

**Training needs of the legal profession on the child as  
witness: A social work investigation**

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**“ Our children deserve to be heard and treated with all the respect, dignity, and sensitivity afforded adults. When we reflect these ideals in our preparation of children as witnesses, we facilitated the search for truth that the law demands” Copan.**

With sincere appreciation to:

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## **SUMMARY**

**KEY TERMS:** Child Witness, legal sector, training needs

This social work research study explores whether members of the legal profession are aware of the unique characteristics of a child witness that one must take cognisance of when interviewing them. This is explored by means of a questionnaire to determine if and what training needs exist with members of the legal sector with regards to the child witness. The following themes were identified from the questionnaire where members of the legal profession require further training on: child development, children's language development, children's normal sexual development, process of disclosure in sexual abuse, interviewing skills, rapport building skills, minimum age for testifying, factors determining credibility of the child witness, children's statements and report of events, truth vs. lie testing and interview protocols.

## OPSOMMING

### SLEUTEL TERME:

*Kindergetuie, regsisteem, opleidings behoeftes*

Hierdie maatskaplike werk navorsing eksplorieer of lede van die regsprofessie bewus is van die unieke eienskappe van die kind as getuie waarvan 'n mens moet bewus wees wanneer 'n kind ondervrae word. 'n Vraelys is gebruik om vas te stel of daar opleidingsbehoefte onder lede van die regsprofessie bestaan aangaande die kind as getuie. Die volgende temas is geïdentifiseer vanuit die vraelys waarin lede van die regsprofessie nog opleiding moet verkry: kinderontwikkeling, taal ontwikkeling by kinders, die proses van openbaarmaking van seksuele misbruik, onderhoudvoerings vaardighede, rapport bou vaardighede, minimum ouderdom vir getuienisaflegging, faktore wat die kredietwaardigheid van die kind se getuienes beïnvloed, waarheid teenoor leueun toetsing, ondehoud protokolle.

## **FOREWORD**

The article format was chose in accordance with Regulation A.11.2.5 for the degree MSW (Social Work in Forensic Practice). The article will comply with the requirements of the journal in Social Work, titled Social Work/Maatskaplike Werk.

# INSTRUCTIONS TO AUTHORS

## Social Work/Maatskaplike Werk

The Journal publishes articles, short communications, book reviews and commentary on articles already published from any field of social work. Contributions relevant to social work from other disciplines will also be considered. Contributions may be written in English or Afrikaans. All contributions will be critically reviewed by at least two referees on whose advice contributions will be accepted or rejected by the editorial committee. All refereeing is strictly confidential. Manuscripts may be returned to the authors if extensive revision is required or if the style or presentation does not conform to the Journal practice. Commentary on articles already published in the Journal must be submitted with appropriate captions, the name(s) and addressee(s) of the author(s) and preferably not exceed 5 pages. The whole manuscript plus one clear copy as well as a diskette with all the text, preferably in MS Windows (Word or WordPerfect) or ASCII must be submitted. Manuscripts must be typed double spaced on one side of A4 paper only. Use the Harvard system for references. Short references in the text: When word-for-word quotations, facts or arguments from other sources are cited, the surname(s) of the author(s), year of publication and page number(s) must appear in parenthesis in the text, e.g. "... (Berger 1967:12). More details about sources referred to in the text should appear at the end of the manuscript under the caption "References". The sources must be arranged alphabetically according to the surnames of the authors. Note the use of capitals and punctuation marks in the following examples.

Die Tydskrif publiseer artikels, kort mededelings, boekbesprekings en kommentaar op reeds gepubliseerde artikels uit enige gebied van die maatskaplike werk asook relevante bydraes uit ander dissiplines. Bydraes mag op Afrikaans of Engels geskryf word. Artikels op Afrikaans moet vergesel wees van 'n Engelse opsomming van ongeveer 200 woorde. Alle bydraes sal krities deur ten minste twee keurders beoordeel word. Beoordeling is streng vertroulik. Manuskripte sal na die outeurs teruggestuur word indien ingrypende hersiening vereis word of indien die styl nie ooreenstem met die tydskrif se standaard nie. Kommentaar op artikels wat in die Tydskrif gepubliseer is, moet van toepaslike titels, die naam(name) en adres(se) van die outeur(s) voorsien wees en verkieslik nie langer as 5 bladsye wees nie. 'n Disket met die hele teks, verkieslik in MS Windows (Word of WordPerfect) of ASCII moet die hele manuskrip en een duidelike kopie daarvan vergesel. Manuskripte moet slegs op een kant van die bladsy in dubbelspasiëring getik word. Verwysings moet volgens die Harvard-stelsel geskied. Verwysings in die teks: Wanneer woordelike sitate, feite of argumente uit ander bronne gesitater word, moet die van(ne) van die outeur(s), jaar van publikasie, en bladsynommers tussen hakies in die teks verskyn, bv.

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NEWSPAPER REPORT/KOERANTBERIG: MBEKI, T 1998. Fiddling while the AIDS crisis gets out of control. *Sunday Times*, 8 March, 18.

# TRAINING NEEDS OF THE LEGAL PROFESSION ON THE CHILD AS WITNESS: A SOCIAL WORK INVESTIGATION

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## ABSTRACT

*This article discusses empirical data obtained from questionnaires to determine the training needs that members of the legal profession have with regards to the child as witness. This article aims to highlight those training needs that exist with members of the legal profession and how best to address these.*

## 1. PROBLEM FORMULATION

Child rape is a tremendous problem in South Africa. From all the sexual offences reported to the police – about 60 000, on an annual basis – almost half are child abuse cases (Van As, 2008:1). According to Chetty and Reddi (2005:501). Childline has reported that in the last decade there has been a 400% increase in reported child sexual abuse cases. When one starts to look at what the conviction rate in South Africa is, it is even more shocking: “For murder and sexual abuse and rape in this country, the conviction rate is extremely low. For children, it is on the order of 7%” (Van As, 2008:1). The question thus arises what causes this and why is the number so low?

One of the hypothetical answers could be in the reactions that come forth when one deals or hears about an alleged sexual abuse case. Some of the reactions are as follow: The child will not be a reliable witness, the child has made the story up, and someone has told the child to say such things. Studies have shown (Baragwanath, et al., 1999:2; Massengale, 2007:1) that the judiciary and jurors believe children have poorer memory than adults, are highly suggestible and susceptible to the influence of others, and prone to fantasy. According to Chetty and Reddi (2005:501) the increase in the

prevalence of sexual abuse of children may be an indicator that current South African criminal law does not protect children adequately.

However according to Baragwanath, et al (1999:37) in the 1970's and 1980's the number of child witnesses appearing in court, increased, while at the same time research demonstrated that in some circumstances children were capable of giving reliable testimony from a very young age. The researcher therefore believes that the above mentioned reactions are based on myths and that when one believes or perceives that a child is not a reliable witness, it is not based on facts.

Children can be just as good a witness as an adult when one takes into account in what developmental stage they are and what their cognitive development is. In the theoretical part of the master's degree in forensic practice, literature was presented on how children interpret questions and then respond to it (Walker, 2006:1-87). Walker (2006:7) states the following: *"...language is the essential tool: our courts cannot function without it. And the children who come into our courts cannot function adequately without our willingness to speak their language. The responsibility for clear communication has to be ours. Until we accept that responsibility, until we learn how the language of children and the language of adults differ, we will not be doing our jobs as effectively, of fairly, as we can"*. The onus therefore lays with the adults, in this case members of the legal profession, to ask children age appropriate questions and by this one will gain the answers that are necessary.

Müller (2004:69) is of the opinion that communication with children can be complicated because it involves an understanding of language development, which in turn involves issues of semantics, syntax and conversational competence. According to Müller (2004:69) misunderstanding is very often the product of child-adult communication.

The result of unclear communication between a child and the court system is that many defendants could be acquitted. This view is supported by Gallinetti (2005:219) whom is of the opinion that many defendants are acquitted because of incorrect and inadequate techniques for taking statements used by police or forensic social workers. The researcher is of the opinion that

members of the legal profession are also using incorrect and not age appropriate language when they are questioning the child witness.

One of these barriers (Louw, 2005:19-28) that members of the legal profession encounter when dealing with the child witness is the developmental level of the child's communication skills and the communication demands of the forensic setting. Müller (2004:70) gives further discussion on how language is a barrier in the legal profession. They are the following:

- developmentally inappropriate vocabulary;
- complex syntactical structures, including the use of multiple questionings, embeddings, and the negative;
- misunderstanding of children's speech;
- introduction of new information into the conversations; and
- conversational competence.

Louw (2005:27) believes that the onus is on the interviewer to have adequate knowledge on language development, the child's developmental level as well as tools that can be utilised to obtain reliable information from the child. Müller and Hollely (2000:41) is of the opinion that the questioning of a child witness is a much specialised task, and prosecutors and defence counsel are not trained in these methods. She further states the following: *"At present it suffices to say that the use of techniques (in the legal system) makes it impossible for child witnesses to communicate truthfully and effectively"* (Müller & Hollely, 2000:41).

The researcher is of the opinion that the difference in language development is one of the main barriers that one encounters. If one would ask the right question in the right manner to a child, the child would provide the necessary information. But this can only be done if members of the legal profession have sufficient knowledge regarding children and their development and in this instance specifically knowledge regarding language development. Massengale (2007:3) is of the opinion that for any professional involved in the investigation or prosecution of an allegation of child abuse, understanding of basic child development and monitoring word usage and expectations

accordingly can make the difference in whether or not the judge and jury view the child as a competent and credible witness.

According to Gallinetti (2005:221) judges and presiding officers have to undergo sensitisation to child victims of sexual abuse. Currently the Law, Race and Gender Unit (Gallinetti, 2005:21) at the University of Cape Town is offering such training. However the training is offered to presiding officers on a voluntary basis with the result that there is no consistent training of this nature.

From studying the above literature it is clear that effective communication with children is essential when obtaining information or verbal evidence from them. There seems to be a lack in the training that members of the legal profession have with regards to specialised training on children, their development and especially their language development.

The following research question thus arises:

- What are the training needs of members of the legal profession with regards to training on aspects concerning children, child development and more specifically child language development?

## **2. RESEARCH GOAL**

The aim of this research was to determine whether there is a need amongst members of the legal profession to receive specific training on children and child development that can serve as guidelines for further studying in implementing a training program.

## **3. THEORETICAL STATEMENT**

If members of the legal profession have adequate training on the child as witness, there would be a higher number of successful conviction rates.

## **4. RESEARCH METHODS**

The research was conducted by means of a literature and empirical study.

### **4.1 Literature Review**

According to Fouché and Delport (2005:123) the aim of a literature review is to contribute towards a clearer understanding of the nature and meaning of the problem that has been identified.

A literature review can serve a number of broad functions (Fouché & Delport, 2005:124-125):

- It is a source for selecting or focussing on a topic
- It helps to save time and avoids duplication and unnecessary repetition.
- It equips the researcher with a complete and thorough justification for the subsequent steps, as well as with a sense of importance of the undertaking.
- It demonstrates the underlying assumptions of the general research questions.
- It will enable a researcher to demonstrate knowledge on the most recent and authoritative theories, accepted definitions and key concepts in this field.
- It helps to shape the research question or hypothesis through the identification of alternative conceptions of the problems of variables that had not previously occurred to the researcher.
- And it provides the framework of the research and identifies the area of knowledge that the study is intended to expand.

Themes that were investigated during the literature study are as follow:

- What are the requirements for a reliable witness?
- What are the requirements of evidence to be accepted as truth in a court?
- The development of language throughout childhood.

Literature for the research study was obtained from social work, psychology, justice and criminology. Articles in professional journals, research reports and dissertations and the Internet were used to gain information. More literature from abroad was utilized as forensic social work is still a relatively new field in South Africa and not much literature exists. Members from the legal sector were consulted with the formulation of the questionnaire. The database utilized for a systematic library search, was Social Work Abstracts, Social Science Abstracts, EBSCHO HOST WEB, NEXUS, Repertories from South African journals and articles and SABINET.

## **4.2 Empirical investigation**

The research was conducted according to the following aspects that are outlined:

### **4.2.1 The design**

The study conducted a needs analysis with members of the legal profession regarding the training needs concerning the child witness. And through this needs analysis the foundation for further study to develop an accredited training program is laid.

In quantitative-descriptive designs (Fouché & Delpont, 2005:137) questionnaires are required as a data collection method. Respondents were selected by means of purposive sampling. According to Singleton (in Fouché & Delpont, 2005:202) that this type of sample is based on the judgement of the researcher, in that a sample is composed of elements that contain the most characteristic, representative or typical attributes of the population. The researcher obtained data through the utilisation of a questionnaire. A list of the various magistrates, prosecutors, lawyers and advocates that reside in Mpumalanga was obtained. The researcher first made telephonic contact with the individuals to determine whether they have worked with children as a witness and then if a positive response was given they were incorporated in the sample.

### **4.2.2 Data collection**

The research study that was undertaken involved 20 members of the legal profession. The members of the legal profession were purposively chosen and they were requested to complete a questionnaire anonymously. The sample of the respondents was drawn from members of the legal profession that reside in Mpumalanga Province

A research questionnaire was developed with the aid of two members of the legal profession. This questionnaire was sent via email to all the members of the legal profession that have been purposely selected, for completion. The researcher also had ten structured interviews with respondents as the response rate with the email was very low.

Quantitative data was obtained from this questionnaire and will be discussed in this paper.

#### **4.2.3 Ethical aspects**

- Ethical permission was obtained from the Ethics Committee of the Faculty of Health, North-West University, Potchefstroom Campus.
- The researcher is of the opinion that no physical or emotional harm was done to the respondents by completion of the questionnaire
- The respondents participated on voluntary basis and with informed consent.
- The respondents were informed on what the purpose of the research study is.
- The questionnaires were completed in anonymously which ensured confidentiality.
- The researcher was also compelled to uphold the ethical standards as stipulated by the South African Council for Social Service Professions (SACSSP).

#### **4.2.4 Limitations to the study**

- The response rate for the completion of the research questionnaire was very low. Even though only twenty questionnaires were obtained the researcher is of opinion that the respondents represented a cross profile of different persons within the legal profession and therefore results can be drawn to the broader population.
- The replies given were the respondents own opinion. There is no scientific measuring instrument utilized to evaluate that the opinion expressed is valid.
- The study focused on theoretical training that the respondents have received. The researcher is however of the opinion that the practical experience that the respondent has gained needs to be explored.
- The literature that was reviewed was from abroad as there is currently little literature that exists in South Africa due to the fact that forensic social work is relatively new field.

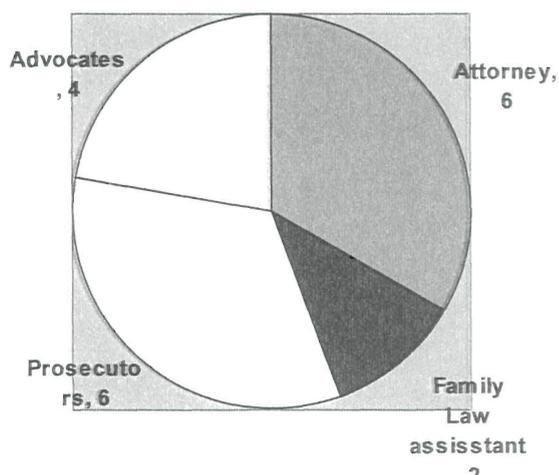
## 5. DISCUSSION OF EMPIRICAL DATA

Data obtained from the questionnaires will be discussed.

### 5.1 Identical Data

A total number of twenty respondents were involved in the completion of the research questionnaire. One (5%) magistrate, six (30%) attorneys, two (10%) family law assistants, seven (35%) prosecutors and four (20%) advocates took part in the research study (Appendix A, Section A: Biographical data, Question 1). The researcher is of the opinion that they represent a cross profile of the legal profession in the Mpumalanga Province.

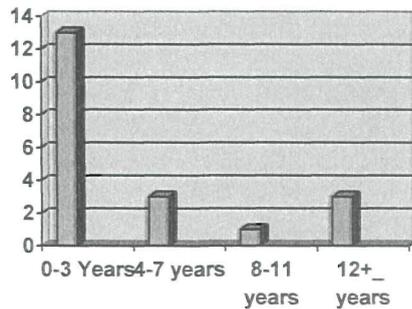
Graph 1: Profile of respondents – job titles



### 5.2 Years of experience

The respondents have the following number of years of experience in working with children (see graph 2: number of years experience in working with children): 13 (65%) respondents have been working with children as witnesses between 0 – 3 years, three (15%) of the respondents have been working with children as witnesses between 4 – 7 years, one (5%) respondent have been working between 8 -11 years with the child as witness and three (15%) of the respondents indicated that they have been working with the child as witness for more than 12 years (Appendix A, Section A: Biographical data, question 4).

Graph 2: Number of years experience in working with children



The above graph indicates that 13 (65%) of the respondents have indicated that they have less than 3 years of experience in working with the child as witness. The respondents experience in working with the child as witness therefore seems to be not a lot and this could explain why most of the responses indicated that the respondents have not yet acquired the necessary specialised training in dealing the with the child as witness.

### 5.3 Previous training on children and children's issues

Only seven (35%) of respondents indicated that they have received specific training regarding children and 13 (65%) respondents indicated they did not receive any specific training regarding children (Appendix A, Section A: Biographical data, question 5). This is of concern to the researcher as all the respondents are currently working in some way or another with the child as a witness. Below are the trainings (Appendix A, Section A: Biographical data, question 5) that the respondents have indicated that they have attended:

- FAMSA basic counselling course
- FAMSA Mediation Course
- Fifth Annual National Conference on Dealing with Children and Divorce
- Trial advocacy training for Family Advocates (Justice College)

- The Miller du Toit Conference on the Internalisation of Child and Family Law.
- Intensive social context training course for Family Advocates
- Sexual harassment workshop
- Mediation training for Family Advocates Office (Justice College)
- FAMAC training
- Parenting plans
- Certification course on Children's Act
- Workshop on Children's Act 2005
- Workshop on Child Justice Bill (Justice College)
- Diploma on Child Witness (Karen Muller – one respondent attended this)

Eighteen (90%) respondents indicated that they would benefit from further training regarding child development (Appendix A, Section A: Biographical data, question 8) and the child as witness and two (10%) respondents indicated that they do not require further training on the child as witness. This is thus a clear indication that further training on child development and the child as witness is a need with members of the legal sector.

Six (30%) of the respondents indicated that they have received training on the new Children's Act (Appendix A, Section A: Biographical data, question 7) and 14 (70%) indicated that they have not received training on the new Children's Act. This is of concern to the researcher because the respondents, members of the legal profession, are the ones that need to implement law.

Seven (35%) of the respondents indicated that they have received training on the Sexual Offences Bill and 13 (65%) of the respondents indicated that they have not received training on the Sexual Offences Bill (Appendix A, Section A: Biographical data, question 7).

Six (30%) of the respondents have indicated that they have received training on the Child Justice Bill and 14 (70%) indicated that they have not received

training on the Child Justice Bill (Appendix A, Section A: Biographical data, question 7).

#### **5.4 Themes forthcoming from the empirical investigation.**

##### **5.4.1 General knowledge of child development**

One (5%) respondent regarded his knowledge on child development to be excellent, four (20%) regarded their knowledge to be good, 11 (55%) regarded their knowledge to be average, three (15%) regarded their knowledge to be poor and one (5 %) regarded their knowledge to be very poor (Appendix A, Section B: Child development, question 2). According to Zaal (in Burman, 2003:175) it is essential for court adjudicators and court staff who work with children to be given proper education regarding to the developmental stages and behaviour of children. From the responses given from Section C: The Child as witness, question 1 in the questionnaire, it seems that the respondents have not received training on child development or either the training that they have received was not adequate.

According to Massengale (2007:1) a basic understanding of child development is important for at least the following two reasons:

- Studies consistently show that a child's perceived credibility as a witness is directly influenced by the attorney's ability to effectively interact and communicate with the child.
- Prosecutors must often educate the judge and the jury about the average child's cognitive development in order to explain how it may influence a particular child's testimony.

If members of the legal profession therefore do not have a basic understanding of child development they would not be able to effectively interact and communicate with the child, with the result that the child's testimony would most probably be perceived to be less credible.

##### **5.4.2 Knowledge regarding children's language development**

One (5%) respondent regarded his knowledge on a child's language development to be excellent, seven (35%) respondents regarded their knowledge to be good, seven (35%) respondents regarded their knowledge to

be average, three (15%) regarded their knowledge to be poor and two (10%) regarded their knowledge on children's language development to be very poor (Appendix A, Section B: Child development, question 3).

The researcher is of the opinion that knowledge of a child's language development is very essential. This view is supported by Zaal (in Burman, 2003:1): *"Whilst the achievement of a child-appropriate court environment and child-friendly procedures are undoubtedly important objectives, it is also equally necessary that court adjudicators be able to hear, understand and give due weight to exactly what children in court are trying to say. Where adjudicators lack such capabilities, a child friendly court environment will be of little use."*

Vieth (2007a:1) adds that there is no substitute for comprehensive training of child interviewers. According to Vieth (2007a:1) many jurisdictions have expended time and resources on videotape cameras, child friendly rooms, and even child advocacy centres without having taken the step too adequately train forensic interviewers. Vieth (2007a:1) is further of the opinion that a child friendly environment may enhance a child's ability to communicate but atmosphere alone cannot make a bad interview good. The researcher is of the opinion that it seems that both South African courts and abroad have taken time and effort to make the court environment more child friendly, but they have lacked in providing training on how to conduct interviews with a child.

According to Müller (2003:5) and Saywitz and Camparc (1998:2) when children are questioned as if they were adults, misunderstandings and avoidable errors can undermine children's credibility and contaminate their statements. The researcher is of the opinion that when one asks children the right questions in the right manner, one would obtain the required information. This is supported by Songca and Le Roux (2004:314) which state the following: "...young children can respond to the demands of testifying when questions are posed in a developmentally appropriate way".

According to Walker (2002:158) interviewers need to understand that there are significant differences in language comprehension and usage between children and adults. The researcher is of the opinion that this can only be

done if members of the legal profession receive specialised training on the child as witness.

Louw (2005:19-28) provides a discussion on the language skills of children, specifically pertaining to their competency as witness. She discusses vocabulary, linguistic complexity, content, pragmatic skills, and comprehension monitoring. Louw (2005:19) is of the opinion that the child's competency to communicate effectively in the forensic context, is not only a function of the child alone, but also depends on the skills of the interviewer. According to Louw (2005:19) the interviewer must have a grounded knowledge base of the child's level of language development to be able to obtain optimal information.

According to Baragwanath, et al. (1999:43) the young child's lack of verbal skills affects the ability of adults to correctly interpret the child's meaning. This indicates to a need for training and skill in questioning of very young children

Guidance on Interview (2003:33) lists the following concepts that are troublesome for children and also provides possible solutions for these concepts:

- "behind", "in front of", "beneath", "above"

One might need to ask the child to demonstrate what they mean.

- Dates and time

One can use memorable or routine events as reference markers such as birthday, school or television schedules.

- Estimates of length, height and weight

This can be specified relative to another person the child knows.

- Estimates of age

This can be specified relative to another person the child knows.

- Frequency of events

Young children may have trouble estimating frequency. Specific examples may help.

- “anything”

Better to say “all” or everything.

- Use of “she” or “he”

Better to say the person(s) specific names

- Where there is a change of topic

To reduce confusion or misunderstanding, signal change with a phrase such as “I’d now like to go on to talk about something else”

- Passive voice

Better to use the active voice e.g. Person X hit person Y, rather than Person Y was hit by person X.

Walker (2002:159) lists the following strategies for increasing the likelihood that an interview of child will be developmentally appropriate:

- Use of active rather than passive voice;
- Avoid negatives and double negatives;
- Include only one query per question;
- Use simple words;
- Use simple phrases;
- Use the child’s terms;
- Be alert to any signals that the child is having difficulty comprehending questions asked.

From the above mentioned literature it seems clear that understanding of children’s language is essential. Children’s language ability and the development thereof seems to be complex and one would therefore need further training to be better equip to show a understanding there off. The researcher is of the opinion that if members of the legal profession do not have sufficient knowledge regarding children’s language development they run the risk of asking developmentally inappropriate questions, which will have

the result that the child witness' testimony would be regarded as less credible and they might not require the information from the child that is necessary to ensure a conviction.

#### **5.4.3 Knowledge regarding normal sexual development of children**

One (5%) respondent regarded his knowledge on normal sexual development of children to be excellent, three (15%) regarded their knowledge to be good, eight (40%) regarded their knowledge as average, four (20%) regarded their knowledge to be poor and four (20%) regarded their knowledge to be very poor (Appendix A, Section B: Child development, question 4).

According to Grobbelaar (2007: 44) the general assumption exist with parents that children are a-sexual and that they experience no sexual stimulation or sexual feelings. Ryan and Blum (in Grobbelaar, 2007:45) however states that this is not the case and explains the normal sexual development of the child according to developmental stages. From this discussion it seems that a child can in every developmental stage experience some type of sexual stimulation or feelings that is normal for that specific developmental stage.

Ryan and Blum (in Grobbelaar, 2007:4-9) further gives an explanation when a child's sexual behaviour can become problematic, when it requires further intervention and when it might be a sign of sexual abuse. The researcher is of the opinion that knowledge in this regard is essential as children are sexual beings. They explore and develop sexuality just as any other part of development. Some behaviour of normal sexual development could therefore be seen as an indication of sexual abuse, if one does not have adequate knowledge regarding normal sexual development, and have negative consequences for all the parties involved in a falsely sexual abuse allegation.

#### **5.4.4 Knowledge of sexual abuse**

Three (15%) of the respondents regarded their knowledge on sexual abuse to be of an excellent nature, seven (35%) regarded their knowledge to be good, five (25%) regarded their knowledge as average, three (15%) regarded their knowledge as poor and two (10%) regarded their knowledge to be very poor (Appendix A, Section B: Child development, question 5).

One (5%) respondent indicated that children lie about sexual abuse, six (30%) respondents indicated that children do not lie about sexual abuse and 13 (65%) respondents indicated that children sometimes lie about sexual abuse (Appendix A, Section D: sexual abuse, Question 1 a).

Although 50% of the respondents indicated that they regard their knowledge on sexual abuse as either good or excellent the researcher is of the opinion that they need further training on sexual abuse and more so on the process of disclosure, as ten (50%) of the respondents indicated that children sometimes make false allegations (refer to 5.4.9). This response indicates to the researcher that the respondents might not be aware that disclosure of sexual abuse with children is most often a process, however according to literature disclosure of sexual abuse is a process (Bruck, Ceci & Shuman, 2005:195; Guidance on Interview, 2003:20, Sorrenson & Snow, 1991:1).

The age group according to the responses which were given by the respondents (Appendix A: Section D: sexual abuse, question 1 b) which are the most likely to fabricate sexual abuse is the age group 14-18 years, as 11 (55%) respondents indicated this age group. Eight (40%) indicated the age group 10-14 years to be the most likely to fabricate sexual abuse and one (5%) indicated the age group 0-4 years.

Sorrenson and Snow (1991:2) investigated 630 cases of sexual abuse and found that in only 116 of the cases the sexual abuse were confirmed. They further identified that disclosure of sexual abuse is a process and that it has four stages: (1) Denial – the child's initial statement to an individual that he had not been sexually abused; (2) Disclosure – This stage as two phases, tentative and active: tentative disclosure refers to the child's partial, vague, or vacillating acknowledgement of sexually abusive activity; active disclosure indicates a personal admission by the child of having experienced a specific sexually abusive activity. (3) Recant refers to the child's retraction of a previous allegation of abuse that was formally made and maintained over a period of time. (4) Reaffirm is defined as the child's reassertion of the validity of a previous statement of sexual abuse.

There are a number of factors that exist that contributes to disclosure being a process (Sorrenson & Snow, 1991:9) pressure from the perpetrator; pressure

from the family to either disclose, deny or to recant; negative personal consequences that the child foresees; videotaping of the interview; retelling parents; judicial proceedings and the investigatory police also has a influence on the child's process of disclosure. According to the following responses that were given by the respondents for the reasons that children could lie about sexual abuse (Appendix A, Section D: Sexual abuse, question 2) it seems that members of the legal sector do not have understanding on the factors that influence disclosure of sexual abuse:

*They are told what to say, if they don't get what they want, being caught out by their parents or boyfriend, parental influence, a parent's influence especially in high conflict divorce cases, to get back at some other person, anger, revenge, bitterness, being manipulated by care-givers, to hide their own sexual promiscuity, to get attention from the family, retaliation"*

The researcher is of the opinion that if members of the legal sector have an understanding of the process of disclosure there might be fewer statements of children that would be seen as not credible.

#### **5.4.5 Interviewing skills**

One (5%) respondent regards their interviewing skills to be of an excellent nature, six (30%) regarded their interviewing skills to be good, ten (50%) of the respondents regarded their interviewing skills as average and three (15%) regarded their interviewing skills as poor (Appendix A, Section C: The child as witness, question 2).

According to Müller (2008:4) the interviewing of children, especially young children, is a highly specialised task. Müller (2008: 4) is also of the opinion that interviewers (for purpose of this research, members of the legal sector) require thorough training in developmental psychology, language acquisition and communication with children. According to Zieff (1991:34) the questioning of a child witness is a very skilled task and not many prosecutors are trained for this. The responses given in the questionnaire supports the latter.

Vieth (2007b:2) is of the opinion that investigative interviewers must be well versed in linguistic, child development, memory and suggestibility issues, the dynamics of abuse, and commonly accepted interview guidelines. Walker (2002:150) mentions that the skill of the interviewer directly influences whether a child relates a true memory, discusses a false belief, affirms details suggested by others, embellishes fantasies, or provides no information at all.

Article 12 of the 1989 United Nations Convention on the Rights of the Child (hereafter referred to as, The UN Convention”) and Article 4(2) of the 1990 African Charter on the Rights and Welfare of the child (hereafter referred to as “the African Charter) as South Africa has signed both. The UN Convention states:

1. State Parties shall assure to the child who is capable of forming his or her own view the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.
2. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law”.

The African Charter is to a similar effect and states (Burman, 2003: 160):

“In all judicial or administrative proceedings affecting a child who is capable of communicating his or her own views an opportunity shall be provided for the views of the child to be heard either directly or through an impartial representative as a party to the proceedings, and those views shall be taken into consideration by the relevant authority in accordance with the provisions of appropriate law”

Burman (2003:160) states that with South Africa signing both the UN Convention and the African Charter, an important question arises: to what extent are our courts geared towards hearing the voice of the child? The researcher can add the question of: with taking into account the factors that affect the accuracy of the child's testimony, what are the adults involved in the legal system doing to hear what the children are trying to say? The latter question is supported by IPT (Interviews with children, 2008) which

states: “the important point is that young children can provide forensically useful information, the major problem is that adults do not know how to let them do it”.

The literature agrees that because questioning a child witness is a very skilled task it is essential for members of the legal sector who work with children to be given proper education regarding the developmental stages and behaviour of children (Interviews with children, 2008; Burman, 2003:175; Guidance on interview, 2003: 15; Zieff, 1991:35). It therefore seems that members of the legal profession need specialised training on interviewing the child as witness.

#### **5.4.6 Rapport building skills**

One (5%) respondent regarded their rapport building skills with a child to be excellent, six (30%) regarded their rapport building skills to be good, nine (45%) regarded their rapport building skills to be average, three (15%) regarded their rapport building skills to be poor and one (5%) regarded their rapport building skills to be very poor (Appendix A, Section C: The child as witness, question 2).

According to Lamers-Winkleman (in Grobbelaar, 2007:7) children who are being interviewed by an empathic interviewer will give more accurate answers than children who are being interviewed by a formal type of interviewer. The researcher is of the opinion that the environment of judicial system is formal and that good rapport building skills are essential to help make the child feel at ease, with a further result that the child will be more easily able to provide evidence to the court.

According to Guidance on interview (2003:23) rapport building is very important and should not be omitted. Most children would need time before they can talk openly to interviewers. With good rapport building skills (Guidance on interview, 2003: 23) initial hesitance, unease or mistrust can be overcome and with the result that the child witness would more easily be able to testify.

It therefore seems from both the literature and the responses given by the respondents that members of the legal sector require further training on improving rapport building skills.

#### **5.4.7 Minimum age for testifying**

Only one (5%) respondent indicated that when it comes to determining the minimum age that a child should be, one must determine the child's stage of development and maturity. The minimum age that was indicated by 19 (95%) respondents varied from 5 years up to 15 years of age (Appendix A, Section C: The Child as witness, question 3). According to Walker (2006:2) research has shown that children as young as three years have testified competently and credibly in court.

According to Hoffman and Zeffert (1988:581) that when it comes to the child as witness, young children are competent witness if the judge considers that they are old enough to know what it means to tell the truth. There is however not particular age over which children are competent to give evidence upon oath, this (Hoffman & Zeffert, 1988:376 & Zieff, 1991:23). Combrinck and Fitchen (1997:3) adds that every child is assessed individually when determining competency and that the child must have the ability to make observations, to recall events and to relay this to the court in an intelligent manner.

According to the above literature there is no minimum chronological age that a child should be before he is able to testify. The researcher is of the opinion that members of the legal profession lack in knowledge regarding this issue as only one (5%) respondents indicated that there is no minimum age for a child to be, before he can testify.

#### **5.4.8 Factors that determining credibility of witness**

Five (25%) of the respondents listed all of the following factors that determine whether a child would be a credible witness: Child's age, ability to observe, adequate memory, must be able to communicate, must appreciate the obligation to testify (Appendix A, Section C: The child as witness, question 4).

Nine (45%) of the respondents listed the following factors that determine whether a child would be a credible witness: ability to observe, adequate memory, must be able to communicate, must appreciate the obligation to testify truthfully (Appendix A, Section C: The child as witness, question 4).

The other remaining six (30%) respondents varied in their responses as to which factors would determine whether a child would be a credible witness (Appendix A, Section C: The child as witness, question 4).

According to Combrinck and Fitchen (1997:3) when it comes to the competence and credibility of a child witness every child is assessed individual. Combrinck and Fitchen (1997:3) states that in order for a child to be considered as competent, the child must have the ability to make observations, to recall events and to relay this to the court in an intelligent way. From the response obtained through the questionnaire it seems as if the respondents to have adequate knowledge regarding factors that determine the credibility of a witness.

#### **5.4.9 Children's statements and report of events**

Five (25%) respondents indicated that the statement that children's memories are unreliable is true. Eight (40%) indicated that the statement is false and seven (35%) indicated that this happens sometimes (Appendix A, Section C: The child as witness, question 5).

Seven (35%) of the respondents indicated that the statement that children are highly suggestible is true, two (10%) indicated that it is false and 11 (55%) indicated that it sometimes happens (Appendix A, Section C: The child as witness, question 5).

Three (15%) of the respondents indicated that the statement that children have difficulty distinguishing fact from fantasy is true, four (20%) indicated that the statement is false and 13 (65%) indicated that it is sometimes true (Appendix A, Section C: The child as witness, question 5).

Two (10%) of the respondents indicated that the statement that children make false allegations particularly of sexual abuse is true, six (30%) indicated that the statement is false and 12 (60%) indicated that this sometimes happen (Appendix A, Section C: The child as witness, question 5).

The following are some of the responses that were given to the question on what influences a child's memory:

*“something familiar, lapse of time, when they feel intimidated, trauma of event, family members, affected parties, things that the child has experienced, development of child’s intelligence, use of toys in court, the relationship with victims and perpetrators, the nature of the act that occurs, emotions, to forget, suppress/erase from memory is a mechanism of self-protection, adults placing words in their mouths, suggestion, coaching, a relaxed environment, colour, sounds, situation analysis*

Twelve (60%) of the respondents indicated that props can influence children’s memory and eight (40%) respondents indicated that props do not influence children’s memory. (Appendix A, Section C: The child as witness, question 8).

There are both similarities and differences in the ways children and adults encode, store and retrieve memories (Saywitz, 2002:8). Saywitz (2002:8) explains some of these similarities and differences, and states that one needs to pay careful attention to the memory demands questions place children at different stages of development.

According to Baragwanath, et al. (1999:1) the testimony of witnesses about events and the people involved in them, or more accurately, their recollection of those events, is central to the functioning of criminal and civil proceedings. The researcher is of the opinion that it is therefore necessary for members of the legal sector to have an understanding of the functioning of a child’s memory and his ability to recall memory.

Ceci, Ross and Toglia (In Vieth, 2007:5) states the following:

*Legal scholars, eyewitness research psychologists and clinicians involved with child victims of sexual assault have all suggested the prosecutors are reluctant to bring court cases to that rely primarily on a young child’s eyewitness testimony presumably because of the burden of proof problems and a suspicion that*

*jurors have negative stereotypes about children's memories.*

When studying the literature it also became clear that there are a number of interacting factors affecting the accuracy of the child's testimony. They are: the accusatorial system, more specifically the elements of confrontation and cross-examination, the presence of the accused; the short attention span of children, the formal judicial system, cultural and language differences between children and court staff, problems relating to the use of interpreters, inappropriate representation of children and the setting in which evidence is given (Muller, 2008:2; Burman, 2003:163; Muller & Hollely, 2000:167; Fitchen & Combrinck, 1997:3).

According to Zieff (1991:22) empirical research demonstrates that children are no less credible than adults in areas relevant for witness assessment such as suggestibility, memory and distinguishing between reality and fantasy.

According to Pipe (in Baragwanath, et al., 1999:38) there is reasonable consensus that children's abilities to recall and communicate develop with age, and that it is a combination of children's knowledge, their skills and social factors which influence the children's memories and their ability to recall past events. The following limitations (Baragwanath, et al., 1999:38) need to be born in mind:

- children view the world differently from adults, the information about an event which a child considers important and selects for remembering will be determined by the child's knowledge and level of development;
- unlike older children and adults, young children cannot spontaneously use complex memory strategies to increase the amount of information they recall;
- young children are very dependent on context to prompt their memory for an event;
- Children and adults differ in their ability to narrate a past event.

Research studies (Walker, 2002:57) that gave a number of general conclusions regarding children's suggestibility:

- Young children tend to be more vulnerable to suggestion than older children. Preschoolers in particular have difficulty rejection misleading information even after adults tell them they were misinformed.
- Children are better able to resist suggestions about significant body-related events than suggestions about other details on events.
- Specific misleading questions are very likely to produce erroneous responses.
- Factors that generally impair memory also increase suggestibility.
- Interviewers who have a bias about what might have happened tend to elicit more false information from children.
- Non suggestive, open-ended interviewing cannot ensure that children will provide accurate reports, especially if those children have been exposed to misinformation in prior interviews or by other sources.
- In certain contexts, errors induced by misinformation procedures show disturbing stability over time and in repeated interviews, although such errors tend to drop out of children's reports at a faster rate than either spontaneous errors or accurate details.

From studying the above literature and the results from the above response from the questionnaire indicates that misconceptions regarding children's reports still exist and members of the legal profession need education on the manner how children make statements.

#### **5.4.10 Truth vs. lie testing**

The majority of the respondents, 15 (75%) were of the opinion that one can test whether a child is telling the truth or not and five (25%) were of the opinion that one cannot test whether a child is telling the truth or not. The following were some of the responses that were given on how one can test this:

*"Asking the same question but doing it by structuring questions differently every time and observe the response if it generates the same answer in all instances"*

*“Put the child under cross-examination”*

*“Eye movements”*

According to Combrinck and Fitchen (1997:3) within the judicial system the main tool utilised to determine the truth is cross-examination. Zaal (in Burman, 2003:173) mentions that aggressive cross-examination of children by adult parties is still far too common. Cross-examination cannot be applied to children, as Zaal (in Burman, 2003:174) notes that a study, that he has conducted, revealed that for instance in the African culture it is considered rude for a child to challenge or question a statement made by an adult. This therefore means that children, especially those from an African culture, would not raise their voices if an adult makes a false statement. Zieff (1991:30) further explains the problem that arises as follow: “...furthermore children can be easily manipulated and intimidated. Especially during cross-examination, they make concessions or change their testimony merely because they think it is expected of them or to satisfy someone or because they want to put an end to the unpleasant experience of cross-examination. The danger that exists with cross-examination is based on how conversation develops in children. According to Walker (2006:82) children learn very early to be cooperative conversationalists: children may provide answers to questions that they have not fully understood.

Walker (2002:156) supports the above when she lists three major limitations on incorporating truth/lie discussions into investigative interviews: (1) children who ‘pass’ the so called truth-lie test are not necessarily more accurate or less suggestible than same-age peers who fail; (2) there is no evidence that standard truth-lie tests encourage children to filter out inaccurate information and (3) young children’s inaccuracies in reporting may be due more to errors in complying with the perceived demands of the interview situation and to errors in memory than to intentional deception.

According to Walker (2002:156) it is difficult to determine the point at which children understand the difference between a “lie” and a “truth”. Walker (2002:156) further mentions that a truthful statement is characterized by the following five elements: (1) the statement is true; (2) the speaker believes the statement to be true; (3) in uttering the statement the speaker intends the

statement to be truthful; (4) the speaker wants to convey truthfulness and (5) the speaker expects the listener to believe the statement is truthful.

The forensic interviewing protocol of the State of Michigan (Grobbelaar, 2007:1) gives guidelines on how to establish whether a child understands the difference between the truth and a lie. Songca and Le Roux (2004:317) is of the opinion that neither an oath nor the knowledge of the difference between truth and falsehood, nor the understanding that punishment may follow a lie, guarantees honesty. According to Guidance on interview (2003:26) the task of defining what is truth and what is lie is even difficult for adults. The researcher is of the opinion that even if the child is able to differentiate between a truth and lie it is not a guarantee that he would be telling the truth.

Therefore the responses that were given indicate that the respondents do not have a clear understanding on how to conduct the truth versus lie test. It is clear from the responses that members of the legal sector or of the opinion that cross-examination is an effective method to use, however from the above mentioned literature is clear that cross-examination is not effective when questioning children. According to the researcher members of the legal sector therefore requires further training on questioning children on other manners than cross-examination.

#### **5.4.11 Interview protocols**

None of the respondents were aware of protocols that professionals should utilize when interviewing children, who have been sexually abused. Members of the legal sector were not aware of protocols that professionals should utilize when interviewing children who have been sexually abused. The researcher is of the opinion that members of the legal sector therefore need information on the forensic investigation i.e. the protocol for the forensic interview (State of Michigan Interview Protocol, in Grobbelaar, 2007), which professionals are able to conduct a forensic investigation, what are the elements that are needed in a forensic report.

One of the recommendations (Walker, 2002:159) professionals make, based on empirical findings for proper interviewing of children are is the use of research based interview protocol. Walker (2002:159) provides the elements of a sound basic protocol for interviewing children, which are based on the

results of empirical studies. These elements are: establishing rapport, explaining interview purpose, discussing interview 'ground rules', emphasizing the use of open-ended questions, limiting the use of demonstrative aids (such as anatomically-detailed dolls), explaining legal proceedings, and formally closing the interview.

The researcher is of the opinion that members of the legal profession should have knowledge on interview protocols that are empirically based, as they are the ones who request reports from either psychologists or social workers and therefore should know what elements there must be in a forensic report. For example the researcher is of the opinion that members of the legal profession should have knowledge of the concern that there are on the utilization of props and cues. According to Walker (2002:160) there are two primary concerns with using props and cues in investigative interviews with children: first, the presence of relevant cues might lead some children to elaborate from general knowledge or fantasy, thereby increasing the amount of inaccurate information they report. Second, the presence of irrelevant cues could be inherently suggestive, leading investigators who selected the cues in the first place to confirm their prior beliefs.

The researcher is of the opinion that all the previous aspects that are mentioned are all essential aspects that members of the legal profession should have knowledge. Knowledge of these aspects, according to the researcher, would improve the conduct of the legal sector and possibly increase conviction rate of child sexual abuse offenders.

## **6. CONCLUSION AND RECOMMENDATIONS**

The research study that was undertaken involved 20 members of the legal profession that have been purposively selected. All the respondents currently reside in the province of Mpumalanga. The respondents completed a questionnaire anonymously. Themes from their responses were identified where upon they require further training.

## 6.1 Conclusions

- The respondents that took part of the research study represent a cross profile of the legal profession and therefore the results can be drawn to the broader community.
- The vast majority, 13 (65%) respondents indicated that they only have between 0-3 years of experience in working with children. The respondents experience in working with the child as witness therefore seems to be not a lot and this could explain why most of the responses indicated that the respondents have not yet acquired the necessary specialised training in dealing with the child as witness.
- The majority of the respondents did not receive any specific training regarding children and children's issues. The researcher is of the opinion that one of the reasons could be that as previously mentioned the majority of the respondents only have between 0-3 years of experience in working with the child as witness. One could hypothetically say that as the years in working with the child as witness increases they would attend more training on children and the child as witness.
- From the literature study it seems that a basic understanding of child development is essential for members of the legal profession. The responses that were given indicate that they do not have a basic understanding of child development.
- From the literature study it seems that knowledge of a child's language development is essential and particularly so for the following reasons:
  - To ensure that adjudicators are able to hear, understand and give due weight to exactly what children in court are saying
  - To avoid misunderstandings and errors that can undermine children's credibility and contaminate their statements
  - To equip members of the legal profession to be able to question the young child witness.

- From the responses given it seems that the respondents have not acquired the necessary understanding regarding children's language development.
- From the literature study it seems that knowledge on a child's normal sexual development is essential. If members do not have that knowledge there is the risk that possible normal sexual behaviour of a child could be misinterpreted as being sexual abuse.
- From the response given it indicates that the respondents do not have knowledge regarding children's normal sexual development.
- The literature study reveals that disclosure of sexual abuse is a process and has four stages: (1) denial; (2) disclosure; (3) recanting and (4) reaffirmation.
- There are a number of factors that contributes to disclosure being a process. They are: pressure from the perpetrator; pressure from the family to either disclose, deny or to recant; negative personal consequences that the child foresees; videotaping of the interview; retelling parents; judicial proceedings and the investigatory police.
- Although 50% of the respondents indicated that they regard their knowledge on sexual abuse as either good or excellent the researcher is of the opinion that they need further training on sexual abuse and more so on the process of disclosure, as ten (50 %) of the respondents indicated that children sometimes make false allegations (refer to 5.4.9). This response indicates to the researcher that the respondents might not be aware that disclosure of sexual abuse with children is most often a process.
- The researcher is of the opinion that members of the legal profession do not have an understanding that disclosure of sexual abuse is a process and that many of the problems that might occur in children's testimony is a result of this process and not because children lie about the abuse.
- The literature study reveals that interviewing children, an especially young child is a highly specialised task. The skill of the interviewer

directly influences whether a child relates a true memory, discusses a false belief, affirms details suggested by others, embellishes fantasies; or provides no information at all. A good interviewer needs to be well versed in linguistic, child development, memory and suggestibility issues, the dynamics of abuse and accepted interview guidelines.

- Members of the legal profession have not acquired the necessary interviewing skills for interviewing children. It is clear from the literature study that interviewing children is a specialised task and requires specialised training.
- Children give more accurate answers when they are interviewed by an empathetic interviewer.
- Rapport building is very important. With good rapport building skills initial hesitation, unease or mistrust can be overcome and with the result that the child witness would more easily be able to testify. Members of the legal profession do not have good rapport building skills. From the literature study it seems clear that these rapport building skills are necessary to enable a child witness to feel more at ease with the result a more accurate testimony.
- The literature reveals that children as young as three years can testify competently and credibly. When it comes to determine whether a child can testify or not each child must be assessed individually and must have the ability to make observations, to recall events, and to relay this to the court in an intelligent manner.
- From the responses given by the respondents it seems that they do not clearly understand that age is not a factor in determining whether a child is able to testify. The literature study reveals that there is no minimum age that a child should be before he can testify. Each child however should be assessed individually on his ability to testify.
- From the responses it seems as if the respondents have adequate knowledge regarding factors that determine the credibility of a child witness.

- There are both similarities and differences in the ways children and adults encode, store and retrieve memories. The testimony of witnesses about events and the people in them are central to the functioning of criminal and civil proceedings. Children's ability to recall and communicate develops with age and a combination of children's knowledge, their skills and social factors influence their memories and their ability to recall past events.
- Misconceptions regarding children's reports still exist and members of the legal profession need education on the manner in which children make statements.
- Cross-examination seems to be the main tool in the judicial system that is utilised to determine the truth. Cross-examination can however not be applied to children due to the following reasons:
  - African culture considers it rude if a child challenge or question a statement made by an adult.
  - During cross-examination, they make concession or change their testimony because they think it is expected of them.
  - Children are co-operative conversationalist; they provide answers to questions that they might not fully understand.
- There is no evidence that the standard truth vs. lie test would ensure that a child will be telling the truth.
- The literature shows that there are various reasons why cross-examination does not work with children.
- Elements of a sound based protocol for interviewing children, which is based on the results of empirical study, are: establishing rapport, explaining interview purpose, discussing interview 'ground rules', emphasizing the use of open-ended questions, limiting the use of demonstrative aides, explaining legal proceedings, and formally closing the interview.

- None of the respondents had knowledge regarding interview protocols for interviewing sexually abused children.
- The goal of the research was to determine whether there is a need amongst members of the legal profession to receive specific training on children and child development that can serve as guidelines for further study in implementing a training program.
- The researcher was successful in achieving this goal. The following themes were identified from the questionnaire that can be incorporated in a training program for members of the legal profession: Child development, Children's language development, Children's normal sexual development, Sexual abuse – more specific the process of disclosure, Rapport building skills, Minimum age for testifying, Factors determining credibility of child witness, Children's statements and report of events, Truth vs. lie testing, Interviewing skills, Interview protocols.
- The researcher therefore can conclude that members of the legal profession have not received adequate training on the child witness and that the need for further training exists with members of the legal profession.

## **6.2 Recommendations**

- The respondents currently reside in the Mpumalanga Province. Although they represent a cross profile of the legal profession the researcher is of the opinion that a similar study should be undertaken in the other provinces of South Africa.
- It is recommended that further study should be undertaken with the respondents where the majority will have more than three years of experience in working with children.
- Further study should be undertaken into the reasons why members of the legal profession would or would not attend specific training on the child as witness.
- Further research should be undertaken in evaluating the effectiveness of the current courses on the child as witness.

- The research recommends that a training program needs to be developed which focuses on the developmental stages and behaviour of children.
- A specific training program should be developed that provides training for members of the legal profession on children's language development.
- A training program should be developed that will provide information on the normal sexual development of a child.
- Members of the legal profession's current knowledge on sexual abuse should be broadened to have an understanding of the process of disclosure of sexual abuse. The researcher is of the opinion that if such knowledge is obtained less child witness statements would be seen as not credible.
- Members of the legal profession should undergo practical training on interviewing the child as witness. A training program can be developed for this purpose, but the researcher recommends that more emphasis should be placed on practical than on the theoretical part.
- Members of the legal profession should obtain training on how to establish rapport with the child as witness.
- Members of the legal profession need to obtain knowledge on how to assess whether a child would be able to testify in court or not.
- Members of the legal profession should have knowledge on children's ability to recall and communicate their memories and recall past events.
- The researcher recommends that members of the legal profession be taught methods other than cross-examination when they want to ensure that children tell the truth.
- It is recommended that members of the legal profession must obtain knowledge on empirically based interview protocols for interviewing children. Knowledge of an empirically based interview protocol is necessary as then members of the legal profession would be aware of for example the concern that there is on the utilization of props and cues.

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## APPENDIX A

### Training Needs Assessment Questionnaire

This questionnaire is aimed at ascertaining whether members of the Law Society have training needs regarding the child as witness. This questionnaire is anonymous and to guarantee this, you need not put your name on, just your job title. Participation is voluntary. Please answer all questions. Honesty in responding to questions is highly appreciated. The first response that comes to mind is the most appropriate. Please read the questions carefully, and then cross(x) in the box under the most applicable response. Other questions will require some explanation/elaboration.

The research report will be available to you after the completion of the study.

Thank you for your participation in this research.

#### SECTION A: BIOGRAPHICAL DATA

1 .Job description: \_\_\_\_\_

2 What is the highest educational level you have reached?

Diploma	Degree	Masters degree	Other

3. Have you ever worked with children in your practice as law specialist?

Yes	No

4. If yes, what is the number of years of experience you have in working with children?

0-3 years	4-7 years	8-11 years	12-15 years	16 years and more

5. Have your received specific training regarding children?

Yes	No

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If **yes**, please describe the training you received? (If you answered **No**, continue to question 6)

No	Diploma /workshop /certificate/ degree	Info regarding the context of training/ what was the training about	Presented by	Date

A. Did the training help you in any way in dealing with the child witness?

Yes	No

B. If **yes**, in what manner? (Please explain)

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6. Have you dealt with cases where sexual abuse was involved?

Yes	No

7. Have you received training on the following acts and bill?

Act/Bill	Yes	No
Children's Act 2005 (Act no 38 of 2005)		
Sexual offences bill		
Child Justice bill		

8. Do you think that you would benefit from further training regarding child development and the child as witness?

Yes	No

8.1 If **yes**, what format of training, regarding child development and the child as witness, would you be willing to attend?

Short Course	3 day workshop	Diploma	Degree

## SECTION B: Child development

1. Have you received any training on child development?

Yes	No

1.1 If **yes**, elaborate on the training you have received (aspects covered, who presented it, type of training):

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2. Do you regard your knowledge on child development in general as?

Excellent	Good	Average	Poor	Very Poor

3. Do you regard your knowledge on the child's language development as?

Excellent	Good	Average	Poor	Very Poor

4. Do you regard your knowledge on normal sexual development of the child as?

Excellent	Good	Average	Poor	Very Poor

5. Do you regard your knowledge on sexual abuse as?

Excellent	Good	Average	Poor	Very Poor

**SECTION C: The child as witness**

1. Assess your child interviewing skills with a child witness:

Excellent	Good	Average	Poor	Very Poor

2. Assess your rapport building skills with a child witness:

Excellent	Good	Average	Poor	Very Poor

3. According to you what is the minimum age that a child should be in order for them to be able to testify in court?

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4. Tick those factors which determine whether a child would be a credible witness:

Child's age	
Ability to observe	
Adequate memory	
Must be able to communicate	
Must appreciate the obligation to testify truthfully	

5. Rate the following:

	True	False	Sometimes
Children's memories are unreliable			
Children are highly suggestible			
Children have difficulty distinguishing fact from fantasy			
Children make false allegations particularly of sexual abuse			

6. Can one test if a child is telling a truth or a lie?

Yes	No

6.1 If yes, how would you test it?

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7. Do you think children and adults have the same ability to remember events they have experienced?

Better	As well as	Worse

8. Do you think that the utilization of props influences children's memory?

Yes	No

9. What according to you influences a child's memory?

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10. What would you say is the most difficult aspect in working with cases that involve children?

Young child witness	
Children who make false allegations	

Child sexual abuse cases	
Teenage witness	
Children who recant their statements	

**SECTION D: Sexual abuse**

1. Please rate the following:

a. Children lie about sexual abuse:

Yes	No	Sometimes

b. Which of the following age groups is the most likely to fabricate sexual abuse allegations?

0-4 yrs	4-7 yrs	7-10 yrs	10-14 yrs	14-18 yrs

2. What are the reasons children could lie about sexual abuse?

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3. Do you know of any protocols that professionals should utilize when interviewing children who have been sexually abused?

Yes	No

4. If yes, name them.

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THANK YOU FOR YOUR PARTICIPATION AND TIME. Please send to [nadiwe@yahoo.com](mailto:nadiwe@yahoo.com).

Yours truly,

Nadia Mengel  
SOCIAL WORKER