the experience is really upsetting for you/your child, we can stop the interview. We will offer information and referral to services that will be able to offer support if needed. These services are HELP Auckland and the Miriam Centre in Whangarei.

If you or your child told us about anything that made us concerned about the safety of you/your child, or anyone else, we would be obliged to report this to a relevant authority or service.

What are the benefits of participating?

We hope that this research will contribute to changes which improve the experience of participating in court for young people and their supporters, and that you/your child will find participating to be a positive experience. You will be given a $25 voucher in acknowledgement of your participation.

Thank you for making the time to read about, and consider taking part in this study.

If you have any questions or would like to discuss participation, please contact me (Isabel):

**Isabel Randell**, 0220628068, iran005@aucklanduni.ac.nz, School of Psychology (Tamaki Campus), The University of Auckland, Private Bag 92019, Auckland.

For any other queries you may contact:

**Professor Fred Seymour**, PhD, Clinical Psychologist, (09) 923 8414, f.seymour@auckland.ac.nz, School of Psychology (Tamaki Campus), The University of Auckland, Private Bag 92019, Auckland.

**Professor William Hayward**, (09) 923 8516, w.hayward@auckland.ac.nz, School of Psychology, The University of Auckland, Private Bag 92019, Auckland.

For any queries regarding ethical concerns you may contact the Chair, The University of Auckland Human Participants Ethics Committee, The University of Auckland, Research Office, Private Bag 92019, Auckland 1142. Telephone 09 3737599 extn. 87830/83761. Email: humanethics@auckland.ac.nz.

APPROVED BY THE UNIVERSITY OF AUCKLAND HUMAN PARTICIPANTS ETHICS COMMITTEE ON 04/12/2014 for 3 years, Reference Number 013069.
PARTICIPANT INFORMATION SHEET

For adolescents

Project Title:

Experiences of young persons as complainant witnesses in criminal court trials for sexual abuse

Principal Researcher: Isabel Randell
Supervisor: Professor Fred Seymour

Hi,

My name is Isabel Randell and I am a Clinical Psychology Doctoral student at The University of Auckland, School of Psychology. Professor Fred Seymour (Clinical Psychologist) and I are currently carrying out looking at the experiences of child and adolescent sexual abuse/assault complainant witnesses within the NZ court system.

We want to help young witnesses in the future by finding out what YOU think. A member of our team would like to talk to you.

About the Study

We know that being a young witness in court can sometimes be a good experience but is often upsetting and really stressful. Even though lots of changes have been made to improve court processes for young people in New Zealand, there are still lots of things that the courts could do better.

The aim of this study is to better understand your experience, and the experiences of other young witnesses.

We would like to know about:

- How you felt about being a witness
- What and who was helpful or supportive for you
- What was difficult or stressful
- What you think would make being the court process better for other young people
What will participation involve?

Because you have recently been a complainant witness in a criminal court trial, you are invited to take part in this research by being interviewed. You do not have to participate, it is your choice.

You can have friend, parent or family/whanau support to help you understand this study. If you are happy to be contacted, we will give you a call to talk about the research with you, answer any questions you have and talk about whether you want to take part. If you do want to take part you need to sign a consent form. Your parent needs to sign a consent form too if you are under 16.

We would interview you at a time and place that suits you. It is up to you whether you want to be interviewed by yourself or whether you want to have a support person sit in on the interview.

Interviews will be about 1 hour long. They will be audio recorded. You can stop the interview or turn off the recording at any time and you do not have to answer all the questions.

If you would like to know what we found out from talking to you and other participants, we can send you a summary when we have finished. You can ask for this on your consent form or by contacting Isabel Randell any time up to six months following your interview.

Storage of information

Your recording and any other information will be kept in a locked filing cabinet at the University of Auckland for six years, and will then be destroyed.

Will information be confidential?

Yes. All the information you provide will remain confidential. Parts of what you say may be quoted in research reports or presentations, however we will make sure that there is nothing in any reports that could identify you. For example, we will use no names of people or places.

Right to withdraw from participation

You can decide not to be part of the project at any time without giving reasons, up until two weeks after the interview.

What if I find talking about this upsetting?

You will not be asked about the sexual assault(s) or abuse. You will only be asked to talk about your experience of the trial process. Usually people find these interviews to be a positive and helpful experience. However, in the unlikely event that talking about the experience is really upsetting for you, we can stop the interview. We will give you information about and referral to services that will be
able to offer support to you if needed. These services are HELP Auckland and the Miriam Centre in Whangarei.

If you told us about anything that made us worried about the safety of you or someone else we would have to report this to the appropriate service.

**What are the benefits of participating?**

We hope that this research will contribute to changes which improve the experience of participating in court for young people and their supporters, and that you will find participating to be a positive experience. You will be given a $25 voucher to thank you for your participation.

Thank you for taking the time to read about, and consider taking part in this study.

If you have any questions or would like to discuss participation, please contact me (Isabel):

**Isabel Randell, 0220628068, iran005@aucklanduni.ac.nz, School of Psychology (Tamaki Campus), The University of Auckland, Private Bag 92019, Auckland.**

For any other queries you may contact:

**Professor Fred Seymour, PhD, Clinical Psychologist, (09) 373 7599 x 88414, f.seymour@auckland.ac.nz, School of Psychology (Tamaki Campus), The University of Auckland, Private Bag 92019, Auckland.**

**Professor William Hayward, (09) 923 8516, w.hayward@auckland.ac.nz, School of Psychology, The University of Auckland, Private Bag 92019, Auckland.**

For any queries regarding ethical concerns you may contact the Chair, The University of Auckland Human Participants Ethics Committee, The University of Auckland, Research Office, Private Bag 92019, Auckland 1142. Telephone 09 3737599 extn. 87830/83761. Email: humanethics@auckland.ac.nz.

APPROVED BY THE UNIVERSITY OF AUCKLAND HUMAN PARTICIPANTS ETHICS COMMITTEE ON 04/12/2014 for 3 years, Reference Number 013069.
PARTICIPANT INFORMATION SHEET
For Children

Principal Researcher: Isabel Randell
Supervisor: Professor Fred Seymour

Hi,

My name is Isabel Randell and I am studying Psychology at the University Auckland.

We want to help young witnesses in the future by finding out what YOU think. A member of our team would like to talk to you.

It is your choice if you would like to take part.

If you do want to take part, we will ask you about

- How you felt about being a witness
- What and who was helpful to you
- What was difficult or stressful
- What you think would make the court process better for other children

We WON’T ask you about the offence

The interview will be about 1 hour and we will audio record our talk. You can choose to have someone with you if you want. You can stop the talk at any time, or stop the recording. You can decide not to take part at any time without giving a reason. We will not use your name in our report. If you told us about anything that made us worried about the safety of you or someone else we would have to talk to someone else about this. You will be given a $25 voucher to thank you for your participation.

If you would like to know what we found out from talking to you and the other children in this study, we can send you a summary when we have finished. You can ask for this on your assent form or by contacting Isabel Randell any time up to six months after your interview.
You can talk to an adult to help you understand the study more and think about it together.

If you are interested we will give you a call to talk about the study more and answer your questions.

If you would like more information please contact me (Isabel):

**Isabel Randell,** 0220628068, iran005@aucklanduni.ac.nz, School of Psychology (Tamaki Campus), The University of Auckland, Private Bag 92019, Auckland.

For any other queries you may contact:

**Professor Fred Seymour,** PhD, Clinical Psychologist, (09) 373 7599 x 88414, f.seymour@auckland.ac.nz, School of Psychology (Tamaki Campus), The University of Auckland, Private Bag 92019, Auckland.

**Professor William Hayward,** (09) 923 8516, w.hayward@auckland.ac.nz, School of Psychology, The University of Auckland, Private Bag 92019, Auckland.

For any queries regarding ethical concerns you may contact the Chair, The University of Auckland Human Participants Ethics Committee, The University of Auckland, Research Office, Private Bag 92019, Auckland 1142. Telephone 09 3737599 extn. 87830/83761. Email: humanethics@auckland.ac.nz.

**APPROVED BY THE UNIVERSITY OF AUCKLAND HUMAN PARTICIPANTS ETHICS COMMITTEE ON 04/12/2014 for 3 years, Reference Number 013069.**
Appendix C

Study One: Permission to Contact Form
PERMISSION TO CONTACT FORM

Court experiences of sexual assault and sexual abuse witnesses

A research team led by Professor Fred Seymour at The University of Auckland is currently undertaking a study looking at the experiences of complainant witnesses in sexual assault and sexual abuse trials in the NZ court system. The study hopes to better understand these experiences through interviews with:

- child and young person complainant witnesses (aged 17 and younger)
- parents of young person complainant witnesses

The aim of this project is to better understand the experiences of these complainant witnesses, and to contribute to evidence which will support positive changes in legislation and court processes.

The research team would like to have permission to contact you/your child to discuss the research further, answer any questions you have and to ask whether you would be interested in taking part. You/your child’s participation will consist of one interview conducted by a member of the research team lasting approximately one hour. The interviews will take place at a time and place of your convenience.

If you agree to be contacted by the research team, you may still decline participation when they contact you.

If you are happy to be contacted please provide the following details:

Name: ____________________________

Home Phone: ________________________

Mobile Phone: _______________________

E-mail: ____________________________

Address: ____________________________

I prefer to be contacted by: (please circle preference)

- Phone
- Email

I am: (please tick)

- Young person complainant witness (aged 17 and younger)
- Parent of young person complainant witness

Signed: ____________________________ Date: ______________

Name: ____________________________ (please print clearly)

If you would like to discuss participation, please contact Isabel Randell, 0220628068, iran005@aucklanduni.ac.nz.

APPROVED BY THE UNIVERSITY OF AUCKLAND HUMAN PARTICIPANTS ETHICS COMMITTEE ON 04/12/2014 for 3 years, Reference Number 013069.
Appendix D

Study One: Consent and Assent Forms
CONSENT FORM
For participants aged 16 or older – COMPLAINANT WITNESSES
(This consent form will be stored for a period of six years)

Project: Experiences of young persons as complainant witnesses in criminal court trials for sexual abuse
Principal Researcher: Isabel Randell
Supervisor: Fred Seymour

I have read and I understand the Participant Information Sheet for the study designed to better understand the experiences of sexual assault and sexual abuse complainant witnesses. I understand the study, and have had the opportunity to ask questions and had them answered to my satisfaction. I have had time to consider whether to take part. I understand that participation involves being interviewed for approximately one hour and that taking part in this study is voluntary (my choice).

- I agree to take part in this research.
- I understand that I am free to withdraw my information at any time up to two weeks after participation without giving a reason.
- I agree that my interview will be audio recorded. I understand that I can stop the interview, or have the audio recorder turned off at any point.
- I understand that a transcriber who has agreed to a confidentiality agreement will transcribe the audio recording of my interview. This transcript will be coded with no identifying details.
- I understand that my participation in this study is confidential and that no material that could identify me will be used in any reports on this study.
- I understand that this consent form will be stored separately from my interview data in a locked filing cabinet in Professor Fred Seymour’s office at the University of Auckland for a period of six years and then destroyed.
- I understand that data will be used in a doctoral thesis, reports, presentations and peer reviewed journal articles. I understand that my identity will be protected.
- I understand that if I disclose any issues related to the safety of myself or others, the researchers are obligated to report this to the relevant authorities or services.

- I am aware that I should not participate in the study if I feel that participation is likely to cause me significant distress. I am aware that referral to a supportive service can be made if I am experiencing distress.

- I understand that I will be offered a $25 voucher in acknowledgement of my participation.

- I wish/ do not wish to receive a summary of the findings [please cross out one option].

Name: ____________________________________________

Contact details (only required if you would like a summary of findings):

____________________________________________________

Signed: ____________________________________________ Date: __________________

APPROVED BY THE UNIVERSITY OF AUCKLAND HUMAN PARTICIPANTS ETHICS COMMITTEE ON 04/12/2014 for 3 years, Reference Number 013069.
CONSENT FORM
For participants – PARENTS OF WITNESSES
(This consent form will be stored for a period of six years)

Project: Experiences of young persons as complainant witnesses in criminal court trials for sexual abuse
Principal Researcher: Isabel Randell
Supervisor: Fred Seymour

I have read and I understand the Participant Information Sheet for the study designed to better understand the experiences of sexual assault and sexual abuse complainant witnesses. I understand the study, and have had the opportunity to ask questions and had them answered to my satisfaction.
I have had time to consider whether to take part. I understand that participation involves being interviewed for approximately one hour and that if I think that the interview will be significantly distressing, then I should consider not participating. I understand taking part in this study is voluntary (my choice).

- I agree to take part in this research.
- I understand that I am free to withdraw my information at any time up to two weeks after participation without giving a reason.
- I agree that my interview will be audio recorded. I understand that I can stop the interview, or have the audio recorder turned off at any point.
- I understand that a transcriber who has agreed to a confidentiality agreement will transcribe the audio recording of my interview. This transcript will be coded with no identifying details.
- I understand that my participation in this study is confidential and that no material that could identify me will be used in any reports on this study.
- I understand that this consent form will be stored separately from my interview data in a locked filing cabinet in Professor Fred Seymour’s office at the University of Auckland for a period of six years and then destroyed.
• I understand that data will be used in a doctoral thesis, reports, presentations and peer reviewed journal articles. I understand that my identity will be protected.

• I understand that if I disclose any issues related to the safety of myself or others, the researchers are obligated to report this to the relevant authorities or services.

• I am aware that I should not participate in the study if I feel that participation is likely to cause me significant distress. I am aware that referral to a supportive service can be made if I am experiencing distress.

• I understand that I will be offered a $25 voucher in acknowledgement of my participation.

• I wish/ do not wish to receive a summary of the findings [please cross out one option].

Name: ____________________________________________

Contact details (only required if you would like a summary of findings):

____________________________________________________________________________________

Signed: _______________________________ Date: ____________________________

APPROVED BY THE UNIVERSITY OF AUCKLAND HUMAN PARTICIPANTS ETHICS COMMITTEE ON 04/12/2014 for 3 years, Reference Number 013069.
CONSENT FORM
For parents of participants aged under 16
(This consent form will be stored for a period of six years)

Project: Experiences of young persons as complainant witnesses in criminal court trials for sexual abuse
Principal Researcher: Isabel Randell
Supervisor: Fred Seymour

I have read and I understand the Participant Information Sheet for the study designed to better understand the experiences of sexual assault and sexual abuse complainant witnesses. I understand the study, and have had the opportunity to ask questions and had them answered to my satisfaction.
I have had time to consider whether I agree to my child taking part. I understand that my child’s taking part in this study is voluntary and involves them being interviewed for approximately one hour.
I understand that if I think this will be significantly distressing, I should consider non-participation.

- I agree for my child __________________ (name) to take part in this research. I am the legal guardian of this child.
- I understand that I am and/or my child is free to withdraw my child’s information at any time up to two weeks after participation without giving a reason.
- I agree that my child’s interview will be audio recorded. I understand that my child can stop the interview, or have the audio recorder turned off at any point.
- I understand that a transcriber who has agreed to a confidentiality agreement will transcribe the audio recording of my interview. This transcript will be coded with no identifying details.
- I understand that my child’s participation in this study is confidential and that no material that could identify my child will be used in any reports on this study.
- I understand that this consent form will be stored separately from my child’s interview data in a locked filing cabinet in Professor Fred Seymour’s office at the University of Auckland for a period of six years and then destroyed.
• I understand that data will be used in a doctoral thesis, reports, presentations and peer reviewed journal articles. I understand that my identity will be protected.

• I understand that if my child discloses any issues related to the safety of my child or any other people, the researchers are obligated to report this to the relevant authorities or services.

• I am aware that if I feel that participation is likely to cause my child significant distress I should consider their non-participation. I am aware that referral to a supportive service can be made if my child is experiencing distress.

• I understand that my child will be offered a $25 voucher in acknowledgement of their participation.

• I wish/ do not wish to receive a summary of the findings [please cross out one option].

Name: ____________________________________________

Contact details (only required if you would like a summary of findings):

__________________________________________________________________________

Signed: ___________________________ Date: ________________

APPROVED BY THE UNIVERSITY OF AUCKLAND HUMAN PARTICIPANTS ETHICS COMMITTEE ON 04/12/2014 for 3 years, Reference Number 013069.
ASSENT FORM
For participants aged under 16
(This consent form will be stored for a period of six years)

Project: Experiences of young persons as complainant witnesses in criminal court trials for sexual abuse
Principal Researcher: Isabel Randell
Supervisor: Fred Seymour

I have read and I understand the Participant Information Sheet for the study about witnesses in the Court. I understand the study, and have had the chance to ask questions and had them answered in a way that I understand. I have had time to think about whether to take part. I understand that taking part in this study is my choice and means that I will be interviewed for about one hour. I understand that my parent has given consent for me to take part in this research. An adult has helped me understand this assent form if I wanted help.

- I agree to take part in this research.
- I understand that I can decide not to be involved in the research at any time up to two weeks after my interview without giving a reason.
- I agree that my interview will be audio recorded. I understand that I can stop the interview, or have the audio recorder turned off at any point.
- I understand that a person who has agreed to a confidentiality agreement will transcribe the audio recording of my interview. This transcript will be coded with no identifying details.
- I understand that my participation in this study is confidential (private) and that no identifying information (for example, names of people or places) will be used in any reports on this study.
- I understand that this assent form will be stored separately from my interview data in a locked filing cabinet in Professor Fred Seymour’s office at the University of Auckland for a six years and then destroyed.
- I understand that data will be used in a doctoral thesis, reports, presentations and peer reviewed journal articles. I understand that my identity will be protected.
- I understand that if I talk about something that makes the interviewer worried about the safety of me or others, the researchers must report this to the relevant authorities or services.

- I understand that if I think it will be very upsetting for me to talk about my court experience then I should not participate, and that if I am very upset then I can be referred to support services.

- I understand that I will be offered a $25 voucher for my participation.

- I wish/ do not wish to receive a summary of the findings [please cross out one option].

Name: __________________________________________________________

Contact details (only required if you would like a summary of findings):

____________________________________________________________________

Signed: ___________________________ Date: _________________________

APPROVED BY THE UNIVERSITY OF AUCKLAND HUMAN PARTICIPANTS ETHICS COMMITTEE ON 04/12/2014 for 3 years, Reference Number 013069.
Appendix E

Study One: Interview Schedules
Semi-Structured Interview Schedules

Young People

Before you went to court how did you feel about it? Why?

Can you tell me about your experiences of the court process?
Probes may include:
What were the best/worst things about it?
What were the most/least stressful things about it?
What things made a difference to how stressed you felt?
- What things helped with the stress?
- What things made the stress worse?
How did you manage the stress?
Were there things outside of the court process that made the court process more difficult?
What kind of impact did being involved in the court process have on you at the time?

How did you find giving evidence?
Probes may include:
How did you feel when you were answering questions?
What were the best/ least stressful things about it?
What were the worst/ most stressful things about it?
How easy or hard to understand did you find the questions that were asked?
To what extent do you feel you were able to tell the court everything you wanted to say?
Where were you when you gave evidence? How was that?
Were you offered a break? If no, would you have liked a break?
How did you find the lawyer on your side/Crown Prosecutor?
How did you find the defence lawyer?
Did someone help you prepare to give evidence? Who? Was that helpful?

Did you understand what was happening throughout the trial?
Probes may include:
Who helped you understand?
- Did the Police OC keep you and your family informed about the progress of the case.

What support did you have in doing all this?
Probes may include:
What sort of things helped you to prepare before you went to court?
Were you told about any support outside of the Criminal Justice process?
Did anyone help you to find other support?
Was there any other help or information that you would have liked?
Were there things outside of the court process that were supportive for you?
Did anyone help by explaining about court and answering your questions? Who?
Court services for victims - Victim Advisor.
- If not, why not?
- If yes, how was that for you?
- Did a Victim Advisor contact you and offer their services?
- Did you accept this?
- Did you receive this?
- Did this continue after you gave evidence?
- Did the VA explain the court process to you and your family?
- Did they make sure that you understood what would happen on the day when you gave evidence?
- Did someone inform you of what time the defendant would be appearing in court?

Did you have “Education for court” programme – including courtroom visit?
- If no – why not?
- If yes - how was that for you? Number of visits?
- How long before the trial was the visit?
- Was that the right time?
- Who was there?
- What did you see/do?

Police Officer in Charge (OC)
- Did the Police OC ask you whether you would like to make a victim impact statement? If so, did someone help you write this? How did you find that?
- Did you have the opportunity to review your witness statement including forensic interview? When did that happen? How was that for you?
- Did the Police OC explain options regarding giving evidence? Did you have choice in terms of ways of giving evidence in court?

Crown Prosecutor
- Did you meet the prosecutor? What was that like?
- Did you meet with the prosecutor prior to the trial to discuss what will happen when you were giving evidence?

Court processes:
- Was a support person offered/present during the trial?
- Who met you at court?
- How did you enter the court? Did you feel secure?
- What was your experience of waiting to give evidence? (Probe for privacy, protection from defendant and family). Where did you wait? Did you see the defendant or their family at all?
- Were you given the option of reading your victim impact statement or having someone else read it for you?
- Did you feel safe and secure? Did someone talk to you about this?
- Did someone talk to you about practical and security needs?
- Did someone talk to you about the outcome of the trial? Who was that? How was that?

How much do you feel you knew what was going on throughout the trial?
Probes may include:
  What was your role? (Probe for understanding of this).
  What were the roles of others?

How did you feel once it was all over?

How do you feel about it all now?

Looking back, was there anything good/positive about being a witness?

What kind of impact do you think this experience has had on you?

What advice would you have for people who work in the courts to make the process better for you?
  Probes may include:
    Is there anything that you would change about how young witnesses are:
    - treated?
    - supported?

What advice would you have for another young person who is going to go through this process?

Would you be willing to give evidence in another case in the future?

Why did you opt in to do this research?
Parents/Caregivers

Before your child went to court how did you and your child feel about it? Why?

Can you tell me about your experiences of the court process?

Can you tell me about your child’s experiences of the court process?
Probes may include:
What were the best things about it? For you? For your child?
What were the worst things about it? For you? For your child?
What were the least stressful things about it? For you? For your child?
What were the most stressful things about it? For you? For your child?
What things made a difference to how stressed you/your child felt?
  - What things helped with the stress?
  - What things made the stress worse?
  - How did you manage the stress?
Were there things outside of the court process that made the court process more difficult? For you? For your child?
What kind of impact did being involved in the court process have on you at the time?
What kind of impact did being involved in the court process have on your child at the time?

How do you think giving evidence was for your child?
Probes may include:
What were the best/ least stressful things about it for them?
What were the worst/ most stressful things about it for them?
How easy or hard did they find the questions that were asked when you were giving evidence to understand?
To what extent do you feel they were able to tell the court everything they wanted to say?
Where were they when they gave evidence? How was that for them?
Were they offered a break? If no, would you have liked them to be offered a break?
How did you/they find the lawyer on your side/Crown Prosecutor?
How did you/they find the defence lawyer?
Did someone help them prepare to give evidence? Who? Was that helpful?

Did you and your child understand what was happening throughout the trial?
Probes may include:
Who helped you/them understand?
  - Did the Police OC keep you and your child informed about the progress of the case.
What support did you have in doing all this?
Probes may include:
What sort of things helped you and/or your child prepare before you went to court?
Did anyone help by explaining about court and answer your questions? Who?
Were you told about any support outside of the Criminal Justice process?
Did anyone help you to find other support?
Was there any other help or information that you/your child would have liked?
Were there things outside of the court process that were supportive:
  - for you?
  - for your child?
Court services for victims - Victim Advisor.
  - If not, why not?
  - If yes, how was that for you?
  - Did a Victim Advisor contact you/your child and offer their services?
  - Did you accept this?
  - Did your child receive this?
  - Did this continue after your child gave evidence?
  - Did the Victim Advisor explain the court process to you and your child?
  - Did they make sure that they understood what would happen on the day when they gave evidence?
  - Did someone inform you of what time the person of the defendant would be appearing in court?
Did your child have “Education for court” programme – including courtroom visit?
  - If no – why not?
  - If yes - how was that for them? Number of visits?
  - How long before the trial was the visit?
  - Was that the right time?
  - Who was there?
  - What did they see/do?
Police Officer in Charge (OC)
  - Did the Police OC ask your child whether they would like to make a victim impact statement? If so, did someone help them write this? How did they find that?
  - Did your child have the opportunity to review their witness statement including forensic interview? When did that happen? How was that for them?
  - Did the Police OC explain options regarding giving evidence? Did your child have choice in terms of ways of giving evidence in court?
Crown Prosecutor
  - Did you and/or your child meet the prosecutor? What was that like?
  - Did your child meet with the prosecutor prior to the trial to discuss what will happen when they were giving evidence?
Court processes:
  - Was a support person offered/present during the trial for your child?
- Who met your child at court?
- How did your child enter the court? Did you/your child feel secure?
- What was your child’s experience of waiting to give evidence? (Probe for privacy, protection from defendant and family). Where did your child wait? Did your child see the defendant or their family at all?
- Was your child given the option of reading your victim impact statement or having someone else read it for them?
- Did your child feel safe and secure? Did someone talk to you/them about this?
- Did someone talk to you and your child about practical and security needs?
- Did someone talk to you and your child about the outcome of the trial? Who was that? How was that?

How much do you feel you knew what was going on throughout the trial?

How much do you feel your child knew what was going on throughout the trial?
- What their role was?
- What the roles of others were?

How did you/your child feel once it was all over?

How do you feel about it all now?

Looking back, was there anything good/positive about your child being a witness?

What advice would you have for people who work in the courts to make the process better:
- for you?
- for your child?

Are there any things about the process that you would want to change?

What advice would you have for another parent of a young person who is going to go through this process?

What kind of impact do you think this experience has had on your child?

Would you be willing to let your child give evidence in another case in the future?

Why did you opt in to do this research?
Appendix F

Study Two: Participant Information Sheet
PARTICIPANT INFORMATION SHEET

Project title: Innovations in trial processes for young complainant witnesses

Principal Researcher: Isabel Randell
Supervisor: Professor Fred Seymour

My name is Isabel Randell and I am a Clinical Psychology Doctoral student at the University of Auckland, School of Psychology. I am supervised by Professor Fred Seymour (Clinical Psychologist, Clinical Programme Director) and project advisors Dr Suzanne Blackwell and Dr Emily Henderson.

About the Study

We are interested in gaining the perspectives of a variety of professionals involved in trials involving young person complainant witnesses regarding the Whangarei child witness pilot protocol.

This study is part of a wider body of research evaluating the Whangarei child witness pilot protocol. The results of this research will make an important contribution to knowledge about the kinds of changes that would improve the experience of participating in court for young people and their supporters.

What will participation involve?

As a professional involved in trials involving young person complainant witnesses you are invited to participate in this research by being interviewed or participating in a focus group. Participation in this research is entirely voluntary. If you are interested
in participating then we will contact you to answer any questions you may have and discuss with you whether you wish to participate. If you agree to participate, we will ask you to sign a consent form and you would be interviewed individually in person or would participate in a focus group (with a maximum of 8 professionals). Whether you participate in an interview or focus group is dependent on your personal preference as well as the number of participants. If you participate in a focus group the other members of your focus group will be of the same professional group as yourself.

Interviews and focus groups will be approximately an hour to an hour and a half long and the time and location would be arranged in consultation with you.

Each interview/focus group will be audio recorded and the recordings will later be transcribed. This transcript will be coded with no identifying details.

If participating in an interview you may ask to have the audio recorder switched off at any time and are not under obligation to answer any questions you do not wish to. If participating in a focus group you are under no obligation to answer any questions you do not wish to, and may leave the session at any point.

At the conclusion of the study, a summary of the findings will be made available to you if you are interested. You can request this on your consent form or by contacting Isabel Randell any time up to six months following your interview.

**Storage of information**

Recordings, transcripts and any other information related to you will be kept in a locked filing cabinet at the University of Auckland for six years, and will then be securely destroyed.

**Will information be confidential?**

Yes. All the information you provide will remain confidential within the research team. In addition, a University approved transcriber will be required to sign a confidentiality agreement. Parts of what you say may be quoted in research reports or presentations. Courts which have adopted the child witness pilot protocol and professional roles of participants will be mentioned in a general sense in reports or in relation to trends in the data, but not in relation to any specific data such as quotes. Identifying details such as names of people and places will be removed from all data.

In the case of focus groups, it is expected that you only share perspectives that you are comfortable with other group members knowing. Please note that I am unable to guarantee the privacy of anything disclosed in the presence of someone who is not a member of the research team. However, all focus group members will be
encouraged to be sensitive to the material shared in that setting and respect the privacy of other participants. This requirement is on the consent form signed by all focus group participants.

**Right to Withdraw from Participation**

Withdrawal differs slightly dependent on whether you are participating in a focus group or interview:

**Interview:**
You are free to withdraw your participation at any time without giving reasons, up until two weeks after the interview. In this case please contact a member of the research team, and any documents related to you would be shredded.

**Focus group:**
You are free to withdraw your participation at any time up until the conclusion of the focus group (you may decide to leave during the focus group if you wish). Given the ‘group’ nature of the focus group, you will not have the option to withdraw your contributions to the focus group.

**What are the benefits of participating?**

If you agree to participate, you are providing a valuable contribution to the ongoing development of the protocol for trials involving young witnesses.

Thank you for making the time to read about, and consider taking part in this study.

If you have any questions or would like to discuss participation, please contact me (Isabel):

**Isabel Randell,** 0220628068, iran005@aucklanduni.ac.nz, School of Psychology (Tamaki Campus), The University of Auckland, Private Bag 92019, Auckland.

For any other queries you may contact:

**Professor Fred Seymour,** PhD, Clinical Psychologist, (09) 923 8414, f.seymour@auckland.ac.nz, School of Psychology (Tamaki Campus), The University of Auckland, Private Bag 92019, Auckland.

**Professor William Hayward,** Head of Department, (09) 923 8516, w.hayward@auckland.ac.nz, School of Psychology, The University of Auckland, Private Bag 92019, Auckland.
For any queries regarding ethical concerns you may contact the Chair, The University of Auckland Human Participants Ethics Committee, The University of Auckland, Research Office, Private Bag 92019, Auckland 1142. Telephone 09 373-7599 ext. 83711. Email: ro-ethics@auckland.ac.nz.

APPROVED BY THE UNIVERSITY OF AUCKLAND HUMAN PARTICIPANTS ETHICS COMMITTEE ON 03/05/2015 for 3 years, Reference Number 014458.
Appendix G

Study Two: Consent Forms
CONSENT FORM

Focus group participant
(This consent form will be stored for a period of six years)

Project: Innovations in trial processes for young complainant witnesses
Principal Researcher: Isabel Randell
Supervisor: Fred Seymour

I have read and I understand the Participant Information Sheet, understood the nature of the research and why I have been invited to participate. I have had the opportunity to ask questions and had them answered to my satisfaction. I understand that taking part in this study is voluntary.

- I agree to take part in this research, involving my participation in a focus group session which will take approximately an hour to an hour and a half.

- I understand that I am free to withdraw participation at any time prior to the conclusion of the focus group session. I understand I will be unable to withdraw data from the focus group in which I participate.

- I agree not to disclose any sensitive or personal information or any identifying details of other focus group participants.

- I agree not to disclose the content of the information discussed, particularly the details of any cases mentioned.

- I agree that my interview will be audio recorded.

- I understand that a third party who has agreed to a confidentiality agreement will transcribe the audio recording of my interview. This transcript will be coded with no identifying details.

- I understand that this consent form will be stored separately from my interview data in a locked filing cabinet in Professor Fred Seymour’s office at the University of Auckland for a period of six years and then destroyed.

- I understand that parts of what I say may be quoted in a doctoral thesis, reports, presentations and peer reviewed journal articles. I understand that identifying details such as names of people and places will be removed from all data, and that my professional role will not be identified in relation to any specific quotes of mine. I understand that my professional role may be mentioned in relation to trends in the data.

- I wish/ do not wish to receive a summary of the findings [please cross out one option].
Name: ____________________________________________

Signed: _________________________________________  Date: __________________

APPROVED BY THE UNIVERSITY OF AUCKLAND HUMAN PARTICIPANTS ETHICS COMMITTEE ON 03/05/2015 for 3 years, Reference Number 014458.
CONSENT FORM

Interview participant
(This consent form will be stored for a period of six years)

Project: Innovations in trial processes for young complainant witnesses
Principal Researcher: Isabel Randell
Supervisor: Fred Seymour

I have read and I understand the Participant Information Sheet, understood the nature of the research and why I have been invited to participate. I have had the opportunity to ask questions and had them answered to my satisfaction. I understand that taking part in this study is voluntary.

- I agree to take part in this research, involving participation in an interview, which will take approximately an hour to an hour and a half.
- I understand that I am free to withdraw my information at any time up to two weeks after participation without giving a reason.
- I agree that my interview will be audio recorded. I understand that I can stop the interview, or have the audio recorder turned off at any point.
- I understand that a third party who has agreed to a confidentiality agreement will transcribe the audio recording of my interview. This transcript will be coded with no identifying details.
- I understand that this consent form will be stored separately from my interview data in a locked filing cabinet in Professor Fred Seymour's office at the University of Auckland for a period of six years and then destroyed.
- I understand that parts of what I say may be quoted in a doctoral thesis, reports, presentations and peer reviewed journal articles. I understand that identifying details such as names of people and places will be removed from all data, and that my professional role will not be identified in relation to any specific quotes of mine. I understand that my professional role may be mentioned in relation to trends in the data.
- I wish/ do not wish to receive a summary of the findings [please cross out one option].
Name: ____________________________________________

Signed: __________________________________________ Date: ___________________

APPROVED BY THE UNIVERSITY OF AUCKLAND HUMAN PARTICIPANTS ETHICS COMMITTEE
ON 03/05/2015 for 3 years, Reference Number 014458.
ETHICS COMMITTEE ON 03/05/2015 for 3 years, Reference Number 014458.
Appendix H

Study Two: Interview Schedule
Interview/Focus Group Schedule

Ascertain familiarity with the protocol/experience with cases using the protocol.

Have you been made aware when the new protocol, or parts of it are being applied in a particular case?

How was this negotiated/notified?

What are your thoughts on the new protocol for child witnesses in Whangarei?
  • Cover each aspects of the protocol.

What differences do you notice between the standard process and the new protocol?

What are your understandings of the intentions of the protocol?

What is working well?

What is not working well?

Do you think that the protocol has made an impact in any way?
  • Positive?
  • Negative?

Do you think that the protocol has had an impact on:
  • the wellbeing of young witnesses or their families? How so?
  • the quality of evidence that the young witness provides? How so?

Which aspects of the court process do you believe young people experience:
  • as difficult and/or stressful?
  • as positive and/or supportive?

Do you think that there are any barriers to:
  • the success of the protocol (in achieving its aims)?
  • the delivery of justice in accommodating the new protocol?

Are there any further changes that you think could or should be made?
REFERENCES


Cossins, A., & Goodman-Delahunty, J. (2013). Misconceptions or expert evidence in child


Henderson, E. (2012). An idea whose time has come: The reform of criminal procedure for...


Willig, C. (2001). *Introducing qualitative research in psychology: Adventures in theory and...


