Cross-examination of Child Witnesses

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Background

- Juror and jury decision making in child sexual abuse (CSA) cases
  - Countering misconceptions with expert evidence and judicial direction (e.g., Goodman-Delahunty et al., 2016a, 2021)
  - Unfair prejudice in joint trials → logical reasoning (Goodman-Delahunty et al., 2016; Goodman-Delahunty & Martschuk, 2020)
- Evaluation of eliciting evidence from CSA complainants
  - Case file analyses → importance of consistency in children's evidence (Goodman-Delahunty et al., 2019, Martschuk et al., 2024a)
  - Trial transcript analyses → many & complex questions (Martschuk et al., 2021)
- Cross-examination of children (Blewer et al., 2024; Martschuk et al., in press)

Cross-examination of children

- Heavily criticised where child witnesses are concerned
- Despite multiple reforms, perceived retraumatising, offensive, repetitive (ALRC, 2025)
- Question types unsuitable for children and vulnerable witnesses
  - Tag questions lead to a Yes-bias in children (Behzadnia & Mehrani, 2018)
  - Nonleading yes/no questions more reliable (Wheatcroft et al., 2015)

Current recommendations on cross-examination of children

- Recommendations focus on

(1) Simplifying language

→developmentally appropriate questions

(2) Psychological state of the complainant during trial

→ Friendly courtroom setting/comfort

Defence's considerations to cross-examination

(Blewer et al., 2024; Martschuk et al., 2024b)

- Balancing act between
  - Obligations to client vs. vulnerabilities of the complainant
  - Rules of the court
- Compliance with *Browne v Dunn* (1983)
  - Rephrase *Browne v Dunn* questions
  - Discuss expectations for compliance with rule prior to hearing
  - Consider alternative ways to comply with the rule

→ Solutions for 'better' cross-examination must consider defence's perspectives.

Thank you

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