



OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS

5.6 VICTIMS OF CRIME

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1. INTRODUCTION

The views, concerns and representations of victims are an important consideration in the criminal justice system. The *Canadian Victims Bill of Rights*¹ (CVBR) provides victims of crime with rights in the criminal justice system.

Although Crown counsel do not represent victims in criminal proceedings, they must ensure that victims are properly informed about matters that affect them. Where appropriate, they must be provided the opportunity to participate in the criminal justice process. The *Criminal Code*² (Code) contains numerous provisions intended to increase the opportunities for victims to be heard before the courts, and to provide protection to victims' physical integrity as well as to their privacy.

¹ SC 2015, c 13.

² In relation to criminal prosecutions involving young persons, the *Youth Criminal Justice Act* (YCJA) contains similar provisions in the Preamble and ss 3(1)(d)(ii) and (iii).

This directive provides guidance to Crown counsel and Crown Witness Coordinators³ in their interactions with victims, including victims of crimes committed by young persons under the *Youth Criminal Justice Act* (YCJA).⁴

2. DEFINITION OF VICTIM

The term “victim” is defined in section 2 of the CVBR to include “an individual who has suffered physical or emotional harm, property damage or economic loss as the result of the commission or alleged commission of an offence.” The term is given a more specific definition in section 2 of the *Criminal Code* for the purpose of *Criminal Code* provisions where it is defined as “a person against whom an offence has been committed, or is alleged to have been committed, who has suffered, or is alleged to have suffered, physical or emotional loss, property damage or economic loss as a result of the commission of the offence.” The distinction between these definitions means that, while both natural persons and legal persons can benefit from the *Criminal Code* provisions, only natural persons have rights under the CVBR. The CVBR provides that no adverse inference shall be drawn against an accused person from the fact that an individual is identified as a victim.

The CVBR provides that, where a victim is dead or incapable of acting on their own behalf, the following individuals may exercise the victim’s rights on behalf of the victim: their spouse; their common-law spouse; a relative or dependant of the victim; an individual having custody or care of the victim or of their dependants.

3. STATEMENT OF POLICY

Crown counsel are bound to follow the letter and the spirit of the *Canadian Victims Bill of Rights*. In particular, counsel must be mindful of the principles contained in the preamble to the CVBR:

Whereas crime has a harmful impact on victims and on society;
Whereas victim of crime and their families deserve to be treated with courtesy, compassion and respect, including respect for their dignity;
Whereas it is important that victims’ rights be considered throughout the criminal justice system;
Whereas victims of crime have rights that are guaranteed by the *Canadian Charter of Rights and Freedoms*;⁵

³ Crown Witness Coordinators provide court-based support to victims and witnesses in the three Territories and are based in the PPSC regional offices in the Yukon, the Northwest Territories and Nunavut. Crown Witness Coordinators work with prosecutors in supporting victims and witnesses through the criminal justice process and providing information about the court process. Crown Witness Coordinators are required to travel to many small and remote communities, many of which are only accessible by air. The Crown Witness Coordinators locate and meet with victims and witnesses, and help them prepare for court appearances.

⁴ Note that the YCJA contains specific provisions concerning victims.

⁵ See, eg, *R v NS*, [2012] 3 SCR 726; *R v O’Connor*, [1995] 4 SCR 411.

Whereas consideration of the rights of victims of crime is in the interests of the proper administration of justice;

Whereas the federal, provincial and territorial governments share responsibility for criminal justice;

Whereas, in 1998, the federal, provincial and territorial governments endorsed the *Canadian Statement of Basic Principles of Justice for Victims of Crime* and, in 2003, the *Canadian Statement of Basic Principles of Justice for Victims of Crime, 2003*.

In dealing with victims, Crown counsel must be careful to ensure that victims understand the role of a Crown prosecutor. They must therefore inform victims at the outset that they do not represent them in the proceedings and that, as Crown counsel, they must be scrupulously fair in presenting the case and may, as a result, present evidence that is favourable to the accused.

Crown counsel and Crown Witness Coordinators must bear in mind the disclosure obligations that may arise as a result of their dealings with witnesses, for example the need to disclose to defence all statements made by the victim, particularly where the victim has given inconsistent versions of the relevant events. These obligations should be explained to victims and witnesses.

4. OPERATION OF THE POLICY

4.1. Rights of victims of crime

The CVBR creates a statutory obligation on the PPSC to recognize and respect several rights of victims of crime. The rights in the CVBR apply to individual persons who suffer physical or emotional harm, property damage or financial loss as a result of an offence or an alleged offence under the *Criminal Code*, the *Youth Criminal Justice Act* or the *Crimes Against Humanity and War Crimes Act*, a designated substance offence as defined under section 2(1) of the *Controlled Drugs and Substances Act* or an offence under section 91 and Part 3 of the *Immigration and Refugee Protection Act*. These rights apply to investigations, prosecutions, corrections and conditional release processes in Canada for which there is a victim of crime who is a Canadian citizen or permanent resident or who is present in Canada.

Sections 6-8 of the CVBR provide victims of crime with a right to general information about the justice system and their role, as well as specific case in which they are involved. Sections 9-13 provide victims with various rights to protection, including security, privacy and identity. Victims have specific rights which may arise during a prosecution, such as a right to request a testimonial aid, to present a victim impact statement or to request a restitution order. Section 14 provides victims with a right to convey their views about decisions which affect their rights. Finally, victims of crime have the right to complain to the Director of Public Prosecutions if they believe that their rights are not respected.⁶ Counsel have an obligation to consider these rights in their approach to a prosecution and are strongly encouraged to work closely with Crown Witness Coordinators in regard to these rights.

⁶ See the *PPSC Complaints Policy*, available at <http://www.ppsc-sppc.gc.ca/eng/cmp-pln/index.html>.

4.2. Special needs of some victims

In their dealings with victims, Crown counsel and Crown Witness Coordinators must take into account the circumstances of the victims (including their age and gender), the nature of the crime(s) and the harm or loss (emotional, financial or physical) that the victims sustained. Trauma may affect a victim's ability to process information about proceedings, particularly when that information concerns unknown or new terms or processes, which may require Crown counsel and Crown Witness Coordinators having to repeat information about the court process.

While the needs and circumstances of each victim will invariably be unique, Crown counsel should bear in mind certain considerations in specific types of cases.

Where the victim of a crime is a child, communication and protection take on special importance. Crown counsel must consider what measures are required to ensure the victim understands the information that is conveyed about the criminal justice system. Crown counsel should use language appropriate to the age, understanding and maturity of the child, and to the extent possible, should interview the child in a place and manner that is most likely to ensure the child's comfort and security. Specialized services, such as Child Advocacy Centres or Social Services, may be available to assist Crown counsel in proceedings involving child victims or witnesses.

Where the crime is one of domestic violence, Crown counsel should be aware of the dynamics commonly at play in respect of victims of such offences. To that end, Crown counsel must be familiar with the *PPSC Deskbook* guideline "5.5 Domestic Violence".⁷

Where the crime involved the violation of the victim's sexual integrity, the victim may find it difficult to participate in the proceedings. Crown counsel should attempt to ascertain the needs of the victim and respond accordingly.

In all crimes of violence, Crown counsel should be sensitive to a victim's sense of vulnerability and should consider appropriate measures to ensure the security and enhance the comfort of the victim. Such measures should include steps to ensure that victims are kept informed about the progress of the case, and about the types of issues that may arise: for example, applications to introduce evidence of prior sexual activity, or to obtain access to their personal, medical or other records.

In cases involving victims with special physical needs, Crown counsel must work to eliminate barriers that might impede the involvement of the victims in the proceedings. The same is true in cases where the first language of a victim is not the same as that of Crown counsel or the language in which proceedings are conducted.

Some victims may view court proceedings with suspicion; they may have concerns about bias or prejudice based on their race, ethnic origin, gender identity, or sexual orientation. Crown counsel should be aware of such concerns and seek to address them in an appropriate manner.

⁷ See the *PPSC Deskbook* guideline "5.5 Domestic Violence".

4.3. Alternative measures

Not all offences require criminal proceedings. In some cases, the interests of victims, offenders, and society may be properly addressed through the use of alternative measures programs.

In cases involving physical violence, the public interest normally requires that the offence be prosecuted. Crown counsel must consider the position of the victim and, where appropriate, seek input from the victim in deciding whether an alternative to prosecution is appropriate. Where an alternative to prosecution is appropriate, care must be taken to ensure that Crown counsel's decision is explained to the victim.

When considering an alternative measure for a criminal offence, Crown counsel must apply the *PPSC Deskbook* directive "3.8 Alternative Measures". Crown counsel should also be aware that the rights of victims to receive information provided in sections 6 and 7 of the CVBR may require that the victims be advised of the use of alternative measures.⁸

Crown counsel should also keep in mind that when such measures are being considered for a young person, they must consider relevant provisions under the YCJA.⁹

4.4. Bail hearings

On bail applications, Crown counsel must consider whether bail should be opposed in order to protect the victim. Even where bail is denied, Crown counsel must consider whether conditions of non-communication with the victim should be sought.

When considering the Crown position regarding interim release, Crown counsel must give particular attention to the provisions of the *Criminal Code* that allow the court to impose conditions aimed at protecting the victim: see sections 515(4-4.2), 515(12-14), 516(2), 522(2.1) of the Code. In particular, Crown counsel should be aware that the judge is required to note on the record that the security of the victim has been considered in making a bail order, and, on request of the victim, to provide a copy of the bail order to the victim.

Crown counsel or the Crown Witness Coordinator must communicate information related to bail proceedings and decisions made by the court to victims in a timely manner. In circumstances where the victim is difficult to contact, the assistance of police should be sought.

4.5. Peace bonds

Crown counsel should, in appropriate circumstances, consider other options for protecting victims. Sections 810 to 810.2 of the Code are designed to assist potential victims by seeking to prevent contact with them and persons who may commit violent acts.

⁸ See *Criminal Code*, ss 732.1(5)(a) and 742.3(3)(a) respectively.

⁹ See YCJA, ss 4-12.

4.6. Sentencing

The *Criminal Code* requires that the harm to victims and to society be considered by the Court in formulating an appropriate sentence.¹⁰ Crown Counsel must provide information to the Court on these two elements in their submissions on sentencing. Crown Witness Coordinators should work with victims to assist them in providing this information, as appropriate, as part of their victim impact statement.

In addition, Crown counsel must consider seeking measures aimed at preventing future criminal offences, for example, conditions in probation orders or conditional sentences that prohibit an offender from being in certain places or having contact with people of a certain age or gender. Crown counsel should be aware that the *Criminal Code* allows victims to request and be provided copies of probation orders and conditional sentence orders.¹¹

Crown counsel should also consider available sentencing approaches or processes available in their respective jurisdictions, including domestic violence treatment options, drug treatment, mental health treatment court processes. These may include other restorative sentencing approaches, such as sentencing circles, which may be available in certain Indigenous communities.

5. PROVIDING INFORMATION TO VICTIMS AND PARTICIPATION IN THE COURT PROCESS

Crown counsel and Crown Witness Coordinators must work together to provide information to victims and to assist in their preparation as witnesses in the court process. Once a Crown Witness Coordinator becomes involved in a case, he or she must make reasonable efforts to contact the victim as soon as possible, explain the role of the Crown Witness Coordinator, provide appropriate information about the case and remain a point of contact for the victim during the process.

In providing the victim with information about the case, Crown counsel and the Crown Witness Coordinator must be careful not to disclose other evidence in the case so as not to taint the victim's testimony. Crown Witness Coordinators should also provide the victim, as early in the process as possible, with information about victims' services available within the territory, either through the police, the community or territorial government services.

Once charges are laid, Crown counsel, in collaboration with the Crown Witness Coordinators or with local police, should:

- make every reasonable effort to ensure the victims are made aware of the release of the accused from custody if this occurs before the completion of proceedings, the terms of release, and any subsequent amendment to the terms of release;

¹⁰ See *Criminal Code*, ss 718(a), 718(f), 718.2(e).

¹¹ See *Criminal Code*, ss 732.1(5)(a) and 742(3)(a).

- make sure the victims know what to do if they have concerns about the accused's compliance with the terms of release, and who to call if there is a breach;
- ensure that the victims are informed of any conditions prohibiting contact with the victims while the accused is in custody;
- explain to the victims the roles of Crown counsel, defence counsel, the judge, and the jury and their role as witness;
- assess the victims' reliability as witnesses and ensure that the victims have been given the opportunity to review their statement, if any, before testifying;
- consider the need for and type of testimonial aid that may be helpful in helping victims to testify in the proceedings, and apply for these testimonial aids from the Court;
- ensure, to the extent feasible, that the victims are informed beforehand when proposing to make a significant amendment to the charges, or to terminate a prosecution;
- consider steps to prevent inappropriate use or dissemination of the disclosure materials where they contain information of a sensitive nature pertaining to the victim. In particular, Crown counsel must follow, as required, the *PPSC Deskbook* guideline "2.5 Principles of Disclosure";¹²
- apply, where appropriate, for an adjournment where an application is made by the accused for the production of records pertaining to a victim and the victim requests the opportunity to retain a lawyer;
- provide timely information regarding developments in the proceedings as well as information pertaining to plea and sentence negotiations;
- seek restitution orders where appropriate (consistent with the *PPSC Deskbook* guideline "Restitution");
- inform the victims about options to participate in the sentencing process by means of testimony, or a victim impact statement pursuant to section 722 of the Code (and inform the victims that this can be read aloud, if they so wish, or presented by other means, for example by using a testimonial aid);
- inform the victims of the right to notice and participation in various post-conviction processes, such as parole hearings, *Criminal Code* Review Board hearings and parole eligibility hearings; and
- inform the victims of any appeals made either by the Crown in case of an acquittal or by defence against a conviction or against the sentence, and ensure that the victims are informed of any decisions related to bail.

¹² See the *PPSC Deskbook* guideline "2.5 Principles of Disclosure".

5.1. Aids to trial testimony

The *Criminal Code* provides a number of measures that can be invoked to increase the comfort and security of victims obliged to testify in criminal proceedings. It is the responsibility of Crown counsel to consider if any of these measures are available and appropriate in a given case, and to apply to the court accordingly:

- Section 486 - the exclusion of the public from the courtroom;
- Section 486.1 - the presence of a support person;
- Section 486.2 - the use of a screen or closed circuit television;
- Section 486.3 - preventing cross-examination by self-represented accused;
- Section 486.31 – non-disclosure of witness' identity;
- Sections 486.4 and 486.5 - orders restricting publication of identity of victims;
- Section 486.7 – any order necessary to protect the security of any witness;
- Section 715.1 - the use of pre-recorded video evidence;
- Section 657.1 - the use of affidavit evidence;
- Sections 278.1 to 278.91 - opposing production to the accused of a victim's personal records;
- Sections 276 to 276.5 - opposing the admissibility of evidence of the victim's prior sexual conduct; and
- Section 277 – opposing the admissibility of evidence of the victim's sexual reputation for the purposes of challenging the credibility of the victim.

Crown counsel are to assess the needs of witnesses and victims with regard to the various testimonial aids available, in order to determine which aid or support to apply for, where appropriate. Crown counsel, with the assistance of a Crown Witness Coordinator when necessary, may need to seek additional information from witnesses and victims (for example, from the victim about their ability to testify or from the Court about the availability of testimonial aids) prior to the hearing in order to support an application for a testimonial aid.