

KNOWLEDGE AND ATTITUDES OF CRIMINAL JUSTICE PROFESSIONALS IN RELATION TO FETAL ALCOHOL SPECTRUM DISORDER

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ABSTRACT

Results of a provincial survey of Judges and Crown Prosecutors to determine specifically, their attitudes, knowledge, behaviors and training needs related to Fetal Alcohol Spectrum Disorders. In general, the survey results suggest that while aware of some aspects of FASD, Judges and Prosecutors both desire and need more education and training to support them in their work with individuals with FASD who come into conflict with the law. The findings also suggest that access to accurate and timely assessment and diagnoses of FASD would be beneficial. Survey findings point to the need for specific action to improve the ability of Judges and Prosecutors to recognize and to work with people affected by FASD in the Criminal Justice System. The results further indicate the need for changes and improvements in several areas regarding legal policy issues, research, and professional education and practice.

In many jurisdictions in Canada and the United States, criminal courts are now recognizing FASD as being a contributing and/or relevant factor in the criminal justice system. However, as of March 2006¹, there were no reported criminal cases that mentioned FASD in any context in the following jurisdictions:

- New Brunswick
- Quebec
- Nova Scotia
- Prince Edward Island
- Nunavut

One reasonable hypothesis is that awareness of FASD among legal professionals in these jurisdictions is not on par with the rest of the country where FASD has been found to be a factor and more education is needed.

Courts in both Canada and the United States have acknowledged that an accused/victim/witness with FASD who becomes involved with the criminal justice system may not understand the arrest and court process, and courts have recognized several aspects that need particular attention. Some of the issues identified include: competency, capacity, and legal responsibility, false confessions, giving testimony, sentencing, as

well as, the victimization of persons with FASD while in custody.² Although the person with FASD may be of average or above average intellect, s/he may not be able to fully grasp the severity of the situation. Courts have identified what are considered to be three areas of difficulty for persons with FASD related to their disability:

1. Difficulty translating information from one sense or modality into appropriate behaviour. Translating hearing into doing, thinking into speaking, feeling into words.
2. Difficulty generalizing information. Links are not automatically formed. Learning happens in isolated clumps and may be unconnected or loosely connected to their experiences, thoughts or emotions.
3. Difficulty perceiving similarities and differences. Without the ability to generalize and make associations, a person's capacity to compare and contrast, see whole patterns, sequence and judge is affected.³

The court summed up the above in one word, "gaps". These "gaps" become significant when

considered in a legal context. This study was conducted between June 2005 and June 2006 to obtain information from New Brunswick Criminal Justice System professionals, specifically Provincial Judges and Prosecutors, regarding their knowledge and attitudes about FASD. Information was also gathered from Judges and Prosecutors regarding their training and educational needs in relation to this issue.

Some of the research questions that were addressed in this study include:

- What are the beliefs and attitudes and knowledge levels of legal professionals in New Brunswick in relation to FASD disabilities?
- Are there any professional knowledge-based practices in the New Brunswick criminal justice system regarding FASD individuals who come into conflict with the law?
- What are the present training and professional practice needs of legal professionals in New Brunswick?
- Can the information gathered in this study help in the development of training and professional practice initiatives in the province?

METHODS

The survey questionnaire used in this study was modified from a questionnaire that was used previously in a study of legal professionals in the Richibucto-Rexton-Elsipogtog area in 2002. It was tailored to account for the development of the Canadian Guidelines to FASD Diagnosis and specific diagnostic terminology. The survey was mailed to all New Brunswick. Provincial Judges listed in the New Brunswick Court website and all of the Crown Prosecutors listed in the Directory of Employees of Public Prosecutions along with an introductory letter and a stamped return envelope for ease in response. Respondents were given the choice to fill out and return the paper response or to participate in a telephone interview, and a follow-up call was made to respondents to see if they preferred a telephone interview. All of the returned surveys were mailed or faxed.

The questionnaire consisted of questions in the following areas:

- Background Information - Personal Information
- Awareness of FASD
- Impact of FASD on Professional Practice
- Knowledge and Views Regarding FASD
- Looking to the Future-Professional Practice and Training Needs in relation to FASD

Most of the questions were in a multiple choice or forced choice format with various response options depending upon the content of the question e.g. Likhert scale, yes-no, select all that apply, multiple choice. The response rate for Provincial Judges was 65%. Out of the 31 Provincial Judges, 20 participated in the study. The response rate for Crown Prosecutors was 36%. Out of a possible 53 Prosecutors, 19 participated in the study. Overall, the participation rate was 46% of the total population of all of the Judges in the New Brunswick Provincial Court and all of the Crown Prosecutors in New Brunswick Public Prosecutions. Data were entered into Excel and analyzed using the Statistical Package for the Social Sciences (SPSS)/PC Version.

Of the Judges who responded 20% were female and 42% of the Prosecutors who responded were women. In the total populations of Judges and Prosecutors, 16% of all Judges in the Provincial Court are women while 28% of all Crown Prosecutors are women. Proportionately a larger number of female Judges and Prosecutors participated in this study than would be expected from the total population make-up. For this reason, responses may be more reflective of female Judges and Prosecutors in the province. Responses came from Judges and Prosecutors from all regions of the province who served both rural and urban areas and English, Acadian and Aboriginal populations.

General Population Characteristics

The survey of Judges and Prosecutors was completed by 39 respondents: 20 Judges and 19 Prosecutors. The Judges, not surprisingly, were older; 81% of the Judges had graduated prior to 1980 compared to 37% of the Prosecutors and

there were more males among them-80% of the Judges compared to 58% of the Prosecutors.

General Awareness of FASD

95% of the Prosecutors and 70% of the Judges reported they “first heard about FAS, FAE, (Fetal Alcohol Effects) or other alcohol-related birth disorders” more than four years ago. The mass media has been a crucial source of information about these matters for these Judges and Prosecutors: 53% overall cited this source. Indeed, one judge gave no other response to the questionnaire other than to write across the top, “The only knowledge I have of the topic is what I have gleaned from T.V.” Still, there was some variation between the two groupings; Judges were most likely (69%) to cite their source of information as professional training/orientation and workshop sessions, whereas Prosecutors were most likely (68%) to cite the mass media. This difference may be related to the fact that a workshop on FASD was presented to the New Brunswick judiciary by Lori Vitale Cox, one of the researchers, in their June 2005 continuing education session. A significant minority of respondents in each group – 16% of the Judges and 32% of the Prosecutors – cited “other justice professionals” as a source of information on FASD and other alcohol-related birth disorders. These findings suggest the importance of conducting orientation and workshops on FASD especially among the judiciary who may be less impacted by mass media information. Certainly in their open-ended remarks the Judges and Prosecutors emphasized that updates on developments in FASD issues would be much appreciated.

The Impact of FASD on Professional Practice

Most Judges and Prosecutors (75%) indicated that they have encountered persons “disabled with FASD” in their practice, in the sense that they were informed that accused persons and occasionally others, such as witnesses, may have had that condition; here 84% of the Prosecutors and 68% of the Judges replied “yes”. Over half of the respondents in each grouping also reported they suspected some accused persons with whom they dealt to be “disabled with FASD”. Among those having such suspicions, 90% of the Judges and the Prosecutors reported that one factor

behind that suspicion was the accused person’s “inability to learn from mistakes”. A smaller majority in each grouping, approximately 75% of the Judges and 70% of the Prosecutors, based their suspicion on the accused physical appearance (e.g., facial shape, small size).

A large percentage of respondents in each grouping reported that they had modified their practice routines when dealing with a person they suspected had FASD. 70% of the Judges and 50% of the Crown Prosecutors claimed to have adjusted their practice in such a situation. Only a small minority of the Judges and Prosecutors directly engaged “trained others” in responding to individuals with suspected FASD disabilities. In line with their legal roles, Judges were more likely than Prosecutors (11% to 5%) to secure support to facilitate communication with individuals with suspected FASD disabilities. Prosecutors were more likely (26% to 17%) to send someone suspected of FASD for professional assessment.

The majority of the Judges and Prosecutors, who reported an encounter with an actual or suspected accused disabled with FASD, did modify their decision-making in the event of a guilty plea or conviction. Judges indicated that their sentences in these cases were more likely to entail “increased supervision” (70%) and “extra-judicial sanctions” (60%). Prosecutors also indicated these two options in their sentencing recommendations (70% for “increased supervision” and 54% for “extra-judicial sanctions”).

These patterns strongly suggest that persons with FASD and other alcohol-related disabilities are encountered by Judges and Prosecutors in their practice and that, in large measure, these Judges and Prosecutors do attempt to adjust their practices and decision-making under such circumstances. Judges and Prosecutors also report that they have little recourse to diagnostic services, treatment or trained support professionals. Several respondents in their open-ended remarks queried, “What treatments will work?”, “What services are available?”

All the above patterns occur in a context where these Judges and Prosecutors generally echo the words of one judge, namely “I do not know the symptoms and neither does my support group”. Only three of the 39 respondents, all three of whom were Judges, were aware that the term FAE, Fetal Alcohol Effects, was no longer used as

a diagnostic label by medical professionals trained in FASD related disorders, and only one respondent (another judge) professed to have any knowledge about the diagnosis of ARND, Alcohol Related Neurodevelopmental Disorder

Attitudes Regarding FASD

The Judges and Prosecutors were asked about their level of agreement with a variety of statements about FASD. For each statement the response options were from one to four where four represented the strongest agreement. In response to the statement about "FASD being identifiable" 95% of the Judges and 72% of the Prosecutors indicated much agreement (i.e., checked off 3 or 4); roughly 40% of the Judges and 20% of the Prosecutors selected the strongest agreement option (i.e., 4). The plurality of Judges and Prosecutors (47% and 37% respectively) agreed strongly (i.e., chose 4), that "FASD is relevant to my work as a legal professional" and 95% of the Judges and 61% of the Prosecutors showed much agreement (i.e., selected either 3 or 4) with that statement. Interestingly, and consistently, the Judges and Prosecutors generally rejected the statement "the effect of alcohol on fetus development is unclear"; only a minority in each grouping (31% of the Judges and 28% of the Prosecutors) indicated much agreement (i.e., chose options either 3 or 4) with that statement.

There was more variation in the Judges' and Prosecutors' views on whether "clearer criteria were needed to properly diagnose FASD". Both Judges' and Prosecutors' responses were well distributed over the agreement continuum but Judges' responses were skewed more to the "much agreement" pole (64%) whereas the Prosecutors' views were more to the "little agreement" pole (53%). Judges and Prosecutors in both groupings (over 80% checked either 3 or 4) clearly believed that improved FASD diagnosis would lead to more appropriate consequences for unacceptable behaviour. Few respondents in each grouping (6% of the Judges and 17% of the Prosecutors) expressed much agreement with the statement that "FASD is only an issue for youth". Few Judges and Prosecutors (12% of the Judges and 17% of the Prosecutors) indicated much agreement with the statement "FASD occurs primarily in minority families". Overall, the

Judges' and Prosecutors' consensus views were that FASD is identifiable, that the impact of alcohol on fetus development is clearly established and that the FASD phenomenon is not limited to youth and those in minority families. They generally considered that FASD issues are relevant to their practice and indicated that with clearer and more accessible diagnosis these issues would be even more relevant. The question concerning the need for greater diagnostic clarity generated the greatest diversity in the Judges and Prosecutors' responses, and Judges were more likely than Prosecutors to believe that more diagnostic clarity was needed. This is to be expected since the majority of these Judges and Prosecutors report they were not familiar with the Canadian Guidelines for FASD Diagnosis that operationalize FASD diagnosis and so provide diagnostic clarity.

DISCUSSION

As noted above, the Judges and Prosecutors appear to have accepted the significance of the FASD phenomenon for their professional practice. They also acknowledged their lack of familiarity with recent developments in diagnosis and labeling with respect to FASD-related disabilities. Virtually all respondents expressed a lack of familiarity with the "new Canadian Guidelines for the diagnosis of the FASD conditions" – only 12% of the Judges and none of the Prosecutors reported having much awareness of the guidelines. It is not surprising then that only 40% of the Judges and 26% of the Prosecutors reported themselves "prepared" to deal with FASD cases (suspected or otherwise). The Judges indicated in large number that support would be helpful in the guise of more research information becoming available (74%), lists of qualified physicians drawn up in different regions of the province for FASD referrals (74%), better diagnostic information being generated and circulated (74%), and a FASD diagnostic centre being established ((53%). Prosecutors also pointed to the benefits of some supports, especially more research information (68%), but with less emphasis than the Judges; a plurality of the Prosecutors did call for more diagnostic information being available (37%) and cited the importance of practice guidelines being developed (42%). Only three

respondents in each of the two professional groupings reported they knew where to refer persons for FASD diagnosis, and only one of the combined judge and prosecutor sample indicated any knowledge of where to refer persons for treatment of FASD conditions. Virtually all the justice professionals did agree that it would be very helpful to have such treatment possibilities. The Judges and Prosecutors, informed about Correction Services Canada's report on the prevalence of FASD among the inmate population, were asked how prevalent FASD-related disabilities were among offenders they encountered in their practice. The responses ranged from few to as many as 40%, with the plurality category being "between 10% and 19%", clearly indicative of a very significant issue for the justice system. There was also complete consensus that the prevalence of FASD disabilities required a more coordinated approach among justice and health professionals, and that sessions on the topic with other legal professionals to shape a New Brunswick "approach" would be valuable. The large majority of both Judges and Prosecutors appeared open to the prospect of what is increasingly referred to in justice circles as "the problem-solving court"; for example, at least 80% of the respondents indicated that a Mental Health court would be a helpful initiative.

Overall, this survey of Judges and Prosecutors indicated quite clearly that they see FASD related disabilities as a pervasive phenomenon in their practice and that they are not as prepared as they would like to be in responding to it. Where they encounter it, based on information received or their own suspicions, they do attempt to modify their practice (e.g., in sentencing) to take the FASD effects into account. Lack of training and provincial FASD diagnostic and intervention services are issues for these legal professionals. The Judges and Prosecutors are clearly calling for more information and training on FASD issues, access to proper FASD assessment (while noting that the diagnoses and information in place have established the central claims of the FASD model) and more regular updating. They are seeking ways to take FASD appropriately into account in their practice as well as to identify case law pertinent to FASD. They have articulated clearly and with emphasis the

need for policies and programs to respond to the challenge of FASD disability.

RECOMMENDATIONS

Legal Policy Issues

1. Develop a coordinated approach to FASD in the Criminal Justice System and develop clear practice guidelines.

100% of the respondents indicated that they wanted a coordinated approach to the problem of FASD in their professional practice.

Legal Research

1. Determine how many individuals with FASD are coming into conflict with the law and also the nature of their offences.
2. Monitor Judges and Prosecutors' knowledge through periodic surveys and evaluation of education and support programs.

It is important to determine, periodically, changes in the awareness and knowledge of Judges and Prosecutors. While survey results indicate that a few Judges and Prosecutors have a basic understanding of the issues related to FASD, there are clear professional differences in knowledge and attitudes towards FASD. At the same time, the data clearly call for standardized training programs to meet the specific needs of each.

Professional Education and Practice

1. *Train Judges and Prosecutors about FASD, when and where to refer for diagnosis and the long-term secondary disabilities associated with FASD.*

Only 12% of Judges surveyed and 0% of Prosecutors surveyed were aware of the 2005 Canadian Guidelines for FASD Diagnosis. Less than half of the respondents had ever heard of the term FAE. Only 17% of Provincial Judges and 0% of Prosecutors surveyed were aware that the term FAE was not used in making diagnosis of FASD disabilities. Only 6% of Judges and 0% of Prosecutors were familiar with the term ARND or

Alcohol Related Neurodevelopmental Disorder. Almost half of the respondents were unaware of the physical characteristics of FASD.

2. *Develop the Capacity of the Criminal Justice System in terms of FASD referral and diagnosis.*

This would be for the benefit of the accused and also the systems responsible for the care after sentencing in terms of intervention and treatment while incarcerated or on probation.

3. *Improve professional preparedness to care for individuals with FASD disabilities.*

Survey results show that 60% of the Judges surveyed and over 70% of the Prosecutors surveyed feel unprepared to deal with individuals with FASD in their practice.

4. *Develop a Wellness or Mental Health Court to deal with individuals with FASD in Criminal Justice System.*

Over 80% of respondents were open to the idea of a Mental Health or Wellness Court in terms of dealing with individuals with FASD.

SURVEY DATA

VIEWS AND IMPACT ON PRACTICES OF JUDGES AND PROSECUTORS REGARDING FASD

	20 JUDGES		19 PROSECUTORS	
	Number	%	Number	%
PERSONAL CHARACTERISTICS				
Male	16/20	80%	11/19	58%
Graduated prior to 1980	14/17	81%	7/19	37%
AWARENESS OF FASD				
Heard of FAS/FAE birth disorders more than 4 years ago	14/20	70%	18/19	95%
Is main source of information on FASD mass media?	8/19	42%	13/19	68%
Is main source of information on FASD* professional workshop?	13/18	69%	3/19	16%
Aware that medical people trained in FASD disorders do not use term 'FAE'	3/18	17%	0/19	0%
Familiar with 'ARND' diagnoses	1/16	6%	0/19	0%
Believe the percentage of FASD-disabled persons among accused is between 0 - 9 %	4/14	29%	5/17	30%
Believe the percentage of FASD-disabled persons among accused is between 10 -19 %	7/14	50%	6/17	35%

Knowledge and attitudes of criminal justice professionals in relation to fetal alcohol spectrum disorder

	20 JUDGES		19 PROSECUTORS	
	Number	%	Number	%
IMPACT ON PRACTICE				
Ever informed of an accused or other being disabled with FASD	13/19	68%	16/19	84%
Ever suspect that an accused or other might be FASD-disabled	10/17	59%	10/14	53%
Factors fuelling suspicions of FASD disability: physical appearance	6-9/10	60%-90%	7/10	70%
Factors fuelling suspicions of FASD disability: accuseds' inability to learn from mistakes	9/10	90%	9/10	90%
Ever sent someone suspected of FASD for assessment: Yes	3/18	17%	5/19	26%
Ever used a trained support person to help in communicating with someone suspected of FASD: Yes	2/17	11%	1/19	5%
Ever modified practice dealing with an accused with FASD: Yes	10/14	70%	9/18	50%
Modification: Increased supervision	7/10	70%	9/13	70%
Modification: Suggested extra judicial measures	6/10	60%	7/13	54%
VIEWS ABOUT FASD (SOLIDLY AGREE WITH THE STATEMENT)				
FASD is an identifiable syndrome	16/17	95%	13/18	72%
FASD is relevant to my work as a legal professional	16/17	95%	11/18	61%
The effect of alcohol on fetus development is unclear	5/16	31%	5/18	28%
Clearer criteria are needed to diagnose FASD	9/14	64%	8/17	47%
FASD is really only an issue for youth	1/16	6%	3/18	17%
FASD occurs primarily in minority families	2/16	12%	3/18	17%
FASD assessment would lead to more appropriate consequences for behaviour	13/15	87%	14/17	82%

	20 JUDGES		19 PROSECUTORS	
	Number	%	Number	%
LOOKING INTO FUTURE				
Aware of new Canadian guidelines for FASD	2/16	12%	0/16	0%
Prepared to deal with accused that has FASD In the future: Yes	7/18	40%	5/19	26%
Kind of support needed: More research information	14/19	74%	13/19	68%
Kind of support needed: Lists of qualified professionals to consult /refer	14/19	74%	4/19	21%
Kind of support needed: Guidelines	5/19	26%	8/19	42%
Kind of support needed: diagnostic info on accused	14/19	74%	7/19	37%
An FASD Diagnostic Clinic	10/19	53%	4/19	21%
Know where to refer for FASD assessment	3/18	17%	3/18	17%
Know where to refer for FASD treatment	0/18	0%	1/19	6%
Having treatment alternatives would be helpful	17/17	100%	15/17	88%
A coordinated approach to FASD is needed	18/18	100%	16/18	88%
Sessions with other legal professionals to discuss a province-wide approach are needed	19/19	100%	17/19	90%
It would be helpful to have a mental health court in my area	16/18	88%	14/19	74%

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