**DCJ 715 Brief 4: Witness Protection Programs**

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**Abstract**

This paper reviews robust witness protection programs of five countries based on best practices. The programs' primary purpose is to protect witnesses assisting in criminal cases by providing testimony in court. The research revealed that the United States, United Kingdom of Great Britain, Switzerland, Australia, and Canada had witness protection programs established by good legislation. They clearly defined the authority, administration, vetting of staff, enrollment criteria, responsibilities and obligations of each party, program oversight, and witness health/mental care. Additionally, participants who followed all the guidelines are shown to have remained safe with their identities secured. Countries that demonstrate good witness protection practices have a strong record of securing and protecting their witnesses while maintaining vital conviction records. These countries have lower corruption and a less transnational criminal organizational presence. Research also showed that witness protection programs are costly and thus a common concern for poorer countries.

*Keywords*: witness protection programs

The countries that have the most robust legislation or policies in place for the protection of witnesses for either working with law enforcement or providing testimony in court are the United States, United Kingdom of Great Britain, Switzerland, Australia, and Canada. The author used the criteria for good practices of witness protection programs to determine which countries had the most robust support for witness protection programs. Sound practices are procedural measures, witness protection programs, witness protection authority, and witness protection unit (*Good practices for the protection of witnesses in criminal proceedings involving organized crime*, 2008).

Procedural measures are the actions taken by the court to relieve the witness of intimidation and fear. The court may implement obfuscation techniques to hinder voice and face recognition. The testimony process may also be handled in a manner such as videoconferencing. These are in place to prevent the witness's identity from being revealed (*Good practices for the protection of witnesses in criminal proceedings involving organized crime*, 2008).

Witness protection programs must be covert and adhere to formal rules with strict oversight. It must provide the vetting process in a strict criterion for admission into the program. The program should also include funding for witness relocation, witness re-identification, and other necessities for the witness. These may include psychological and health benefits and possibly employment (*Good practices for the protection of witnesses in criminal proceedings involving organized crime*, 2008).

Witness protection authority is the oversight and coordinating authority that may be local or national level government. It may be a subcategory of the police or part of the judicial branch of government. This authority provides the oversight, policy, and procedures determining entry into the program. The length of time that a witness may be in the program, which benefits will be provided to the witness (*Good practices for the protection of witnesses in criminal proceedings involving organized crime*, 2008).

Witness protect unit has the authority to operate the covert program. It includes implementing the program and the care of the program's witnesses. It will necessarily include physical security, relocation of the witness, and identity obfuscation. The staff of this unit must be volunteers and have the highest moral and ethical standards. They must also be psychologically evaluated to endure lengthy separation from family and loved ones. Furthermore, they have to have a mind that will allow them to protect persons who were once criminals (*Good practices for the protection of witnesses in criminal proceedings involving organized crime*, 2008).

The first country to be reviewed for its witness protection program is the United States. The witness protection program concept was conceived and developed in the United States to combat the Mafia in the 1970s. The program started as the Organized Crime Control Act. However, it had some shortcomings and, in 1984, was reformed by the Witness Security Reform Act. This Act addressed the shortcomings by creating the admission criteria and the procedures for assessing witnesses and risks posed by the criminals. It also established a fund for compensation to the victims. The witnesses' obligations were also defined by using a signature of a memorandum of understanding. Procedures on how to handle a witness who is in breach of the contract were also addressed (*Good practices for the protection of witnesses in criminal proceedings involving organized crime*, 2008).

Additionally, penalties for unauthorized disclosure of witness protection information by any participants, along with the penalties, were outlined. The rights of any third parties involved in the case were part of this Act that addressed the financial obligations of the witnesses. Furthermore, the visitation rights of non-witnesses related to the witness were dealt with. The U.S.'s WITSEC addressed each of the best practices for witness protection. It also has a perfect record of protecting witnesses who have followed program guidelines (*Good practices for the protection of witnesses in criminal proceedings involving organized crime*, 2008).

The second country's witness protection program to be reviewed is the Swiss. The current procedures and policies that administer the witness protection program were established in December 2003. Unlike the American witness protection program that involved the need to combat the Mafia, the Swiss were formed to protect witnesses involved in war criminal proceedings. Following the best practices for successful witness protection, the program addresses reprisals, death threats, harm against relatives, and property. The program also protects witnesses' identities from being exposed (Arnold, 2007).

Another factor is that the Swiss employ health care for the witnesses. This care takes place in physical and mental treatments. The Swiss had based their concern for witnesses' mental health on research that provided evidence for stronger testimony in court by those who had received these treatments (Arnold, 2007).

The other Swiss guarantee the anonymity of their witnesses via technology to obscure and obfuscate witness identity during testimony. Witness identity protection is a primary concern in the witness protection program. The guarantee of anonymity is only granted for cases of such severity that the perpetrator faces at least five years in prison. The decision to provide witness protection may be suggested by the police but must be submitted by the public prosecutor or the judge. However, the judge provides the final decisions. Additionally, the Swiss witness protection program is clearly defined and provided with solid oversight (Arnold, 2007).

In the United Kingdom, the police and the prosecutors will examine the threat level to determine if witness protection is necessary. Witness protection is only granted in the severest of cases because the United Kingdom holds the right of a defendant to face their accuser in open court as a fundamental principle. This can be found in article 6 of the European convention on human rights. Any witness testifying a firearm or knife-involved crime is given special protections straightaway. If the prosecutors determine that protection measures are required, they must apply for these measures to the CrimPR. Two questions guide the decision to grant protective measures. The first question determines the eligibility of the witness for protection. If the answer is yes, then the second question that must be answered is, will the witness provide a more decisive testimony in court because of the protections? If both questions are answered, then witness protection may be awarded (*Witness protection and anonymity*, 2022).

The United Kingdoms' witness protection program provides anonymity via sections 74 through 85 of the Coroners and Justice Act of 2009. The decision for anonymity is based on the severity of the case. The most likely will involve the use of a knife or a gun. Additionally, the police or the prosecutor must request these protections to a Justice of the Peace. However, it should be noted that anonymity is not guaranteed at the actual trial unless a separate anonymity application has been approved (*Witness protection and anonymity*, 2022).

In only the severest of cases will the witness be granted the option of relocating to a different city or possibly a different country. The policy for witness protection can be found in the Serious Organized Crime and Police Act of 2005. For this level of protection, the witness must be threatened by a defined and established threat (*Witness protection and anonymity*, 2022).

The witness protection program hit all the good practices benchmarks for a witness protection program. There is a well-defined policy, funding, vetting, and strict and formal rules with oversight. Most noticeable about United Kingdom's witness protection program is that it is provided in only the severest cases (*Witness protection and anonymity*, 2022).

The next witness protection program to be examined is in Australia. The authority for this program that outlines the policies and guidelines is in the Witness Protection Act of 1994. Australia only protects those in severest criminal cases like the United Kingdom's program. A significant and verifiable threat must be present for protection to be offered (*Australian federal police annual report 2020 - 2021*, 2021).

This program maintains its integrity and accountability via safeguards defined within the Act. All employees involved in the program must hold a national security clearance that includes a significant vetting of level II. All staff members are drug tested and screened using anti-corruption techniques established by the AFP (*Australian federal police annual report 2020 - 2021*, 2021).

The AFP Commissioner determines the entry to the program and is also responsible for reviewing candidates for removal. Additionally, the Commonwealth Ombudsman can investigate any complaints or review decisions following the ombudsman's Act of 1976. There were no actual reported incidents requiring investigations for the reporting period of 2020 – 2021 (*Australian federal police annual report 2020 - 2021*, 2021).

The AFP administers the witness protection program and its budget. The program's cost for the reporting period was $1,331,931.45. Audits are done periodically to support the integrity of the program (*Australian federal police annual report 2020 - 2021*, 2021).

Canada's witness protection program will be the last program for evaluation. The Witness Protection Program Act S.C. 1996, c. 15 governs Canada's witness protection program (WPP). It is administered by the Commissioner, who is also responsible for vetting and admitting an applicant to the WPP. Before the applicant reaches the Commissioner, they must've been recommended by law enforcement, federal security defense safety organization, or international court. As in the previous WPPs that have been evaluated, good practices of a witness protection program are in place. The Commissioner establishes the obligations of the government and the witness. The Commissioner will also review multiple factors to determine if the witness should be admitted into the program (*Witness protection program act*, 2022).

The program provides for strict oversight by the Commissioner and the integrity of all staff. The program uses covert operational and administrative methods to protect the witness and location of the facilities. Additionally, the program provides a new identity, a safe location, and funds for the witness. The program's integrity is further enhanced by oversight from the minister, who receives an annual report from the Commissioner on the operation and proceedings of the WPP (*Witness protection program act*, 2022).

In conclusion, all witness protection programs discussed in the five countries above exhibit good practice as defined by the United Nations. They are well defined with a national authority's good practices, policies, and regulations. They provide the means for vetting and establishing mutual obligations between the witnesses and the government. Additionally, they clearly defined the responsibilities and accountability of witness protection staff. Furthermore, the witness protection programs provide for the mental and physical care of the witness, including limited financial assistance. Most importantly, protecting witnesses' identity and the location remains the primary goal. Unfortunately, due to the high cost of the programs, poorer countries cannot establish witness protection programs that follow the best practices tenants. These countries continue to attract transnational crime organizations.

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