



Benchmark

best practice-best evidence with vulnerable people

Questioning children

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1. Introduction

Disclaimer: The material provided in this guideline is not legal advice and should not be treated as such. The information is intended as a guide only and should not be relied upon as the definitive authority on the law regarding communication with, or representation of, children. No liability is accepted for any adverse consequences of reliance upon it. Further disclaimer information is provided here [\[link\]](#).

1.1 This guide was developed to assist legal professionals, including police personnel, lawyers, and judges, to communicate effectively with children and young people who are involved in the justice system. The guide provides information on children's/young people's communication, difficult concepts for (younger) children, how to formulate questions and conduct

examinations in ways that facilitate best evidence, and pre-trial preparation. For the purposes of this guideline “children” are defined as young people under 18 as per the [Evidence Act 2006](#) and the [United Nations Convention on the Rights of the Child](#).

2. What you need to know about children’s communication

Children can be very effective witnesses

2.1 Even very young children can accurately recall and report past events, provided they are questioned appropriately.

Linguistic diversity

2.2 Aotearoa New Zealand is a highly linguistically and culturally diverse context. Many who enter the courts do not necessarily share the same cultural knowledge and practices and may not share the same first language. Establishing reliable information about the first language and known languages for a child is essential.

Child/adolescent language v. adult language

2.3 Children, adolescents, and even young adults are still mastering their first language: They understand fewer words and grammatical structures than adults do; they may not recognise irony and ambiguity, or understand the same idioms¹ as adults; they may be less able to express themselves.

2.4 *It will be necessary to adapt your language to a child/adolescent witness or defendant—as a highly literate, highly educated adult, even your everyday spoken language may be more complicated than you realise.*

Children, young people and courtroom talk

2.5 Lawyers and judges often use words, expressions, and grammar which are beyond children’s and young people’s comprehension - and it may not be evident from the child's response whether the child has understood a question. Furthermore, stress can interfere with children's and young people's comprehension, memory, and ability to respond to your questions.

2.6 Children and young people rarely indicate when they don’t understand a question:² They may be too embarrassed or nervous to do so, or may not even realise they haven’t understood.³ As a result, they may attempt

to answer questions they have not understood. The onus should be on the questioner to ensure questions are comprehensible to the child/young person⁴ and on the judge to control questions as per s 85 of the Evidence Act 2006, which states that a judge may disallow any question they consider improper.

2.7 Just because a child does well in an Evidential Video Interview (EVI) does not mean s/he will do equally well at trial unaided. The context/atmosphere and questioning style of the typical EVI differs vastly from that of the typical courtroom examination.

Language impairment

2.8 The children and young people you encounter may have language impairments, diagnosed or otherwise. For example, child maltreatment (i.e., neglect and/or abuse) is associated with impoverished language skills.⁵ Young offender populations have disproportionately high rates of language impairment⁶ (conservatively estimated at around 60%) and other intellectual impairments, mental health⁷ and substance abuse problems, and traumatic brain injuries.⁸ Children and young people with language impairments may be unable to express themselves and/or comprehend language as well as others of their age.

Children's narratives

2.9 Children and some adolescents are still learning how to construct comprehensive, coherent, clearly sequenced narratives to describe their past experiences; they may not know which details a listener needs to fully understand what happened if that listener did not experience the events themselves. This reflects, in part, children's immature communication skills (e.g., some may not have mastered tense and pronoun use) and, in part, their developing ability to use memory search strategies effectively to reconstruct their account of what occurred.

3. Difficult concepts for younger children

3.1 Children and young people often use terms long before they have acquired an adult-like understanding of the concepts they express or the full class of entities/actions/states denoted by them. Some concepts common to courtroom examinations can be particularly problematic for younger children (preschool/primary school) including concepts relating to time, clothing placement, and touch. These concepts are also likely to be difficult for children with learning difficulties and/or developmental delays, who may be functioning at a developmental level that is lower than their chronological age.

a) Temporal descriptions

Timing of events

3.2 When people are asked *when* something happened, the information is not typically retrieved directly from memory; rather, people reconstruct events in their minds to figure out when it *must have* happened (e.g., "It must have happened in March because it was just after the school year began").

3.3 **Recency:** Children as young as 4 may be able to indicate whether one event occurred more recently than another,⁹ provided the more recent event occurred within a few months of being asked.¹⁰ But they may be unable to place the event in time with respect to the calendar or seasons.

3.4 **Time of day (morning, afternoon, night, etc):** Preschool children may be able to use inference to figure out what time of day an event occurred if the event occurred within the previous few months (e.g., "It must have happened in the morning, because it happened at preschool").¹¹ We do not yet know fully at what point children's performance becomes equivalent to adults'.

3.5 **Day, month, year, season:** During middle childhood (roughly 7-12 years) most children develop the ability to indicate when an event occurred on longer timescales (e.g., what day of the week, which month of the year, estimates of what year it was). During this period they are also more likely to spontaneously include references to time (e.g., indicating the order of events; the day, month, year).

3.6 There is some evidence that children at the late end of middle childhood (roughly 9-12 years) are equivalent to adults at dating a past event in terms of the time of day, season and year; however, they are less accurate when dating the day of the week and the month of the year. There is also some evidence that, by adolescence, time estimations are equivalent to adults'.¹²

3.7 *Children's and young people's accuracy at dating events is not related to their accuracy about other aspects of those events (e.g., what happened). Errors in placing an event (or a person) in time are not legitimate grounds for discrediting other aspects of children's testimony.*¹³

Using landmark events to establish timing

3.8 Adults often ask children about landmark events (e.g., a season, birthday, class teacher or holiday) that occurred around the same time as

the event in question (e.g., "Was it before or after your birthday?" or "Did it happen near Christmas?"). However, young children (under 10 years) may have problems linking the landmark event to the event in question.¹⁴ Children of this age are more able to place one event in time relative to another if the landmark event occurred *after* the event of interest, but not if it occurred *before*. For example, a child with a birthday in March may not recognise that an injury sustained in April was "near" their birthday, as it is now 11 months until their next birthday (as opposed to just one month since their last birthday). Clarify with children which birthday or landmark event they are using as their reference point (e.g., their 10th birthday or their 11th birthday).¹⁵

Young witnesses/defendants may benefit from a visual timeline that shows landmark events to help them place other events in time; with a visual timeline, the witness/defendant could potentially place events in time by pointing to the timeline, rather than (or in addition to) explaining in words (see the [Pretrial Case Management guideline](#) for more on visual timelines).

Duration

3.9 Up to the age of around 7 years or later, children may use duration words (e.g., second, minute, hour, day, week, month, year) before they have a clear grasp of how long those time periods actually are. The lag between use and comprehension may result in incorrect usage.¹⁶

3.10 Before 7 years, children may understand the relative differences between time periods (e.g., that a minute is shorter than an hour) but still be unable to map those words onto actual durations.¹⁷ Despite knowing that a minute is shorter than an hour, for example, children under 7 years are unlikely to be able to accurately appreciate *how much* shorter a minute is.

3.11 Children may not be competent at telling time from a clock until after 9 years of age. This may also impact upon their ability to appreciate the duration of intervals like seconds, minutes, and hours.¹⁸

Frequency

3.12 Children aged 4-8 years can typically accurately identify whether they have experienced an event once or more than once, but will likely have trouble accurately specifying how many times a repeated experience has happened.¹⁹ As for children over 8, there is little research on their

ability to specify the exact number of repeated events. However, when a young child makes improbable claims about frequency (e.g., “I have been to Sydney a thousand times”), the inflated number can be “a *metaphor* for ‘lots and lots of times’”.²⁰

3.13 Children aged 6-8 years are more likely to be able to put repeated events into chronological order than younger children (4-5 years). All children within these age ranges are likely to recall the first instance of a recurring event better than a subsequent one; older children within this age range may also have better recall of the latest incident compared to those occurring in the middle of the series.²¹

Implications for practice: Timing, duration, frequency

- As a rule of thumb these are the things that children in early and middle childhood may have difficulty with:
 - Accurately identifying the day of the week, the month, year, and season in which an event occurred.
 - Accurately estimating durations (older children may also struggle with this).
 - Accurately specifying how many times a repeated event happened. But you *can* ask if it happened once or more than once.
- Younger children’s memories for the first and (sometimes) last instances of a series of repeated events are likely to be strongest.
- Always consider whether your proposed questions about timing, duration, or frequency are strictly necessary—some may be, others may not.
- Consider engaging a Communication Assistant to assess²² (inter alia) children’s temporal abilities to ascertain which time-related questions the child is likely to be able to answer accurately. See [Communication Assistance Guideline](#).

An Aotearoa New Zealand-based Communication Assistant recalled a person being confused by the word *time* in a question like, “Do you remember the time at the flat?” The communication assistant suspected that the person thought he was being asked whether he remembered what the time was on the clock at the flat, rather than whether he remembered what had happened at the flat. He said, “No”.²³

b) Clothing placement

3.14 Questions about clothing placement are commonplace in forensic contexts. Although few studies have examined this, some recent research suggests that 3-6 year olds have difficulty in describing clothing

placement—especially when clothes are in an intermediate position (partially on or off)—and when referencing some prepositions, particularly “over” (e.g., *Did Chris touch you over or under your knickers?*).²⁴ Children aged 3-6 rarely give spontaneous descriptions of clothing placement during forensic interviews or courtroom questioning. They are more likely to give clear and detailed descriptions about clothing information when asked *wh*-questions (*What? Where?*) than yes/no or forced choice questions. *Wh*-questions are also more likely to elicit intermediate descriptions of clothing placement, thereby reducing ambiguity or possibilities for misinterpretation.²⁵

Implications for practice

3.15 Use open-ended questions to get descriptions of clothing placement (e.g., “Where were your clothes?”), with open-ended follow-up questions (“Tell me more about where your clothes were”) rather than closed or forced-choice questions (e.g., “Were your pants on or off?”). This allows children to answer in their own words, rather than requiring them to understand words which they may not have a good grasp of, such as prepositions (*on, off, over*).

An Aotearoa New Zealand-based Communication Assistant reported that sometimes children don’t know the names for clothes or related items, e.g., sleeves, collars, cuffs etc. They also don’t always use the terms for body parts correctly. For example, one person muddled words like *hip* and *elbow*.²⁶

c) Touch

3.16 Some preschool children (and older ones too) have a limited definition of the word *touch*. For example, they may use *touch* only to refer to certain types of bodily contact (e.g., touching with a hand) but not use *touch* to refer to other forms of bodily contact (e.g., penetration,²⁷ licking and biting²⁸). Inconsistencies in a child’s testimony regarding touch could arise from a child’s idiosyncratic definitions of the words used. For example:

- A preschooler (and an undergraduate) claimed that a picture depicting kissing did not involve touch.²⁹
- A 6-year-old said he hadn’t been touched but later said he had been licked.³⁰
- A child was asked, “Did you touch John?” The child said “No”, but later said that John had, “... put his willy in my hand and in my mouth.” It could be that the child was saying that s/he didn’t touch John – it

was John who touched the child.³¹

4. Formulating questions for children/young people

Write out as many of your questions as possible before trial to help you identify sentences and words/expressions that may be too difficult for the witness/defendant to understand, questions that are unnecessary, and poor sequencing. Remember that there is a **vast** difference between spoken and written language³²—your aim is to produce the simplest and shortest questions in a form reflecting spoken (not written) language, using the most everyday words and expressions. This may mean breaking down complicated questions into a sequence of shorter ones.

Rules of thumb

4.1 These rules will help solve at least *some* of the problems with courtroom language:

"Rule # 1 Use short, simple questions—the younger the witness/defendant, the shorter the question.

Rule # 2 Imagine your question coming out of the young person's mouth: If it sounds strange, precocious, or like a parody of legal-speak, rephrase your question."³³

a) Words, phrases and expressions

Legalese / legal terminology

4.2 Avoid legalese phrases such as *I put it to you; I suggest to you; Is it your evidence that*. These phrases are unnecessary, increase the complexity of the question, and are atypical of children's, young people's, and other civilians' speech.

Putting the case

When putting the case, instead of saying *I put it to you that you saw your father on your 11th birthday*, you could say, *I say that you saw your father on your 11th birthday. What do you say?*

4.3 Avoid legal terminology such as *defendant, cross-examination, prosecution, prosecutor, witness, arrest, allegation, interview, EVI*. Children's, adolescents', and some adults' understanding of these terms can be inaccurate, as the table below illustrates. For example, replace *EVI*

with *the video talk you did with [interviewer's name]*; replace *defendant* with the person's name; replace *Her Honour* with *Judge Maisel*, and so on.

Research findings: Examples of children's, young people's (and adults') misunderstandings of common legal terms³⁴

Victim: "The victim is him or her being tried" (28 year old)*

Prosecutor: "The prosecutor takes the person away when proved guilty" (13 year old)*

Defendant: "<The defendant is> someone who tries to defend the accused person and prove they are innocent" (13 year old)**

Cross-examination: "...when they examin <sic> the person on trial ie their clothes, hair traces, finger prints" (15 year old)**

Court: "A court is a sort of jail" (5 year old)***

Prosecution: "Prosecution's when you die. You get hanged or something awful like that" (10 year old)***

Witness: "<Witnesses> whip people when they are naughty" (7 year old)***

Formal language

4.4 Avoid formal vocabulary and phrases (e.g., *on that occasion, incident, protrude, how were you positioned, sibling, residence, at that address*). For example, even adolescents (and some adults)³⁵ may not yet fully understand formal words of "saying" (e.g., *assert, concede, imply, predict, interpret, confirm*) and formal words of "thinking" (e.g., *doubt, infer, hypothesise, conclude, assume*).³⁶ Similarly, adolescents (and some adults) may not have mastered words like *similarly, conversely, moreover, furthermore, nevertheless*.³⁷

4.5 Even if children and young people use formal words, their understanding of them may be partial or wholly incorrect, which can lead to misunderstandings.³⁸

Poor practice	Better practice
Can you <i>confirm</i> for us how old you are?	How old are you?
How old were you at the time that X <i>occurred</i> ?	How old were you when X happened?
Did you <i>assume</i> you would go?	Did you think you would go?

Figurative expressions

4.6 Avoid figurative (non-literal) expressions, such as irony, metaphors and idioms (e.g., *kick the bucket*). Idioms may confuse children, adolescents, non-native speakers of English, and even adult native

speakers of English (e.g., potentially, some jurors and adult defendants).

Research findings: Double-function words

4.7 Words such as *cold, sweet, sharp, warm, bright, hard* can have a primary physical meaning (e.g., *sugar is sweet; a knife is sharp*) but also a secondary, non-literal meaning (*Anne is sweet*). Young children may know the primary meaning but not the secondary—understanding of the latter develops over time.³⁹

Poor practice	Better practice
Did Chris and Dad <i>talk shop</i> often?	Did Chris and Dad talk about work often?
I'm sorry to <i>hammer the point</i> , but...	I'm sorry that I need to ask you again, but...
When this <i>came to the surface</i> , what did you do?	When you found out, what did you do?
Is Elise sharp?	Is Elise smart?

Context dependent words

4.8 Take care with third-person pronouns (*he, she, it, they, etc.*) and other words whose meaning is context dependent (e.g., *here, then, there, at that time, at that place*). It can be difficult to track to whom or what these phrases refer in extended speech. Wherever possible, replace such words with full names and descriptions.

Poor practice	Better practice
When did <i>he</i> do <i>it</i> ?	When did Chris hit you?
Did <i>he</i> do <i>it</i> <i>there</i> or somewhere else?	Where were you when Chris hit you?
<i>At that time</i> , what was <i>he</i> doing?	What was Chris doing when he was in the kitchen?

b) Grammar

Passive voice

4.9 Avoid the passive voice. Passive clauses can be harder to process than those in the active voice⁴⁰ and are more typical of written than spoken English.⁴¹ Although children may use the passive voice in preschool years, the ability to fully comprehend them can still be developing during adolescence. Even in adulthood, some native speakers of English struggle to understand examples such as:⁴²

The woman was chased by the man	Better: The man chased the woman
The sailor was hit by the soldier	Better: The soldier hit the sailor

Poor practice (passive) ⁴³	Better practice (active)
You were interviewed by Jill	Jill interviewed you <i>Better still:</i> Jill asked you some questions
You were asked some questions by Ms Wright	Ms Wright asked you some questions
Frank was being shown some photos by Mary	Mary was showing Frank some photos
You will be given some photos by Bob	Bob will give you some photos
Where were you massaged by Bob?	Where did Bob massage you?
It was suggested by Mr X that you were wrong	Mr X suggested that you were wrong <i>Better still:</i> Mr X said that you were wrong
How often are you hit by Mum?	How often does Mum hit you?
Was the bed slept in by Chris?	Did Chris sleep in the bed? <i>Better still:</i> Where did Chris sleep?

Subordination

4.10 Avoid using lots of subordinate clauses in a single sentence—they can make a sentence harder to process.^{44,45} Some types of subordinate clause are more difficult than others, such as clauses beginning with *although*, *unless* and a hypothetical *if*.⁴⁶

Main clause	Examples of subordinate clauses
The dog bit the postman...	although he was outside the fence
	when he delivered the mail
	if he passed by the gate
	because he was whistling
	who had kicked him earlier
What would you say...	if I were to suggest you are lying?
Do you know...	whether Bob has a job?
	how many times Bob hit you?

Poor practice	Better practice
What I want you to do is to promise me that when you're talking to everyone here today that at all the time, all times, you'll tell the truth.	I want you tell the truth in court today. Do you promise to tell the truth?
What happened was you asked Dad about sex, didn't you?	Did you ask Dad about sex?
So, although you were hit, you say, almost every day, you didn't tell anybody, is that right?	You said Mum hit you almost every day. Did you tell anyone that Mum hit you?
So Mum wouldn't let you play on the computer unless you'd finished your homework?	When would Mum let you play on the computer?

Negatives

4.11 Avoid negatives **wherever possible**. Even a single negative can make a sentence harder to interpret and answer accurately.⁴⁷ Double negatives are harder still. Concealed negatives such as *unless, scarcely, hardly, rarely, anything but* can make a sentence extremely difficult to understand.⁴⁸ If combined with another negative, they can make the sentence almost uninterpretable.

Poor practice	Better practice
Dad did not ask you to keep a secret, did he?	Did Dad ask you to keep a secret? [if yes] What did he say?
Did you not know where to go?	Did you know where to go?
Mum wouldn't let you play on the computer unless you'd finished your homework?	When would Mum let you play on the computer?
You were anything but unhappy about the trip?	How did you feel about the trip?

c) Question types

Questions indicating the answer (including tag questions and declaratives)

4.12 The accuracy and completeness of children's and young people's reports of past events can be dramatically affected by the types of questions posed. Decades of research shows that, when asking children/young people to report about past events, responses to non-suggestive, open-ended, free-recall questions (e.g., *Tell me about the party*) are more likely to be accurate than responses to other question types.⁴⁹ Closed yes/no questions can sometimes be risky; leading

questions (ones that indicate the expected response) are riskiest of all⁵⁰— these include statements posed as questions (e.g., *So you saw your Dad?*). Tagged questions are considered so coercive that counsel are effectively banned from using them when questioning children/young people in England/Wales.⁵¹ This question type should not be used with children/young people.⁵²

Examples of question types		
Open-ended free-recall	Closed (yes/no) questions	Tag questions
What happened next?	Did you see the accident?	You saw the accident, didn't you?
What did you see?	Did you see the fight?	You saw the fight, didn't you?
Describe the room for us	Was the room small and cramped?	The room was small, wasn't it, and cramped?

Why do psychologists recommend the use of open-ended questions?

Open questions draw on different memory processes and require different types of responses than closed questions. They draw on **recall memory processes**, where the child searches their memory and reports what is salient to them. Recalling these details may, in turn, activate or make related details more accessible, and so the child generates their own cues for remembering further information by following their own thought processes, rather than responding to externally provided ones (which may increase the risk of introducing incorrect information). As a result, open questions are more likely to elicit coherent, detailed, and accurate responses than closed questions.

Closed questions tap into **recognition memory**: The child/young person must search their memory and match their recall to what the interviewer is asking, and then provide a response. Because the questions from the interviewer may sound familiar and plausible there is greater risk of the child/young person simply agreeing with the interviewer rather than providing their own elaborative response or correcting interviewer errors.

You should maximise the use of open-ended questions. However, if children are non-responsive to those open-ended questions (during rapport building or during an examination), you may need to ask a few simple, warm-up questions requiring one-word/short responses to give them confidence in answering questions and build reciprocity. You can then switch back to an open-ended questioning style, for example:

"Warm-up" questions:

Q: I am going to ask you some questions about the shower.

Q: Do you have a shower at your house in Kent Street?

Q: Do you have a bath in the house in Kent Street?

Q: Where is the shower?

Open-ended questions:

Q: Tell me about having showers at your house.

(Communication Assistant, personal communication, 6 February 2019)

Forced choice / alternative questions

4.13 Forced choice questions give the addressee two or more options to choose from:

a) Was the car red₁ or blue₂?

b) Were you happy₁, sad₂, or something else₃?

4.14 The options provided must be mutually exclusive and cover all possibilities to avoid error. Hence (a) is unacceptable because it does not cover all possibilities. Conversely, (b) appropriately contains a catch-all option ("or something else") which ensures all possibilities are covered. However, adding a catch-all option is not always possible (as in *Was she pregnant₁, not pregnant₂, or something else₃?*).

Poor practice	Better practice
Was the car red or blue?	Was the car red, blue, or something else? <i>Better still:</i> What colour was the car?
Were you happy or sad?	Were you happy, sad, or something else? <i>Better still:</i> How were you feeling?

Indirect questions (*do you know ..., can you remember..., can you tell us...*)

4.15 Indirect questions involve two questions: [*Do you know*]_{Q1} [*what time Dad arrived?*]_{Q2}. Respondents are expected to answer the second question (if they know the answer).⁵³ However, children and young people sometimes answer the first instead: Q: *Do you know what time Dad arrived?* A: *Yes [I do know]*.



4.16 If both questions are closed, as in example (2) above, a bare yes or no can be ambiguous: Yes could mean *Yes, I do know* or *Yes, he was at home*. If this happens, clarify the answer.

4.17 **HINT:** Indirect questions often begin with *do you know, do you remember, can you tell me*, etc; if the next word is *if* or *whether*, you may be about to ask a question like (2) and a bare yes or no response will be ambiguous.

Poor practice	Better practice
Do you remember [whether the boys were in the room]?	Were the boys in the room? <i>Better still: Where were the boys?</i>
Can you remember [if the boys were in the room]?	Were the boys in the room? <i>Better still: Where were the boys?</i>
Can you tell us [whether Dad was at home]?	Was Dad at home? <i>Better still: Where was Dad?</i>
Do you recall [if Mary was at work on the day you left]?	Was Mary at work on the day you left? <i>Better still: Where was Mary on the day you left?</i>
Do you know [if Dad was at work]?	Was Dad at work? <i>Better still: Where was Dad?</i>
Note that a subordinate yes/no question is typically introduced by <i>if</i> or <i>whether</i>	

Research findings: Indirect questions

Research suggests that children’s tendency to respond to the main clause question decreases with age when the subordinate question is open (e.g., involves a *wh*-word) but not when it is a yes/no question—children under 10 may answer these incorrectly.⁵⁴ However, NZ court transcripts show that older children too (e.g., 11 and 14 year olds) sometimes answer the wrong part of an indirect question.

Negative questions

4.18 Children and young people may not have mastered the tricky rules

for answering negative yes/no questions (*Didn't you see Bob?*) and negative tagged questions (*You didn't see Bob, did you?*), so a bare *yes* or *no* response can be ambiguous. E.g., if a child/young person says just *No* in response to either of these questions, you cannot be sure whether they are saying *No, I didn't see Bob* or *No, you're wrong, I did see Bob*.

4.19 Similarly with negative declarative questions: In response to *You didn't see Bob?*, a bare *yes* could mean *Yes, I did see Bob* or *Yes, you're right, I didn't see Bob*.

4.20 Avoid these question types. If you do use one, and get a bare *yes* or *no* response, clarify the response (e.g., *I'm sorry, I asked that question badly. Let me try again. Did you see Bob?*).

Multiple questions (e.g. multifaceted)

4.21 Each question should contain only *one* request for information. If you find yourself saying *and* in the middle of a question, you may be about to ask a multiple/multi-part question. For example, the question *Was Dad wearing shorts and a t-shirt* contains two questions (*Was Dad wearing shorts? Was Dad wearing a t-shirt?*). It would be much better to ask, *What was Dad wearing?*

d) Examples of "simple" words that can confuse children

Remember / forget

4.22 These verbs are conceptually difficult. They involve prior knowledge and the ability (*remember*) or inability (*forget*) to remember that prior knowledge (or to fulfil an intention). Children may begin using these words as 2 year olds,⁵⁵ but they may not fully understand them until much later.⁵⁶

Research findings: Children's (mis)understanding of *forget* and *remember*

Forget: For some children up to around 7, *forget* may mean *not ever having known*.⁵⁷ Hence a child who claims to have forgotten something may not have ever known in the first place.

Remember: One pre-schooler believed that one can only *remember* something if it has been forgotten first—hence his claim not to remember an event he had participated in, "Because I didn't forget yet, so I still know it."⁵⁸

Ask

4.23 *Ask* and *tell* can be tricky for children because sometimes they (pragmatically) mean much the same thing (Did you ask/tell mummy to close the window?) but sometimes (literally) mean different things (*Did you ask mummy what to say?* v. *Did you tell mummy what to say?*).

4.24 Children up to 10 may confuse *ask* and *tell* in sentences like (b), (c) and (d).⁵⁹ Children and young people may also be unable to identify who would read the book in sentence (d): the speaker (correct interpretation) or Laura (incorrect interpretation).⁶⁰

Ask	Tell
a. I asked Laura to close the window	a(i) ≈ I told Laura to close the window
b. Ask Laura what time it is	b(i) ≠ Tell Laura what time it is
c. Ask Laura her last name	c(i) ≠ Tell Laura your last name
d. Ask Laura which book to read	d(i) ≠ Tell Laura which book to read ⁶¹

Best practice: Follow up ask/tell questions with “What did [X] say?” to check comprehension

Q: Did you ask Mum what to feed the baby?

Child: Yes

Q: What did you say?

Child: I said, "What are you gonna feed him?"

Q: Did you ask Mum what to do?

Child: Yes.

Q: What did you say?

Child: I said she should tell the police.

An alternative to *tell*: *Talk and say*

Q: I am going to ask you some questions about your talk with Nana. [Pause] Did you talk to Nana about what happened at the party?

Child: Yes.

Q: What words did you say?

Child: I said that Bobby hurt me.

Q: What words did Nana say?

Before / after

4.25 Children up to 7 or even older may be unable to accurately interpret clauses beginning with *before* or *after*.⁶²

5. Conducting your examination-in-chief or cross-examination

See Pre-trial Case Management Guideline for case law on questioning.

Preliminary questions/instructions before substantive questions

5.1 Before asking substantive questions, settle the child/young person with a few neutral questions (e.g., *Did you have to take a day off school today? What subjects are you missing at school? My job is to ask you questions about what happened. Are you ready to answer some questions?*).

5.2 Remind the child/young person about the rules of the examination (see s 6.3) and tell the child/young person to let you know if they need a break.

Pace and volume

5.3 Adjust your speaking speed to an unrushed, slightly slower than normal pace and give children/young people plenty of time to respond. Children up to mid-adolescence can take longer to process your question⁶³ and formulate their response than adults do. Slowing down is important with *any* witness/defendant who is stressed.

5.4 Young witnesses/defendants may not tell you when they can't hear you properly. Monitor your volume and look at the witness/defendant (or at the camera, as appropriate) when speaking to them.

The order of topics covered / signpost topic changes

5.5 The topics on which you question children/young people should be ordered logically and chronologically to support children's retrieval of all details associated with the topic being talked about.

5.6 Always indicate when you have finished with one topic and orient the child/young person to the topic of the next set of questions (e.g., *We've finished talking about your trip to Rotorua. Now I want to talk about your trip to Wellington*). Signposting changes in topic can also help the fact-finder follow your lines of questioning.

With permission, Communication Assistants sometimes create a Post-it sign for each topic to be covered in an examination—e.g., what happened in the bathroom (say, represented by a picture of a bath); what happened in the kitchen; what happened on their 11th birthday, and so on. When a new topic begins, the relevant Post-It sign is placed

in front of the witness/defendant to help them focus on that topic; when that topic is finished, the Post-It sign might be placed in a “finished” box so the witness/defendant can see how far they’ve progressed through the examination. If a witness asks how many more questions there are, counsel can indicate how many more *topics* there are.

Using the child’s terms

5.7 Try to use children’s/young people’s terms wherever possible. For example, ascertain which names they use for relevant body parts and individuals and use those names consistently (e.g., the name the child/young person uses for her maternal grandmother versus her paternal grandmother). This may be clear from the EVI but you should *also* check with the child/young person during your examination.

Repeated questions

5.8 Needlessly repetitive questions should be disallowed under s 80 Evidence Act 2006. There is evidence that the chances of self-contradiction increase the more questions are repeated.⁶⁴ The *type* of question used can also affect the accuracy of responses to repeated questions (see s 4.12).⁶⁵

5.9 Best practice suggests that, if a question must be repeated:

- Explain why you are asking a question again (e.g., to check you’ve understood an earlier response). This reduces the pressure a child/young person may otherwise feel to change their original answer.
- Avoid phrasing repeated questions as closed or suggestive (e.g., ones designed to elicit a *yes* or *no* response or ones that are suggestive).
- Limit the number of times you repeat a question.⁶⁶

Cross-examination: Accusing children of lying

Children report that being suspected of lying is highly distressing⁶⁷ and they can be badly thrown by such accusations.⁶⁸ If counsel’s case is that the child is lying, then the duty to put the case may require that counsel address this with the witness. However, it should be done non-confrontationally (e.g., by asking *Are you sure?*); in some cases it need not be done at all (see [Pre-trial Case Management](#) on the duty to put the case).

6. Pre-trial preparation of *your own* witness/defendant

6.1 While it is not always possible, it is good practice for prosecutors calling a young witness to meet them at least twice before trial, including a substantial briefing interview (see [Pre-trial Case Management Guideline for case law on witness briefing](#)). The pre-trial briefing(s) is an opportunity to (inter alia) prepare the witness by explaining the “rules” of the examination and building rapport. The points below apply equally to defence calling a young defendant or witness. See the [Pre-trial Case Management Guideline](#) for information on applying for special measures/accommodations for child witnesses/defendants, such as scheduled breaks and mini-breaks, visual aids, comfort objects, and so on.

Explaining the “rules” of the examination to *your own* witness/defendant

6.2 Children learn early on that they are expected to answer adults’ questions. This may lead children and young people to try to answer questions even when they don’t know the answer⁷⁰ or when the question doesn’t make sense to them.⁷¹ They may also agree with questions that imply a particular response, fail to correct you if you make a mistake,⁷² and answer questions which they don’t understand.⁷³

6.3 For these reasons it is a good idea, at a pretrial briefing, to tell your young witness/defendant about the “rules” of the trial examination, namely:

- That they should answer the question if they know the answer (stress this to avoid overuse of the *I don’t know* response)
- That they should not guess the answers
- That they should tell you:
 - If they don’t understand a question or the question doesn’t make sense.
 - If they don’t know or don’t remember the answer (but stress that they should answer if they do know/remember).
 - If *you* make a mistake.

It may be useful to display visual aids (e.g., posters) that remind children of the examination rules while they testify. See [Pre-trial Case Management Guideline](#) for more information on visual aids to support young people's adherence to the "rules" of the trial.

6.4 Giving your young witness/defendant an opportunity to practise applying the rules using neutral topics may help them apply the rules correctly (e.g., asking a question they don’t know the answer to —*What*

*did I have for breakfast?—to practise the I don't know response).*⁷⁴

6.5 At trial, remind the child/young person about the rules. However, be aware that this does not *guarantee* that they will always follow those rules.

Remember that young witnesses are entitled to attend the **Court Education for Young Witnesses programme**, which helps prepare them for trial. Check that the O/C has offered the programme to the witness and completed the paperwork.

7. Pre-trial rapport building with *your own* young witness/defendant

Courtroom v. everyday interactions with adults

7.1 When young witnesses give evidence, their role differs markedly from their usual interactions with adults. They might have difficulty recognising that other people don't have the same knowledge they do, and that they are in the role of "expert" about the events in question. Although it is obvious to most adult interviewees what an interviewer does and doesn't know, children often assume adults know what happened, even if the adults were not present at an event. Most times children interact with adults, the adults are knowledgeable about the topic of conversation (the teacher who asks a child "what does 2 + 2 equal?", for example, does not do so because she doesn't know the answer).

7.2 For these reasons, young witnesses may fail to give important information to allow the court to understand what occurred (e.g., contextual information or information about their thoughts and feelings) and/or not give sufficient detail to communicate what happened.

7.3 Some young witnesses are also acutely aware that making disclosures or undergoing legal interviews have consequences, which can affect their willingness to discuss their experiences (others may have a limited understanding of the process which could also affect what information they provide). The type of information that they are expected to discuss in a public forum may also be challenging or humiliating, particularly if their experience was distressing. As such, they may be reluctant to provide elaborative responses for a variety of reasons, such as:

- Close relationships with the people involved
- A sense of loyalty to people involved
- Fear of retribution and/or abandonment

- Feelings of complicity, embarrassment, guilt, and shame
- Concern that their wishes/actions will have a negative impact on others
- Concern that they won't be believed, and/or that they will be punished
- Worries about family disruption

Pretrial: Establishing rapport with *your own* young witness/defendant

7.4 To overcome children's reluctance and to put them at ease, you should spend time establishing rapport **before trial** if at all possible. Counsel should then reinforce rapport building immediately before the young person is questioned in court, to ensure that they retain the benefit of the preparation. If unable to meet the young person at a scheduled break or before court, counsel should seek a brief adjournment before calling him or her.

7.5 As well as putting the young witness/defendant at ease, spending some time establishing rapport serves two additional purposes:

- It helps you assess their functioning (e.g., language or cognitive skills) which you can use to shape the way that you conduct the examination.
- It can give young people crucial practice at providing elaborate narratives about neutral or positive experiences (see below), leading to better interview performance later on.

7.6 Although widely recommended as part of good clinical and forensic practice there is not much direct research examining how best to establish rapport to facilitate accurate and detailed reporting from young people. The available research only examines rapport-building in relation to evidential interviewing; emerging evidence from this research suggests:

- By encouraging children/young people at a pre-trial briefing to give an organised and detailed account of a recent event or interest unrelated to the alleged offending, you help them practise the kind of response you want from them later. Asking them about recurring events can be particularly effective if you ask for an overview first and then for a detailed account of a specific instance.⁷⁵
- The style of questioning you use is important: Open-ended questioning (see s 4.12 above) is most effective for building rapport (e.g., "Tell me everything about the party from the beginning to the end"), and use the child's/young person's words as cues for further elaboration (e.g., "You played benchball. Tell me everything you can remember about playing benchball").⁷⁶

With young children, rapport-building might start by talking about a physical object that is immediately in front of the child before discussing physically/temporally removed things. Some children may also benefit

from being asked a few simple questions requiring one-word/short responses before moving on to open-ended questioning (see **Why do psychologists recommend the use of open-ended questions? at s 4.12**).

During a pre-trial meeting with a 5-year-old witness, defence counsel wore a bright coloured tie and asked the child some questions about it. At trial, defence counsel wore the same tie and asked the child the same questions about the tie before embarking on substantive questioning.

7.7 Creating a supportive context during rapport building can impact positively on children's responding, particularly their ability to resist misleading questions (note that this has been found for children in early to middle childhood⁷⁷ and may also be true of older children). However, ensure that supportive behaviours (such as smiling, nodding) are **not only** given when they say something you want to hear (i.e., ensure these behaviours are **not** contingent⁷⁸ upon the response). Focus on effort and engagement rather than the amount or accuracy of the response. Non-contingent support includes such behaviours as:

- Use of child's/young person's first name
- Open body posture
- Eye contact
- A warm tone and demeanour
- Positive nonverbal behaviours (nodding, facial expressions)
- Facilitative utterances (e.g., "mmhmm", "uh-huh", "okay")

Maintaining rapport

7.8 Rapport does not remain constant throughout an interaction;⁷⁹ it can fluctuate and may diminish when topics are difficult for a young person to talk about or if they feel unsupported. Responding to indications of reluctance at trial (or pretrial during rapport building) with supportive statements can increase their subsequent responding and repair breakdowns in rapport⁸⁰ (e.g., "I can see it is hard for you to talk about this. Just listen to the question and answer as best as you can"). Conversely, a non-supportive style can decrease the number of details young witnesses include in their accounts of their experiences.⁸¹

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Information on copyright is provided here [[link](#)].

9. References

[1] For example, *kick the bucket, come to the surface, talk shop, paint the town red*.

[2] Cathleen A Carter, Bette L Bottoms and Murray Levine "Linguistic and socioemotional influences on the accuracy of children's reports" (1996) 20 *Law and Human Behavior* 335 at 349; Kirsten Hanna and others "Child witnesses in the New Zealand Criminal Courts: A review of practice and implications for policy" (2010) http://www.ipp.aut.ac.nz/_data/assets/pdf_file/0020/119702/Child-Witnesses-in-the-NZ-Criminal-Courts-full-report.pdf at 78; Karen J Saywitz, Lynn Snyder and Rebecca Nathanson "Facilitating the Communicative Competence of the Witness" (2010) 3 *Applied Developmental Science* 58 at 64; Rachel Zajac and Paula Cannan "Cross-examination of sexual assault complainants: A developmental comparison" (2009) 16 *Psychiatry, Psychology and Law* S36 at 49.

[3] Nancy W Perry and others "When lawyers question children: Is justice served?" (1995) 19 *Law and Human Behavior* at 609 at 621. Carter and others, above n 2, at 348-349. See also Carol Chomsky *The acquisition of syntax in children from 5 to 10* (M.I.T. Press, Cambridge, MA, 1969) at 45 where 5 and 6 year olds responded to questions, "readily, with no hesitation, and with great assurance" even though their answers showed they had misunderstood the question.

[4] *R v Barker* [2010] EWCA 4 at [42].

[5] Jarrad AG Lum and others "A meta-analysis of cross sectional studies investigating language in maltreated children" (2015) 58 *Journal of Speech, Language, and Hearing Research* 961 at 972.

[6] Stavroola AS Anderson, David J Hawes and Pamela C Snow "Language impairments among youth offenders: A systematic review" (2016) 65 *Children and Youth Services Review* 195 at 200; Pamela C Snow and Martine B Powell "Oral language competence in incarcerated young offenders: Links with offending severity" (2011) 13 *International Journal of Speech-Language Pathology* 480 at 485; Natalie R Kippin, Suze Leitão, Rochelle Watkins, et al. "Language diversity, language disorder, and fatal alcohol spectrum disorder among youth sentenced to detention in Western Australia" (2018) 60 *International Journal of Law and Psychiatry* at 46.

[7] See review in Amber Fougere, Stuart Thomas and Michael Daffern "A study of the multiple and complex needs of Australian young adult offenders" (2013) *Australian Psychologist* 48 at 189.

[8] Thomas J Farrer, R Brock Frost and Dawson W Hedges "Prevalence of traumatic brain injury in juvenile offenders: A meta-analysis" (2013) 19(3) *Child Neuropsychology* at 229.

[9] Note that children of this age probably will not understand the word *recent(ly)* but may know *first* and *next*.

[10] William J Friedman "The development of memory for the times of past events". In Patricia J Bauer & Robyn Fivush (Eds.), *The Wiley handbook on the development of children's memory* (pp. 394-407). Wiley-Blackwell at 397.

[11] Friedman, above n [10](#), at 399.

[12] Fiona Jack, William Friedman, Elaine Reese and Rachel Zajac "Age-related differences in memory for time, temporal reconstruction, and the availability and use of temporal landmarks" (2016) 37 *Cognitive Development* 53 at 58-59.

[13] Jack and others, above n [12](#), at 62.

[14] It is not currently known at what age beyond 10 children generally acquire this understanding.

[15] Kelly McWilliams, Thomas D Lyon and Jodi A Quas "Maltreated children's ability to make temporal judgments using recurring landmark event" (2016) 14 *Journal of Interpersonal Violence* <<https://doi-org.ezproxy.otago.ac.nz/10.1177/0886260516645812>>.

[16] Katharine A Tillman and David Barner "Learning the language of time: Children's acquisition of duration words" (2015) 78 *Cognitive Psychology* 57 at 58.

[17] Tillman and Barner, above n [16](#), at 67.

[18] William J Friedman and Frank Laycock "Children's analog and digital clock knowledge" (1989) 60 *Child Development* 357 at 361.

[19] Kim P Roberts and others "Developmental differences in the ability to provide temporal information about repeated events" (2015) 29 *Applied Cognitive Psychology* 407.

[20] Anne G Walker and Julie Kenniston *Handbook on questioning children: A linguistic perspective* (3rd ed, ABA Center on children and the Law, Washington, DC, 2013) at 65.

[21] Roberts and others, above n [19](#), at 413.

[22] Under s 80 of the [Evidence Act 2006](#), application can be made for a Communication Assistant to assess a witness' communication and other competencies, and advise counsel on how to adjust their language and the court on how to adjust trial processes to accommodate that witness (*R v Hetherington* [2015] NZCA248 and [Police v HJ \[2016\] NZYC 168](#)).

[23] Communication Assistant, personal communication, 15th December 2018.

[24] Stacia N Stolzenberg and others "Spatial language, question type, and young children's ability to describe clothing: Legal and developmental implications" (2017) *Law*

and Human Behavior 398 at 406.

[25] Stacia Stolzenberg and Thomas D Lyon "Where were your clothes? Eliciting descriptions of clothing placement from children alleging sexual abuse in criminal trials and forensic interviews" (2016) 22 *Legal and Criminological Psychology* 197 at 204.

[26] Communication Assistant, personal communication, 15th December 2018.

[27] Yee-San Teoh and others "Eliciting accounts of alleged child sexual abuse: How do children report touch?" 23 *Journal of Child Sexual Abuse* 792 at 801.

[28] Patricia Y Hashima, Keith Barton and Margaret S Steward "What does 'touch' mean to young children? An empirical study" (1988) 67 *Perceptual and Motor Skills* 683 at 688-689.

[29] Hashima, above n 28, at 688-689.

[30] Joyce Plotnikoff and Richard Woolfson *Intermediaries in the Criminal Justice system* (Bristol University Press, 2015) at 195.

[31] Plotnikoff and Woolfson, above n 30, at 195.

[32] Jim Miller and Regina Weinert *Spontaneous Spoken Language: Syntax and Discourse* (Clarendon Press, Oxford, England, 1998) at 457.

[33] Adapted from Kirsten Hanna and Emily Henderson (2015) *Vulnerable witnesses - children* Wellington, New Zealand: NZ Law Society Continuing Legal Education.

[34] *Kate Freshwater and Jan Aldridge "The knowledge and fears about court of child witnesses, schoolchildren and adults" (1994) 3 *Child Abuse Review* 183 at 188; **Emma Crawford and Ray Bull "Teenagers' difficulties with key words regarding the criminal court process" (2006) 12 *Psychology, Crime & Law* 653 at 662; ***Michelle Aldridge, Kathryn Timmins and Joanne Wood "Children's Understanding of Legal Terminology: Judges Get Money at Pet Shows, Don't They?" (1997) 6 *Child Abuse Review* 141 at 144.

[35] Marilyn A Nippold *Later language development: School-age children, adolescents, and young adults* (3rd ed, PRO-ED Inc, Austin, TX, 2007) at 44.

[36] Janet W Astington and David R Olson "Metacognitive and metalinguistic language: Learning to talk about thought" (1990) 39 *Applied Psychology: An International Review* 77 at 81.

[37] Marilyn A Nippold and Ilsa E Shwarz "Use and understanding of adverbial conjuncts: A developmental study of adolescents and young adults" (1992) 35 *Journal of Speech and Hearing Research* 108 at 113.

[38] Nippold, above n 35, at 46.

[39] Nippold, above n 35, at 39.

[40] Not all passives are difficult for children to understand and some children do better than others. However, it can be difficult to predict which passive clauses will be understood by which children. The best approach is to avoid them altogether. Verbs which only appear in the passive shouldn't be used at all (e.g., *You are reputed to be...*;

Bob is rumoured to be...) (examples from Rodney Huddleston and Geoffrey K. Pullum *The Cambridge Grammar of the English Language* (ebook, Cambridge University Press, Cambridge, England, 2002) at 1435).

[41] James A Street and Ewa Dąbrowska "More individual differences in language attainment: How much do adult native speakers of English know about passives and quantifiers?"(2010) 120 *Lingua* 2080 at 2090; James A Street and Ewa Dąbrowska "Lexically specific knowledge and individual differences in adult native speakers' processing of the English passive" (2014) 35 *Applied Psycholinguistics* at 116, footnote 1.

[42] Street and Dąbrowska (2010), above n [41](#), at 2084-2085.

[43] There are different forms of the passive, however, a full description is beyond the scope of this Guideline.

[44] Not all sentences with multiple subordinate clauses are difficult to understand—consider the children's rhyme, *This is the house that Jack built*—but some are. It is best to take a conservative approach and avoid overloading a question with them.

[45] Long, complex questions put to children were rejected and simpler questions required in the cases *H v R* [2016] NZCA 260; *R v Barker* [2010] EWCA 4 [42]; [Wills v R \[2011\] EWCA Crim 1938](#); [Hinton v R \[2016\] NZCA 269](#); [Lubemba \[2014\] EWCA Crim 2064](#).

[46] Katharine Perera *Children's Writing and Reading: Analysing Classroom Language* (Basil Blackwell Ltd., Oxford, England, 1984) at 142-144.

[47] Perera, above n [46](#), at 116-119.

[48] Perera, above n [46](#), at 117.

[49] Michael E Lamb and others *Tell me what happened: Structured investigative interviews of child victims and witnesses* (ebook, John Wiley & Sons Ltd., Chichester, England, 2008) at 40-43.

[50] Michael E Lamb and Angele Fauchier "The effects of question type on self-contradictions by children in the course of forensic interviews" (2001) 15 *Applied Cognitive Psychology* 483 at 489.

[51] [Wills v R](#), above n [45](#) (judge placed limits on questions preventing tagged questions), *R v Edwards* [2011] EWCA Crim 3028; [R v W and M \[2010\] EWCA Crim 1926](#); [R v RL \[2015\] EWCA Crim 1215](#) (counsel submitted questions to judge who eliminated tagged questions).

[52] Judges have the ability to control inappropriate questioning through s 85 of the [Evidence Act 2006](#) and the Court of Appeal has stated that they have a duty to do so: *Metu v R* [2016] NZCA 124 [25]; *Stanley v Police* [2017] NZHC 790 [18]. See also the leading English Court of Appeal decision supporting that duty, *Lubemba v R*, above n [45](#).

[53] Sometimes the questions are asked in the reverse order: [What time did Dad arrive], [do you know?].

[54] Angela D Evans, Stacia N Stolzenberg and Thomas D Lyon "Pragmatic failure and

referential ambiguity when attorneys ask child witnesses 'Do you know/remember' questions (2017) 23 *Psychology, Public Policy, and Law* 191 at 197.

[55] Janet Astington and Joan Peskin "Meaning and use: Children's acquisition of the mental lexicon" in J Hudson and others (ed) *Development of the mediated mind: Sociocultural context and cognitive development* (Erlbaum, Mahwah, NJ, 2004) at 64; Marilyn Shatz, Henry M Wellman and Sharon Silber "The acquisition of mental verbs: A systematic investigation of the first reference to mental state" (1983) 14 *Cognition* 301.

[56] Astington and Peskin, above n 55, at 317.

[57] Roslyn Hill, Glyn M Collis and Vicky A Lewis "Young children's understanding of the cognitive verb forget" (1997) 24 *Journal of Child Language* 57 at 72.

[58] Anne G Walker and Julie Kenniston *Handbook on questioning children: A linguistic perspective* (3rd ed, ABA Center on Children and the Law, Washington, DC, 2013) at 43. For this child, remember involves (a) prior knowledge; (b) later not being able to recall that prior knowledge; (c) then later still succeeding in recalling that prior knowledge.

[59] Chomsky, above n 3, at 41-102.

[60] Pamela E Kramer, Elissa Koff and Zella Luria "The development of competence in an exceptional language structure in older children and young adults" (1972) 43 *Child Development* 121 at 126.

[61] Questions adapted from Kramer and others, above n 60, at 47, and Chomsky, above n 3, at 124.

[62] Perera, above n 46, at 139-140; Walker and Kenniston, above n 58, at 36.

[63] Robert V Kail and Carol A Miller "Developmental change in processing speed: Domain specificity and stability during childhood and adolescence" (2006), *Journal of Cognition and Development* 7(1), 119-137 at 119, 125.

[64] Samantha J Andrews, Michael E Lamb and Thomas D Lyon "The Effects of Question Repetition on Responses When Prosecutors and Defense Attorneys Question Children Alleging Sexual Abuse in Court" (2015) 39 *Law and Human Behaviour* 559 at 567.

[65] Andrews, Lamb and Lyon, above n 64, at 568, Debra A Poole and Lawrence T White "Effects of Question Repetition on the Eyewitness Testimony of Children and Adults" (1991) 27 *Developmental Psychology* 975 at 984.

[66] The research to date cannot tell us how many times you can repeat a question before the risk of eliciting inaccurate information rises substantially. A cautious approach is thus warranted.

[67] Kaoru Yamamoto and others "Across Six Nations: Stressful Events in the Lives of Children" (1996) 26 *Child Psychiatry and Human Development* 3 at 144.

[68] John R Spencer and D Glaser "Sentencing, Children's Evidence and Children's Trauma" (1990) *Criminal Law Review*, June, 371-382.

[69] Amanda Waterman, Mark Blades and Christopher Spencer "Indicating When You Do Not Know the Answer: The Effect of Question Format and Interviewer Knowledge on

Children's 'don't know' Responses" (2004) 22 British Journal of Developmental Psychology 335 at 343; Meaghan Danby, Sonja Brubacher, Stefanie Sharman and Martine Powell "The Effect of Practice on Children's Ability to Apply Ground Rules in a Narrative Interview" (2015) 33 Behavioural Sciences and The Law 446 at 452; Jason Dickinson, Sonja Brubacher and Debra Poole "Children's Performance on Ground Rules Questions: Implications for Forensic Interviewing" (2015) 39 Law and Human Behaviour 87 at 93.

[70] Martin Hughes and Robert Grieve "On Asking Children Bizarre Questions" (1980) 1 First Language 149 at 153-157; Amanda Waterman, Mark Blades and Christopher Spencer "Do Children Try to Answer Nonsensical Questions?" (2000) 18 British Journal of Developmental Psychology 211 at 215.

[71] Kim Roberts and Michael Lamb "Children's Responses When Interviewers Distort Details during Investigative Interviews" (1999) 4 Legal and Criminological Psychology 23 at 27-28.

[72] Perry, above n 3.

[73] There is little research that has focused on the effectiveness of explaining the rules discussed above *specifically* in courtroom examinations. However, research from other domains does suggest it is more effective if children have opportunities to practise the rules and get feedback about their responses (on neutral topics), rather than if they are just given the instructions and expected to follow them. When instructing children that it is acceptable to say *I don't know*, **it is also important to encourage children to answer when they do know, to avoid an overuse of don't know responding** (Susan Gee, Marian Gregory and Margaret-Ellen Pipe "What colour is your pet dinosaur?" The impact of pre-interview training and question type on children's answers" (1999) 4 Legal and Criminological Psychology 111 at 123-124).

[74] Sonja Brubacher, Kim Roberts, and Martine Powell "Retrieval of Episodic Versus Generic Information: Does the Order of Recall Affect the Amount and Accuracy of Details Reported By Children About Repeated Events?" (2012) 48 Developmental Psychology 111 at 117.

[75] Deirdre Brown and others "The NICHD Investigative Interview Protocol: An Analogue Study" (2013) 19 Journal of Experimental Psychology: Applied 367 at 375.

[76] Karen Saywitz and others "Effects of Interviewer Support on Children's Memory and Suggestibility: Systematic Review and Meta-Analyses of Experimental Research" (2016) Trauma, Violence and Abuse 1 at 7-8.

[77] The effect on children of adult responses (like nodding and smiling, or praise and encouragement) can depend on whether those responses are contingent (i.e., depending on the content of the child's report) or non-contingent. Nodding randomly or to all of a child's statements is less likely to be suggestive than if nodding is only paired with certain statements (i.e., only those that fit the case theory during substantive questioning) (F James Billings and others "Can reinforcement induce children to falsely incriminate themselves?" (2007) 31 Law and Human Behavior 125 at 126, 131-132.).

[78] Karen Saywitz, Rakel Larsen, Sue Hobbs and Christine Wells "Developing Rapport with Children in Forensic Interviews: Systematic Review of Experimental Research" (2015) 33 Behavioral Sciences & The Law 372 at 375.

[79] Elizabeth Ahern and others "Support and Reluctance in the Pre-substantive Phase of

Alleged Child Abuse Victim Investigative Interviews: Revised versus Standard NICHHD Protocols” (2014) 32 Behavioral Sciences & The Law 762 at 769.

[80] Jennifer Lewy, Mireille Cyr and Jacinthe Dion “Impact of Interviewers’ Supportive Comments and Children’s Reluctance to Cooperate during Sexual Abuse Disclosure” (2015) 43 Child Abuse & Neglect 112 at 117-118.