

# Navigating the Canadian Criminal Justice System: A Guide for Victims



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*Disclaimer:*

*This booklet is intended as a general guide for victims of crime entering the criminal justice system. Please do not hesitate to contact our office if you require clarification, or for a referral to an agency in your community that may be able to provide services to you. As procedure may vary from one jurisdiction to another within Canada, we strongly urge the reader to contact their local Crown Attorney, police and/or parole office to answer specific/detailed questions about their case. Only a lawyer can provide you with legal advice.*

## **Navigating the Canadian Criminal Justice System: A Guide for Victims**

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Victims of crime are unexpectedly thrust into the criminal justice system by an act that has caused significant harm to their lives or to the lives of their loved ones. Already forced to deal with sudden victimization and loss, injuries, and stresses, victims often feel frustration and anxiety upon encountering a criminal justice system that is complex and sometimes unsympathetic to them. Daily court proceedings can be disconcerting to victims who often have limited knowledge and understanding of the law. Filled with countless frustrating and confusing rules and procedures, it is a system that, far from easing the victims' burden, often further contributes to it.

This guide is informed by the victims with whom we work. All of the questions within this document were brought to our attention by individuals who were navigating the "system". In publishing and continually updating this guide, we hope to simplify the criminal justice system for victims, so that they are better equipped to address many aspects of the system. The information provided within will not always completely answer the questions asked, so we hope that it empowers the reader to ask questions when they are uncertain and to seek local supports and services.

This guide is the only guide of its sort – directly informed and updated by victims and survivors to help demystify the criminal justice process for other Canadian victims of crime. We hope that it will assist all victims who read it to navigate a system that is often overwhelming for those who do not deal with it on a regular basis.

Effective July 23rd 2015, the Canadian Victims Bill of Rights establishes rights for victims across Canada:

- to information about the criminal justice system, victim services, and the status of the investigation into the offence committed against them;
- to protection and consideration of their privacy;
- to participation in and consideration by the justice system; and
- to seek restitution for financial losses.

Victims also have a right to file a complaint for an infringement or denial of any of their rights under the CVBR Act. While most of the provinces and territories also have their own legislation governing victims' rights, federal/provincial/territorial legislation in Canada does not provide truly enforceable rights to victims. First, victims' rights are all provided legislatively; they are not constitutionally-based, like those of persons accused of crime. Second, victims do not have party-status (the criminal justice system is an adversarial process between the state and the accused); and lastly, legislation lacks enforcement mechanisms or excludes legal causes of action for victims.

This guide is meant to be used to answer specific questions that victims may have as they navigate the criminal justice system. As such, pieces of information may be repeated within the guide. This is intentional, as it will allow an individual to have specific questions answered without reading the document in its entirety.

***Terms that are italicized and bolded are among those found in the glossary of terms.***

## You have become a victim of crime – what happens now?

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Victimization, in any form, is unwelcome. Dealing with the police, hospitals, victim services workers, judges, attorneys and other staff of criminal courts can be intimidating for victims who are unsure of their role in the system.

The criminal justice process begins when an offence is committed. If and when the crime is reported, the police then usually handle the investigation up to the laying of charges. Once a suspect is apprehended, an **information** is laid (charges are laid) and the prosecution of the **accused** may be undertaken by the Crown.

The first contact that victims will usually have with the criminal justice system is the police officer. Whether dealing with an officer at the police station or at the scene of a crime, the police are the front line response to crime and violence in the criminal justice system. Many communities have established police based victim service units/programs available for your usage. Where available, these services are confidential and will provide immediate professional counselling and/or emotional support, practical assistance, general information about the criminal justice system and referrals for your consideration. You should ask police at the earliest opportunity if your community has a victim services program.

### **1. How do I tell my family, friends and place of employment that I have been a victim of crime?**

Some victims and survivors are thrust into the public spotlight following the commission of crime and as a result have little privacy. Other victims are able to guard their privacy carefully and do not wish to share what has happened to them with anyone. If and when the time comes to attend a trial, victims will likely have to disclose their victimization to their employer (unless they can take the time off work). Victims and survivors should consider providing only as much detail as they are comfortable sharing and ensure that their supervisor will guard their confidentiality.

While some family members and friends may react adversely to learning about your victimization, expecting you to get over it quickly and move on with your life, others provide excellent support and understanding as you work toward healing and recovery. Victims should try to surround themselves with people who are caring, sensitive and supportive of them, but understand that this will not include everyone they tell.

### **2. How do I report a crime to the police?**

In some circumstances, the victim will decide if they wish to report the crime to the police or not. In other circumstances, the crime may come to the attention of the police and they will arrive at the scene of the victimization. If you decide to go to your local police station to report a crime, you may be entitled to bring a support person with you, or request that the officer taking the report be of a certain gender (i.e. sexual assault cases). If you are uncomfortable at any time, tell the officer or detective. The actual procedures for reporting a crime vary by jurisdiction, so you should check with your local police. When you do report a crime you will likely be required to make a statement.

### **3. What is a statement?**

A statement is a written record of your complaint and includes everything that you can remember about the victimization. This report will be used by officers conducting the investigation and may be used at a later time during court proceedings. Record the name and badge number or get the business card of the officer who took your statement so that you may contact him or her if you remember anything else of significance about the crime.

**4. Who sees my witness statement?**

The Crown counsel, the defence attorney, the police, the judge and the accused will see a copy of your witness statement.

**5. Can I change my statement at a later time?**

Yes, you may change or amend your statement at a later date if you remember something of significance about the crime. Contact the officer who took your original statement to find out how. If they are no longer available, the division to which the crime was reported can assist you.

## Police Procedures

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### 6. Who lays charges?

Generally, it is at the discretion of the police to investigate and lay charges where they believe on reasonable grounds that an offence has been committed. In some provinces (i.e. British Columbia) the Crown must lay charges.

### 7. Will the suspect be arrested and charged?

The suspect may not necessarily be charged with a criminal offence. The police may bring a suspect into the station for questioning, but that does not mean he/she will have formal charges brought against them.

If charges are not laid in your case, it does not mean that the police don't believe you or that a crime did not take place. It may mean that there is not enough evidence to prove the charge in court.

As a victim, you may be able to receive financial **compensation** from the Provincial/Territorial government even if charges have not been brought against the accused ([please see question #102](#)).

If the police investigation supports charges being brought against an accused, he/she will be charged with violating one or more specific sections of the *Criminal Code of Canada*. Once criminal charges are laid, the accused may be held in custody until his/her first court appearance. The police have the discretion to release an accused prior to their first court appearance, generally when the offence is relatively minor and if they do not believe that there is a threat to public safety. The first appearance in court is usually a few hours after having been charged. It is at this **hearing** that a judge will decide whether or not to release the accused on **bail** ([see question #15](#)).

### 8. How do police decide what charge(s) to lay? What is the Crown's involvement?

As mentioned previously, the police conduct a thorough investigation and may lay charges where they believe on reasonable grounds that an offence has been committed. The Crown may be responsible for laying charges in some jurisdictions.

Crown counsel will carefully review all charges to ensure they meet the standard for the province/territory. Crown counsel proceed only with prosecutions which present a reasonable prospect of conviction and where the prosecution is in the public interest. Thus, even if criminal charges have been laid, it is the discretion of Crown counsel to make the decision about whether the criminal process ceases or continues. Some charges are dropped at this point, before there are any court proceedings. This can be for a variety of reasons, but is it frequently because the Crown believes that there is little prospect of the case resulting in a conviction. Victims have no right to appeal this decision.

Although Crown counsel work closely with the police, the separation between police and Crown roles is of fundamental importance to the proper administration of justice. In order to have a system of checks and balances, both the police and Crown counsel are able to exercise discretion independently and objectively.

### 9. What are summary and indictable offences?

The *Criminal Code of Canada* classifies crimes as **summary conviction offences, indictable offences** or hybrid offences. Summary conviction offences (e.g. causing a disturbance) do not allow preliminary inquiries and have much shorter sentences than indictable offences (maximum fine of \$5000 or imprisonment for six months or both). Indictable offences involve serious crimes including aggravated

assault and murder. If an offence is classified as a hybrid (e.g. assault, sexual assault), the **Crown Attorney** may choose whether to proceed with the case as either summary or indictable.

There is an important distinction between summary and indictable offences. Summary conviction proceedings shall not be instituted more than six months after the time when the subject matter of the proceedings arose. This means that the proceedings against an accused must begin within six months of the offence. There is no time limit, however, for the institution of proceedings in relation to indictable offences. Summary conviction offences may only be tried by a Provincial Court judge sitting alone. Indictable offences may be tried in a number of different courts, depending on a number of factors, including the seriousness of the offence and the choice of the accused.

**10. When an offender is charged with multiple offences and/or breaches, why are some of the charges and/or breaches dropped?**

The Crown counsel has discretion with respect to proceeding with charges against an accused. If they do not feel that there is enough evidence to secure a conviction or that proceeding is not in the public interest, some of the charges may be dropped. As the Crown wants to present the strongest case possible, it may not be beneficial to proceed with all of the charges against an accused. In some cases, charges may be reduced to lesser charges, based on either the evidence, or possibly a plea bargain.

**11. Will the police investigators communicate with me?**

In most cases, police detectives are very interested in the outcome of a case and appreciate communicating with the victims. Feel free to contact your investigating officer(s) or detective(s) should you have questions or concerns regarding the investigation.

If you feel that the officer is not being responsive to your queries, you should discuss your needs and try and develop a schedule for updates. This is especially important in cases where an **arrest** is not made right away. An officer may not want to continually report to you that there are no developments.

**12. How do I find out information about my case?**

During the police investigation, refer your questions to the investigating officer or to the detective who took your statement. Be sure to record their name and badge number. If you have not noted this, it will be on the police report. Once charges are laid, the case will be transferred to a Crown counsel. You should ensure that you know which Crown is in charge of your case. The police officer and **Crown Attorney** will both have business cards that you can obtain.

Be aware that you may experience delays when communicating with the Crown and the police, as they are extremely busy. Do not give up! Since police officers usually work shift work it can be difficult to contact them while they are on duty.

**13. Will the police refer me to victim services or a similar voluntary agency? What about financial assistance programs?**

The police do not always refer to these agencies. If you feel that you may be in need of their services, or have questions that need answering, ask the investigating officer for a referral or contact information. If you are the victim or survivor of a violent crime, you may be eligible for financial assistance or compensation. Ask the police officer for this information as well.

**14. When will a Crown be assigned to my case?**

A Crown counsel will usually be assigned to your case as soon as possible following the laying of charges. In some cases, however, Crowns are not assigned until late in the process. A case may have a couple of different Crowns before it goes to trial.



## Before a Trial

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### **15. What is a bail hearing? Does everyone make bail? If refused, can the accused get bail at a later time?**

A **bail hearing**, is where a Justice of the Peace or Judge determines if a person who has been charged should be released or held in custody pending trial. Consideration for bail is a serious issue in Canada because an accused is presumed innocent until they have been found guilty. An **arrest** does not mean that the accused will be found guilty, and bail is frequently granted in cases where the victims, the police, and/or the public do not think it will be granted. Section 515 of the *Criminal Code* sets out criteria for the judicial interim release (or bail) for an accused. Generally speaking the accused will only be detained if they are a flight risk, a threat to public safety, or their release would undermine the confidence in the administration of justice.

It is up to the Crown to ensure that an accused is denied bail. In order to do so they must show just cause (or legally sufficient reason). If the accused has no previous criminal record, the Crown may have to disclose some of the case evidence in order to detain the accused. A bail hearing will generally happen shortly after an arrest. You may not even be aware of it, but if you are and attend, be prepared to hear details of the crime.

If refused, the accused could possibly get bail at a later time. He/she may apply to a higher court for a review of the detention order, and may do so many times.

A bail hearing may also be referred to as a show cause hearing. The Crown must *show cause* as to why the accused should not be released.

### **16. Do all accused have a bail hearing?**

No. An accused maybe released by police with an **appearance notice**, a **promise to appear**, a **recognizance**, or a **summons** without a **bail** hearing. All of these are agreements that the accused enters into, stating that they will appear in court at a later date. The accused may also waive a bail hearing.

### **17. I fear the person who is asking for bail, what is the best way to express my fears to the court?**

If you are afraid of the person who is asking for **bail**, tell the Crown ahead of time. Arrange for a meeting with the Crown before the bail hearing so that you may communicate your concerns effectively. Your fears must be taken into consideration by the judge/officer of the court when determining if bail should be denied to protect the safety of the public. The police and Crown may ask for a provision in the accused's bail to prohibit him/her from contacting you, either directly or indirectly. If the offender is released on bail, you may want to apply for a peace bond ([see questions # 240-250](#)).

### **18. What conditions can be placed on an accused released on bail to ensure the safety of the victim?**

The safety of the victims and witnesses to the offence must be a primary consideration in **bail** decisions. Amendments in December of 1999 to the *Criminal Code* require:

- the responsible judicial officer (officer-in-charge, justice of the peace or judge) to consider the safety and security of the victim in any decision about an accused's bail;
- where an accused is released pending trial, the judge will consider including as a condition to bail that the accused abstain from any direct or indirect communication with the victim and any other condition necessary to ensure the safety and security of the victim; and

- the particular concerns of the victim will be considered and highlighted in decisions on the imposition of special bail conditions, including firearms prohibitions and in criminal harassment offences.

It is important to voice your concerns about your safety to the Crown, prior to a bail hearing when possible.

### **19. What happens if the accused violates the bail conditions?**

If you become aware of an accused that violates the **bail** conditions, contact the police. Anyone who fails to comply with bail conditions, without lawful excuse, may be found guilty of a summary offence and can be punished accordingly. An accused that is arrested and charged with breaching the bail conditions will be held in jail until a bail revoke hearing is held. Depending on the type of breach, a judge may release the person, increase the bail money, or impose a sentence. Once that sentence is served, the accused will be released again. If, however, the breach is serious, bail will usually be revoked.

### **20. Will my case go to trial?**

Most criminal cases are settled by negotiated plea. This means that there will be no trial and a sentencing **hearing** will usually follow. Victims who wish to submit a **victim impact statement** may do so even if there is no trial. Your impact statement is important to the court in sentencing, as the judge must consider the harm you have suffered in choosing an appropriate sentence for the offender. Your impact statement is also important to the paroling authorities who will use it at a later time to determine if the offender is ready to return to the community. As soon as possible, victims should discuss when/how to submit their statement with the Crown or the victim services provider. Refer to [question #119](#) for more information about victim impact statements.

### **21. What is a plea bargain? Do I have a say?**

**Plea bargaining** occurs when the Crown and the defence come to an agreement wherein the accused pleads guilty. The guilty plea usually comes in exchange for a benefit such as reducing the charge against the accused or where the two sides agree upon a sentence.

The Canadian Victims Bill of Rights (2015) provides that a prosecutor can be asked if “reasonable steps have been taken to inform the victims of plea agreements for murder or serious personal injury offences; and in cases involving an indictable offence with a maximum punishment of 5 years or more a) victim asked to be informed of plea agreements and b) whether reasonable steps were taken to inform the victims of the agreement.

Victims appreciate being informed of happenings in their case and are more likely to understand a plea bargain when the reasons behind it have been explained. It is also important to note that Crowns do not require a victim’s permission before proceeding with a plea. A plea bargain can be made at any time including, up to, and during the trial. If you know that there is the potential for a plea bargain in your case, and you wish to be involved, ask the Crown.

### **22. Why would a Crown want a plea bargain?**

If a plea bargain occurs in your case, it does not mean that the offence is less serious or that the Crown doesn’t believe you. **Plea bargaining** is often used when either the Crown or the defence’s case is weak. It is commonly used to save both time and money, as the court system could not handle the volume of cases that come before it without the plea bargaining system. Since Crowns have a good idea of the type of sentence that a judge is likely to impose for a particular crime, if they can get the accused to agree to a term close to this, they may not see the benefit of a trial.

**23. If the Crown fails to confer with the victim's family before offering or accepting a plea bargain, what is the family's recourse?**

The Canadian Victims Bill of Rights (2015) provides victims with a right to Information, Protection, Participation or Restitution. It also provides victims with a right to file a complaint for an infringement or denial of any of their rights under the Act. Each Crown's office will have a procedure for victims to file a complaint. Read more here about the CVBR: <http://laws-lois.justice.gc.ca/eng/acts/C-23.7/page-1.html>

**24. If called to a plea bargaining conference, will I be allowed to have my lawyer or a victim services worker present?**

If you would like to have your lawyer or a victim services worker present, speak with the Crown about this possibility. Most Crowns will not object.

**25. When the case is strong and the evidence is overwhelming, and I am not in agreement that a plea bargain should be accepted or offered, what can be done to stop the process?**

There is nothing that victims can do to stop the *plea bargaining* process. It is often difficult for victims to understand why the Crown would plead down charges against the accused, especially when the case seems so strong. Speak to the Crown and have them explain the reasons for doing so. Ultimately, it is the judge who has the final discretion in accepting or rejecting a plea. Regardless of the fact that a plea bargain has been entered, you still have the right to submit a *victim impact statement* if and when the offender is convicted.

**26. Does the judge have to accept a plea bargain?**

No, a judge does not have to accept a plea bargain. While pleas are joint submissions from the Crown and the defence, a judge can refuse to accept them. This however, is a rare occurrence. If a judge does refuse a plea bargain, he/she will give the court reasons for doing so.

**27. What is a preliminary hearing/inquiry?**

As set out by the *Criminal Code*, a *preliminary hearing* is a court proceeding that is held before the trial. Preliminary hearings are similar to trials but are usually much shorter. The inquiry may be conducted by a Provincial Court judge or, in some circumstances, by a justice of the peace. A preliminary inquiry is not concerned with establishing the guilt or innocence of the accused. It is not a trial. The purpose of the preliminary hearing is to determine whether or not there is enough evidence to proceed with a trial. During the preliminary hearing the Crown Prosecutor can call witnesses to convince the judge that there is sufficient evidence against the accused to proceed with a trial.

During a preliminary hearing, the judge may proceed with the charges, drop the charges, downgrade the charges, or upgrade the charges. In most cases the judge will find there is enough evidence to proceed with the charges and will order a trial. If the judge finds that there is not enough evidence to try the accused on the charges that have been laid, the charges against the accused will be dropped. In some cases a judge may rule that the evidence does not warrant the actual charges laid and, in such cases, the judge may downgrade the charges. For example, the judge may find that the evidence warrants a manslaughter charge rather than a second-degree murder charge. As well, if the evidence warrants it, charges could be upgraded.

If the preliminary hearing does not proceed as planned, it could be for several reasons:

- the accused may plead guilty;
- the accused has waived his right to a preliminary hearing; or

- the Crown has opted to proceed to **direct indictment** (very rare).

### 28. How is this different from a pre-trial conference?

A pre-trial conference is a less formal meeting between the Crown, defence and a judicial official (but not the trial judge). It is generally held outside of a court room, and may take place at any time prior to a trial. Issues addressed in pre-trial conferences vary by province, but are generally limited to procedural items. Victims do not attend pre-trial conferences.

### 29. Is it important for me to attend a preliminary hearing?

It is important for victims to attend the preliminary inquiry because this stage often acts as a test of the Crown's case against the accused. It is not uncommon for a guilty plea to be entered following a **preliminary hearing**. If the accused pleads guilty, there will not be a trial. In these cases, the preliminary hearing is then the only opportunity for victims to hear important evidence, facts and details of the crime.

The victim should also consider attending the preliminary inquiry because evidence may be introduced during this stage that will not be allowed at trial, as the rules of evidence are less strict at preliminary hearings.

### 30. What is disclosure? Does the defence have to disclose its case to the Crown?

The *Criminal Code* obliges the Crown to disclose their case to the defence, as the **accused** has a right to obtain 'discovery' of the prosecution's case against him/her. The Supreme Court of Canada has ruled that "the Crown is under a duty to disclose all the material it proposes to use at trial and, in particular, all evidence that may assist the accused in mounting his or her defence even if the Crown does not propose to place such evidence before the court." The Supreme Court also ruled that "there is no reciprocal obligation on the accused to assist the prosecution." Thus, the Crown must always disclose its case. The defence is not required to disclose except where they plan to use expert evidence or alibis.

### 31. What is a voir dire?

A **voir dire** is a trial within a trial. It is a **hearing** held, without the presence of the jury, to determine whether an issue of fact or law will be admissible. For example, a voir dire may be used in order to decide whether certain aspects of an expert witness' **testimony** will be allowed during the trial.

### 32. What is a "change of venue"?

Most cases are tried in the community courthouse nearest to where the offence took place. In rare circumstances, a trial can be moved to another location. A '**change of venue**' is requested when either party feels that the potential jury pool may have been tainted due to mass media coverage of the case. According to section 599. (1) of the *Criminal Code*, an application for change of venue may be made by either the accused or the Crown if the judge is satisfied that:

- the ends of justice so require; or
- that a jury panel will not be available.

## The Victims' Role during the Trial

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The Canadian Victims Bill of Rights (2015) provides victims with the **right to Information, Protection, Participation and Restitution**. With respect to Information, it is important to note that victims must request information about their case, such as: a) Status and outcome of the investigation; and b) Progress and outcome of proceedings. With respect to Participation, victims' views are to be considered and victims also have the right to present a victim impact statement.

- Every victim has the right to convey their views about decisions to be made by appropriate authorities in the criminal justice system that affect the victim's rights under the Act and to have those views considered.
- Every victim has the right to present a victim impact statement to the appropriate authorities in the criminal justice system and to have it considered.

Some victims will be called as witnesses in the case against the accused. The **Crown Attorney**/Prosecutor (all provinces) or Public Prosecution Service of Canada (all territories) represents the State in criminal matters<sup>1</sup>

### **33. Who represents the victim during the trial? Do I have/need a lawyer?**

Crown counsel is not and can never function as the victim's lawyer. Although the Crown appears to be representing the interests of the victim, the Crown is the lawyer for the Queen and the government during the trial. In Canadian criminal cases, the harm is perceived to have been committed against the State. This is why cases are referred to as Regina v. Smith (or R. v. Smith), Regina being the Queen in Latin. The Crown is truly representing the society, of which you are a part.

It is generally not necessary for victims to hire a lawyer during the trial as they rarely have a legal role in the court process. However, victims may need their own lawyers for specific issues such as publication bans or attempts by the accused to get copies of a sexual assault victim's personal psychiatric records.

### **34. Who advises me of court dates?**

The Crown's office should advise victims of upcoming court dates. If they do not, the court-based victim services (available in most provinces/territories) should have the information available for you. If you are called as a witness, you will be issued a **subpoena**. A subpoena is a court order telling a person specifically when to come to court to testify. If you are subpoenaed, you cannot attend trial before you are called as a witness. If you wish to observe the proceedings after delivering your **testimony**, you can apply to the judge for permission to remain in the courtroom. Speak with the Crown about this as soon as possible.

### **35. Where do I sit in the courtroom?**

Victims usually sit on the right hand side of the courtroom, behind the Crown. Be aware that the courthouse is a public place and seats are not specifically reserved for the victims. You may try speaking to the Crown or police to see if they can reserve some seats for you.

### **36. While in court, if the accused makes threatening remarks or signals at me, what should I do?**

If you are threatened by the accused in any manner tell the Crown. Additional charges may be laid.

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<sup>1</sup> Referred to as the Crown from this point forward.

**37. Will I see and meet family members of the accused in the hallways?**

You are likely to see the accused's family members in the courtroom and throughout the courthouse, including the washrooms. If you do not wish to interact with them or speak to them, you are by no means required to do so. You should tell the Crown if members of accused's family seek you out or harass you.

## The Trial

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### 38. Who will be present in the courtroom during the trial?

There will be many people present in the courtroom during the trial, such as:

**Judge:** presides over the courtroom, controls the proceedings, and makes decisions when questions of law or discretion arise.

**Accused:** the generic name for the defendant in a criminal case.

**Crown Attorney:** or the crown prosecutor/public prosecutor. The Crown presents all relevant evidence to the trier of fact (the trial judge or the jury). A Crown Attorney is not the victim's lawyer but is acting on behalf of all members of the public.

**Defence counsel:** or a defence lawyer, is a lawyer who represents a person charged with a criminal offence. He/she protects the interests of the accused, has a duty to raise every issue, advance every argument, and ask every question, however distasteful, which she/he thinks will help her/his client's case.

**Court Clerk:** officer of the court who files pleadings, motions, and judgments, keeps a record of trial evidence, administers oaths, and announces the beginning and end of court sessions.

**Court Reporter:** a person transcribes testimony during court proceedings, or at trial related proceedings such as depositions.

**Bailiff:** a court officer who has charge of a court session in the matter of keeping order, custody of the jury, and custody of the prisoners while in court.

**Members of the public:** trials in Canada are open to all members of the public unless a specific ban has been ordered by the presiding judge.

**Members of the media:** as trials in Canada are open to the public, members of the media will likely be present in the courtroom to report on the events of a trial unless the judge has ordered a publication ban on the proceedings (where a publication ban has been ordered, members of the media can remain in the courtroom but cannot report on the case).

**Members of the Jury:** (if an accused has been charged with an offence where he/she faces more than five years imprisonment, they may choose a trial by judge or a trial by judge and jury), members of the jury are randomly selected from a cross section of the population; their duty is to decide guilt.

### 39. In what language will the trial be held?

In Canada, the trial will either be in English or in French, dependent upon the accused's language of preference. By law, the accused has a right to trial in his/her own language. This may be of concern to English speaking Canadians who are forced to attend an entirely French trial in Quebec or vice versa. Rest assured that there are bilingual victim services available across the country.

If a victim speaks neither English nor French, translation services *may* be available. Please consult your court-based victim services.

#### **40. Will my trial be a jury trial?**

Trial by jury is actually a very uncommon occurrence in Canada. Jury trials are usually reserved for the most serious cases. As a general rule, any person charged with an offence with a penalty of five or more years in prison has the right to choose if his or her case will be heard by a judge alone or by a judge and jury.

#### **41. What is the difference between a trial by judge and a jury trial?**

There are a few important differences between the two:

- In jury trial, the jury decides on the facts and determines the person's guilt; in trials with a judge alone, the judge determines the applicable law, the facts and the person's guilt.
- In a jury trial, the judge makes a 'charge to the jury', where she or he instructs the jurors about the law that applies to the case. There is obviously no need for this in a trial by judge alone, since the judge knows the law.
- Judges decide what evidence a jury will or will not hear. In cases where there is no jury, the judge hears all of the evidence and then decides whether it is admissible (evidence may be excluded for a number of reasons, generally pertaining to whether or not it is relevant, was legally obtained, or in breach of the rights of the accused or witness).

#### **42. How is jury selection completed?**

There may be some variation between the provinces, but as a rule, individuals from the local community are randomly selected by voter registration or enumeration lists and are summoned to appear for jury duty. Aside from some basic requirements (i.e., Canadian citizenship, 18 years of age and older), each province and territory also has a law called The Jury Act, which prohibits some members of the public from serving on a jury (police officers, lawyers, legislators, etc.)

The defence and Crown will take turns indicating whether they are content with a jury member, or whether they challenge (reject) that person. Each side has a limited number of peremptory challenges, for which no reason need be given; and an unlimited number of challenges for cause, which must be proven on specific grounds, such as impartiality. The process continues until twelve jurors have been selected. The jury pool can begin with 100 or more potential jurors in a large city.

#### **43. Am I allowed to be present for jury selection? Do I have a say in who is chosen?**

Yes, victims are allowed to be present. The Crown, the accused, the defence counsel, other court staff, the media, people who have been selected for jury duty and the family members of the accused may also be there. The victims do not have a say in who is chosen.

#### **44. Can the jury wander through the courthouse during lunch hour and eat in the same cafeteria as the victims?**

Yes, in some case you may see the jury members during lunch and in the washrooms. Victims should not discuss the case with members of the jury under any circumstances.

#### **45. If I accidentally discuss the case with a jury member, what can happen?**

Members of the jury are to remain impartial. Discussing the case with a member of the jury can result in a mistrial. If, however, you do discuss the case with a jury member, tell the Crown immediately. You should tell the Crown even if you think that a jury member might have accidentally overheard something you said.



**46. What happens during jury deliberations?**

During deliberations, the jury is to decide if the accused is guilty and if so, guilty of what offence (i.e., the judge may instruct the jury on the different levels of sexual assault or homicide). The members of the jury remain together until they reach a decision. Sometimes the jury reaches a decision quickly, but victims should note that it can take several days or weeks to reach a decision.

**47. What does it mean if the jury is sequestered?**

After closing statements and the judge's charge to the jury, the jury is ushered into a special room, separating, or sequestering them from the outside world, where they hold all their discussions until they reach a **verdict**. Jurors usually return home after each day of the trial, but in rare circumstances the jury can be sequestered for the entire trial.

It is at the conclusion of the trial, from the time the jury retires to consider its verdict, that the jurors must stay together, isolated from friends and family. If the judge orders the jury sequestered, the jurors cannot go home. It is also important to note that the jury cannot discuss the case with the public, including their family members. This custom of sequestering the jury until a final verdict is reached was established to ensure that outside influences (e.g., media portrayals of the trial, public pressure) do not sway the jury's decision.

**48. Will I be able to thank the jury? Am I allowed to have a list of their names?**

There is no real opportunity for victims to thank a jury for their service. Victims will not be provided with a list of the jury members' names, although their names are read aloud during jury selection. It should also be noted that juries are not permitted to talk about what they have discussed during their deliberations, so you cannot ask them how they came to their decision.

**49. Does a trial run continuously? If not, how long can it be delayed by law?**

Under section 645(1) of the *Criminal Code*, the trial of an **accused** shall proceed continuously subject to **adjournment** by the court. This means that although the trial should proceed continuously, the judge can from time to time adjourn the proceedings to a later date.

Victims should be aware that a number of adjournments or delays may take place during the trial. From indictment through to sentencing, attorneys and judges must arrange their schedules according to availability, and getting court time that is suitable to all can be challenging.

By law, the accused has the right to a speedy trial.

**50. Am I allowed to talk to defence lawyers?**

Although it is not prohibited, it is not usually a good idea for the victims to speak with the defence lawyers about the case. Also, defence lawyers may choose not to speak with you. If you have any questions or concerns about your case, you should speak with the Crown.

**51. Where does the accused sit in the courtroom? How close will I be to him/her?**

If the accused is in custody, he or she will usually sit in a transparent enclosure, which is guarded. He or she may or may not have handcuffs on. The accused may also sit in the courtroom beside his or her lawyer. If the accused has been released on **bail**, he or she may be sitting beside their lawyer or in the public seating area of the courtroom.

Unfortunately, sound in the courtroom may be faint and the hearing devices usually don't work. To ensure that you can hear important **testimony**, sitting near the front is suggested.

**52. Is there appropriate attire to wear to court?**

Although there are no set rules on what to wear to court, there are some general rules of the court regarding attire. If you are wearing a hat, for example, you will be asked to take it off. Other rules of courtroom etiquette, such as not chewing gum and turning cell phones off, will also be enforced.

**53. Am I allowed to speak with the Crown during the trial (in the courtroom)?**

You should avoid speaking to the Crown during the 'in court' proceedings. The Crown is concentrating on arguing a strong case; he/she should not be disturbed. If you have questions or comments, wait until the court has adjourned for the day or for a lunch break before approaching the Crown.

**54. What happens if I "lose it" in court? Will I be banned from the trial?**

At times, it may be difficult for victims to keep composure during the trial. We strongly urge victims to refrain from speaking out of order in court. In extreme cases, you may be held in *contempt of court*, which can mean fines or even jail time. The judge is permitted to remove a person from the trial if they are causing a disturbance.

Some victims find it helpful to take notes during the trial or to write down their thoughts as a way of maintaining composure. You will not likely be removed if you become emotional and begin to cry - only if you disrupt the court in some way. If you must leave the courtroom, try to do so during one of the breaks.

**55. What are the financial costs of attending court?**

The costs of transportation, child-care, food and parking can certainly add up, especially if the proceedings take months or years to complete. Witnesses may receive a small stipend. You may also receive a small mileage allowance depending on the distance you must travel to attend court. Ask the Crown if you are eligible, and about how to collect your fees.

Remember that your expenses are not covered if you have not been called as a witness in the case. Some victims' agencies may be able to provide financial assistance to you.

**56. Can my employer fire me for attending court?**

If you are subpoenaed to appear in court you are legally required to be present and your employer cannot fire you for attending. Victims who choose to attend a trial or other proceedings are not always lawfully required to be present. Unfortunately, some employers are not as compassionate as others and will not tolerate absenteeism. Individuals should speak to their individual employers as the length of trials can vary greatly from one situation to the next. Many provincial victims' rights bills protect victims from being fired. For more information about this, talk to your local victim services.

**57. If I get important information relating to my case, whom do I tell?**

If you get important information relating to your case, contact the police investigator or, if the case has gone to court, the Crown.

**58. What do they mean by 'reasonable doubt'?**

For an accused to be found guilty of a crime, the judge, or the jury, must be convinced 'beyond a *reasonable doubt*' or have essentially no doubt that the accused is guilty. The evidence must be so complete and convincing that any reasonable doubts of the facts are erased from the minds of the judge or jurors. If there is a reasonable possibility that the accused is innocent, then she or he must be acquitted (found not guilty). It does not mean that he or she is innocent, but that judge or jury was not entirely certain about the person's guilt.

**59. What are final summations?**

After all the witnesses for both sides have been heard, the Crown and the defence lawyer make final addresses to the jury and/or judge. These addresses summarize the evidence that has been presented, with each side arguing that their 'story' of the evidence is the most truthful, reliable and relevant.

If there is a jury, the judge instructs them as to what laws apply and how to weigh the evidence that they have heard. This is called 'instructing' or 'charging' the jury.

**60. If I am not pleased with the judge's performance, what can I do about it?**

There is not much that victims can do if they are not pleased with the judge's performance. If the Crown believes that an error of law has been committed, he/she may **appeal** the decision to a higher court. If the judge makes an offensive or inappropriate comment about you or the victim (if you are not the direct victim) you may file a complaint with the Canadian Judicial Council (or its provincial equivalent). The council will not investigate rulings or sentences. You may also write to the Crown to voice your displeasure.

**61. How long does a trial take?**

The criminal trial can be a complicated process, taking months or years to complete from pre-trial to sentencing. In other cases, an entire trial and sentencing hearing can take place in the span of a day. The length and complexity of trials cannot be predicted. Speak with the Crown in your case, as they should have a good estimate. You should expect that there will be delays once the process gets started.

**62. Why is the trial date so far away from the date of the crime?**

The trial date can be so far away from the date of the crime for many reasons. First, the police investigation must take place. These investigations can, in some cases, take quite a long time because all witnesses must be interviewed and statements taken. Also, there are different court proceedings that take place before the actual trial, such as **bail** hearings and **preliminary hearings**. The trial may also be delayed in order to give the accused time to find legal counsel.

Other reasons for the delays are that the courts are over-burdened and have a large number of cases to process, and scheduling between the courts and the attorneys may be difficult. Defence lawyers may also prefer delays because witnesses forget, die, disappear, etc.

**63. If I am at home when the jury reaches a verdict, will the judge wait for me to return to the court before rendering judgment?**

It is unlikely that the judge will wait for victims to return to the courtroom before reading the jury's **verdict**. It may, however, take some time for a jury to reach a verdict, and you will probably have to wait around for quite a while before a decision is made. Speak with the Crown before leaving the courthouse as they can usually estimate the length of time it will take for the jury to return a verdict.

Inform the Crown that you would like to be telephoned immediately if a verdict is reached in your absence.

**64. What happens to letters of outrage that are sent to the judge during the trial?**

Letters of outrage that may be sent to the judge during the trial are usually turned over to the Crown. The Crown may then choose to use these letters in his/her **pre-sentence report** to demonstrate the impact of the crime on the community.

**65. How long does the justice system save all of the trial documents?**

Transcripts and other important court documents remain in the court reporter's office for many years following a trial. The court reporters archive old files so if transcripts are requested at some point in the

future, they can be accessed and transcribed. There is a cost for copies of transcripts, charges are usually incurred by the page, and can be quite expensive.

Procedures for destruction of documents vary by jurisdiction, but it is safe to assume that the documents will be available until all avenues of *appeal* have been exhausted, and in many cases, for years beyond that date.

**66. If I am unable to attend the entire trial, what is the best time for me to be there?**

If you are unable to attend the entire trial, try to be present during the summations at the end of the proceedings. The Crown and the defence will each present their version of the crime and their arguments. This is the ideal time to hear both sides of the story and the ruling that each side is asking for.

**67. If the accused is kept in prison until the time of the trial, is the length of time spent in prison reduced?**

The laws regarding pretrial custody changed on February 23, 2010. Prior to that time, a court could take into consideration any time spent in custody by the person as a result of the offence. This included time spent in prison prior to or during a trial, and usually counted toward reducing the total amount of time spent in prison. It is known as “dead time” and is considered more difficult than time spent in prisons or jails. Dead time was frequently counted as two days of sentenced time for each one day in pretrial custody.

Offenders are no longer able to accrue dead time at this rate while awaiting trial. For accused charged after February 23, 2010, time awaiting trial will still represent a reduction in sentence, but will be accumulated as straight time, or on a one-for-one basis.

## Media

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### **68. Dealing with the media: what should I do?**

Victims should be aware that the media may not wait for a court appearance to begin asking questions about your case, especially in murder or serious assault cases. At this time, victims should hesitate to speak with media or provide specific details of the case. The police and the Crown may not be able to share certain information with victims who want to speak to the media. You also do not want to say anything that may jeopardize the case. If you are uncertain as to what you can say to the media, or whether you should talk to them, you may consider checking with the police, Crown, or victim services. There may be a publication ban in your case to consider also.

Please note that postings on blogs and social media websites (like Facebook and Twitter) can be considered media. Once posted, information is permanently available on the Internet, even if it is removed by the poster. Victims should consider this before posting their perspective on a case that is before the courts.

### **69. Can I create a memorial web page for my loved one?**

Survivors have a strong need to create memorial web pages for deceased loved ones or pages asking people to contact the police if they have information about a crime. Check with your investigating officer and/or Crown to make sure this is ok. You will have to be very careful not to divulge information about any ongoing police investigation.

### **70. How can victims use social media?**

In the Internet age, crime victims are turning to social media to get their stories out to the public and to keep them in the public eye. They use personal websites, blogs, and social media sites such as Facebook and Twitter to garner support for their causes and to advocate for change to the criminal justice system. Others victims use social media to search for answers to mysteries such as who killed their loved ones or to find missing loved ones.

The Internet and social media can be an effective tool in increasing awareness of victims' issues. These media can also be used to reach out to those who may not follow traditional media. Some examples are:

- Personal websites - Some victims choose to create personal websites to get their message out or to provide a voice for their deceased loved one. Many victims are concerned about public safety should their offender one day be released from prison. They want to inform the public about the offender and to get others to join their cause to keep an offender in prison.
- Blogs – Otherwise known as web logs, blogs can be used to post information about their deceased loved one to try to aid in the arrest and conviction of an offender or to provide updates to followers.
- Other social media sites such as Facebook are devoted to broadcasting information about an entire group of victims or contacts.

### **71. Will the media be present in court? Can the public be banned from the courtroom?**

Any proceedings against an accused are held in open court, therefore the public and the press may be there. There are exceptions to this. Under section 486.(1) of the *Criminal Code*, if the presiding judge is of the opinion that it is in the interest of public morals, the maintenance of order, or the proper administration of justice to exclude all or any members of the public from the court room for all or part of

the proceedings, he/she may so order. This, for example, may often be the case where the accused is charged with a sexual offence and the victim is a child.

**72. If I do not want the press to be there, will the Crown ask the court for a publication ban?**

You can ask the Crown to apply to the presiding judge for a publication ban. The judge may also order a publication ban even if the Crown/Defence has not requested one. Under section 486(3) of the *Criminal Code*, the presiding judge or justice may make an order directing that the identity of a **complainant** or witness and any information that could disclose the identity of him/her, shall not be published in any document or broadcast in any way, when an accused is charged with a violent or sexual offence.

Where a publication ban has been ordered, it does not necessarily mean that the press will not be there, it just means that they cannot use certain information regarding a witness or victim in newspapers or broadcasts. This is usually the standard practice with sex offences. Although a publication ban does not exclude the press from being in the court, the judge can in some cases clear the courtroom and exclude the public from the proceedings.

**73. Should I talk with the media during the trial? Will this affect my case?**

Speaking to the media is an individual choice. If you choose to do so, you may want to wait until a trial is finished, but it is not required at any time. You do not have to answer their questions and most will respect your decision. If you are having trouble avoiding them (for example after the trial), ask the police or Crown if there is an alternate exit you could use.

You should be aware that there may be some pitfalls if you do decide to speak to the media (or personally publicize information about your case). The information that you relay may not be presented as you intended, or may not be published at all. Portions of your contribution may be edited out of, changing the intention of your words. You may be misquoted, and while that is remediable, it may cause some harm. The media attention may also grow as a result of your decision to speak, and may persist long after you wish to remain in contact with them. You should also remember that anything that is published on the internet, including information that you may personally post, is essentially permanently available.

**74. What are some helpful tips to remember when dealing with media?**

- Choose one spokesperson to speak to the media. Choose someone you all trust.
- Decide beforehand what you will say.
- Be consistent with your information.
- It is ok to say “I cannot answer that at this moment.”
- Remember to choose your words carefully – try to resist making statements in the heat of the moment.
- Make the media work for you – ensure they tell your story.
- Get the media on your side – they may have information you have not been told. Ask them what they know.
- When possible, ask a reporter to email questions to you and answer them by email. Remember you have more control over what you write than what you say. Read and re-read your statement before pressing send.
- When writing an obituary, remember that any names or places mentioned will attract media attention. Keep in mind that it is difficult to control misinformation. Again, try to be consistent.

**75. What impact can the media have on victims/survivors?**

The media has a preference for stories of “innocent victims” and stories reflecting “cherished social values”. When deaths do not fit into these categories the murder may be reported less sympathetically, if at all. Once the victim’s life and death are in the public domain, the memories that their family has may become spoiled or obscured. It is also common for victims to feel besieged by the media and that their loved one has become “public property” - that they have no control over the representation of the murder.

Read more about [the media and how victims can deal effectively with them](#), if they choose to do so.

## Witnesses

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### **76. As a victim, will I have to testify?**

If you were a direct victim, you witnessed the crime, or you have other information that may be useful to either the Crown or defence, you may be called upon to testify.

As a victim, you will not always have to testify. For example, if you are not a direct victim, such as a parent of a child who has been murdered, you may not be subpoenaed to be a witness. If you are subpoenaed as a witness for the Crown, you are required by law to attend court and give evidence. As previously stated, you will not be allowed to attend the trial before you testify because the lawyers and the judge do not want the other witnesses to influence your *testimony*. Once you have testified, you may then ask the judge for permission to observe the remainder of the trial, and you will usually be granted such a request provided the judge does not believe that you will need to testify again.

**Summary conviction** offences generally involve one appearance of witnesses. For indictable or more serious offences, you may be required to testify at the preliminary inquiry as well as during the trial. Generally, a **preliminary hearing** will occur several months after the charges have been laid, and if there is a trial, it will occur several months after the preliminary hearing. The criminal justice system is quite overburdened, thus you should be prepared for a delay.

### **77. How can I prepare for my testimony?**

To ensure that you are properly prepared, it is suggested that you meet with the Crown before the preliminary inquiry and/or trial. The Crown will explain procedure to you, go over evidence, review your statement to the police, and give you an idea of the kinds of questions to expect. Do not hesitate to ask questions if you are concerned.

Sometime before the trial, the Crown will ensure that you are provided with a copy of your statement, which will help refresh your memory (often the trial can be a long time after the offence). You may be asked to read your statement over a number of times to ensure that the answers you provide in court match the answers given in your statement. You may find it helpful to attend court before your *testimony* to observe another trial and how evidence is given. Most courthouses have court-based victim services that will give you a tour of the courthouse.

You should also be prepared for the fact that testifying will likely have some emotional consequences for you. While on the stand, you will be asked many questions about your victimization, multiple times. When it is time for the defence to question you, they will seek to disprove or discredit your testimony, and they will likely upset you. You need to remember to remain focused on your testimony, tell your story despite the efforts to cast doubt, and remain as calm as possible. If you are upset, or feel that you need a break, you should ask for it.

### **78. As a witness, where will I wait to testify?**

When you get to court (bring the *subpoena* with you), you should first let a court official know that you are there. Several cases are usually heard in the same courtroom on a given day, and all witnesses testifying in the cases are asked to appear at the same time. As a result, you will undoubtedly have to wait before testifying and will probably be excluded from the courtroom. If so, you should wait in an area outside the courtroom until you are called to give evidence (there may be a specific room where you will be allowed to wait). If you are unsure of where to go, check with the Crown or victim services prior to your court date.



Since it can be a long wait before you get to the witness stand, you may wish to bring a book or magazine to read, or take along a family member, friend or crisis worker to keep you company (if the person is not a witness, she or he may be able to stay in the courtroom while you give evidence). You should also make sure you have food, or enough money to buy something to eat, in case you have to wait through mealtimes.

When you are called to give evidence, you should go to the front of the courtroom near the judge. The court clerk will ask you to promise to tell the truth, either by taking an oath or by giving solemn promise known as an **affirmation**, and then will ask you to state your name for the record. The Crown and the defence counsel may then question you.

**79. If I don't believe in God, do I have to swear on the Bible?**

A witness can choose to provide an **affirmation** instead of swearing on the Bible. An affirmation is simply a promise to be truthful.

**80. What will the Crown ask when I am testifying? The defence?**

The Crown will conduct their questioning of you first (examination-in-chief). During an examination-in-chief, the Crown is generally not allowed to ask leading questions. The evidence you present will flow from you, with the Crown doing little more than suggesting the topics and assisting you in keeping on topic. Such topics will typically include simply telling the court what happened, when and where it happened, what you said, what you did, what the offender looked like, etc.

Once you have been examined-in-chief, you will then be cross-examined by the defence lawyer, who will usually ask 'leading' questions – questions, which suggest the answers. The defence, who is only representing the accused, will be trying to expose any weaknesses or inconsistencies in your evidence, thus she or he may suggest that you were mistaken in your identification of the accused, that you consented to what happened, that you were mistaken about the details of what happened, etc.

When the cross-examination has finished, the Crown may then ask you questions about points raised in the cross-examination (called 're-direct').

**81. Do I have to answer everything that they ask me when I'm testifying?**

You are usually required to answer every question asked of you unless the judge tells you not to. If you do not answer you may be held in **contempt of court** and be fined or imprisoned, or both. It is important to remember however, that if you don't know the answer, it's okay to say 'I don't know' or 'I don't remember'.

If a question is inappropriate, the Crown or defence can object to it and if the judge agrees to the objection, you may not have to answer the question. In some cases, objections are sustained and in other cases they may be overruled, meaning that you must answer the question. Some questions, such as those in a sexual assault case about a victim's sexual history, will not be allowed unless the desired evidence meets certain requirements.

Bring your statement to court with you, and have it by your side as you testify. Naturally, you are not expected to remember every detail, if you are unsure of an answer it is better not to guess. Feel free to ask the Crown to allow you to refresh your memory by reading from your statement. Remember to keep your answers short and to the point.

### **82. What can be done to protect ‘vulnerable’ witnesses while testifying?**

The *Criminal Code* provides protections for young sexual assault victims - e.g., testifying behind a screen, testifying via closed circuit TV, clearing the courtroom, allowing a support person with them while testifying, preventing the accused from personally cross-examining the victim, etc. Cases where such **testimony** is allowed are outlined in section 486. (2.1) of the Canadian *Criminal Code*. Speak to the Crown for more information on these provisions and whether they apply to you.

### **83. Other than my testimony, what else will be used as evidence?**

The Crown will likely call other witnesses to testify such as the police officers who investigated the crime, doctors and nurses or people who saw you just after the offence, and maybe even other experts (psychologists, chemists, fingerprint examiners, etc.). Each of these witnesses will go through a similar process to you: examination-in-chief, cross-examination, re-direct. Photos, clothing, weapons and medical reports are other types of evidence that may be presented.

When the Crown has called every one of its witnesses, the Crown’s case is complete. Then, the accused has a chance to present a defence to the Crown’s evidence. The defence lawyer may call witnesses to try to show that the accused is not responsible for the crime or that someone else could be, and the Crown will have an opportunity to cross-examine these witnesses and try to expose any weaknesses and inconsistencies in their evidence.

### **84. Will the accused testify at trial?**

The accused may testify at trial. It is important to note that he/she is not required to testify and can therefore choose not to do so. The accused is not required to prove he/she is innocent, and the fact that they are not testifying will not be seen as an indication of guilt by the judge/jury.

### **85. Why do the courts not allow certain evidence?**

One of the main reasons for excluding certain evidence is because it may be difficult for lay people (members of the jury who are not experts in evidentiary law) to decipher evidence or put aside their personal ignorance and prejudices. The following will usually be excluded as evidence:

- The accused’s bad character or previous convictions;
- The opinions of witnesses (other than ‘experts’);
- Evidence of what someone else has been heard to say (hearsay evidence), unless it is an admission or confession by the accused; and
- To protect the rights of individuals and to also guard against wrongful conviction, evidence that is obtained through a violation of a person’s rights is excluded. An example of this would be a confession to police that is obtained under oppressive conditions, or through questioning styles that are deemed to be threatening. A confession must be voluntary to be ruled admissible at trial.

### **86. Why does a witness have to tell the courtroom about their criminal history while the accused does not?**

As previously stated, our laws are designed to ensure that an accused has a fair trial free from bias. If an accused’s criminal history is presented, jurors may not be able to maintain the assumption of innocence. A witness must present their criminal history in order to prove that they are reliable and trustworthy.

**87. Can I get the items that were presented as evidence in court? How long must I wait to have them?**

Yes, you may be able to get the items that were used as evidence if they were personal items. Make sure that the Crown and police are aware of your desire to get the items back and ask them what the procedure is. You may have to wait until the *appeal* process is over, this could be several years. You will be directed to the police evidence room to collect the evidence. Victims should know that the accused has the right to view all items of evidence, including personal items and photos.

**88. What happens if a witness is caught lying on the stand?**

Lying on the stand under oath and knowing that the statement is false, is called *perjury*. Under the *Criminal Code*, anyone who commits perjury is guilty of an *indictable offence* and may be liable to imprisonment for a term not exceeding fourteen years. If you believe that a witness has committed perjury, inform the Crown.

**89. What happens to a witness who refuses to testify?**

A witness who has been subpoenaed to testify in court is required to do so by law. If he/she refuses to testify, the judge may issue an arrest *warrant* and charge the person with *contempt of court*.

**90. Am I allowed to see court documents such as witness statements and evidence?**

Generally, court materials such as these are restricted to the use by attorneys. You may wish to ask the Crown permission to view these items, but it is unlikely that they will be able to share them.

**91. Can I receive a copy of the Crown's file?**

It is very unlikely that you can receive a copy of the Crown's file. While the Crown has a duty to provide information to the victims, they do not have to give you full access to the file or make copies for you. You can make a Freedom of Information request, but most information in the Crown file will be restricted as the Supreme Court has ruled there is a duty to protect police investigation methods and the personal information of witnesses.

**92. Will the Crown supply me with a copy of the court transcripts, the coroner and/or autopsy reports? If not, how do I access these documents?**

As a general rule, victims are required to pay for court transcripts, which can be a very costly expenditure (up to \$3 per page). If however, the Crown has ordered the transcripts, they may share them with the victims. You will need to ask the Crown to do so.

In a trial, the coroner and autopsy reports are likely to be presented as evidence and will therefore become part of the court record. If so, ask the Crown for copies of these documents. If the coroner and autopsy reports are not entered as evidence, you will have to order and pay for copies of these reports. In some cases, next of kin may be provided with the autopsy report at no cost to them.

If/when the offender is sentenced to a term of imprisonment of more than two years, you may register with the Parole Board of Canada to receive information about the offender who harmed you. The regional communications officers at the Board can provide registered victims with a copy of the judge's "Reasons for Sentence." This document will vary in length, but generally reviews the evidence presented in the case without the large financial cost associated with ordering transcripts.

**93. Where can I get information about the accused's criminal history?**

Victims are not entitled to have information about the accused's criminal history because it is a personal matter. All of the accused's personal information is sealed from the public. If convicted, you may hear

details during sentencing, or in the future at parole hearings, where the Board examines criminal history, in depth.

**94. Am I allowed a list of names and addresses of the witnesses?**

You may not have an official copy of the witness list including names and addresses, but if you are present in court, they are read aloud. Also, they may appear on the court docket (list that is hung outside a courtroom announcing what cases are being heard on a particular day). If you purchase the trial transcripts, the names will be part of the record.

**95. Am I allowed to speak with witnesses who will be testifying at any time?**

Witnesses should not talk to each other about information regarding the case if they, or the person they are talking to, have not yet testified. If it is found that witnesses have spoken about the case before they have testified, this may result in a mistrial.

**96. Why is the probation officer not allowed to testify on behalf of a victim?**

A **probation** officer works directly with the offender and, while they may agree with victims' concerns about the offender, their job is to relate the offender's character to the court without bias.

## Victim Services

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Following the commission of an offence, victims may require a variety of support services including emotional, psychological, medical and financial support and/or general information about the criminal justice system. There are essentially four types of victim services programs available in Canada.

- The first are police-based victim services, which usually consist of victim crisis units to help victims in the aftermath immediately following the crime.
- The second are Crown or court-based services, designed to help enhance the understanding and participation of victims and witnesses in the process.
- The third type of service is community-based and includes sexual assault centres, victim advocacy groups, distress centres, and safe homes.
- The fourth type of service involves a system-based approach and provides a broad range of services from one location.

Most regions use at least one of the approaches listed above for service delivery. The availability of these services depends on resource allocation and the area in which you live. Please check with the police/Crown to assist you in finding suitable supports.

### **97. What do police-based victim services do for victims?**

There are police-based victim services across the country that provide crisis intervention, emotional support, practical assistance and referral during the time of the initial investigation. In some jurisdictions staff and volunteers might also provide court accompaniment. This will vary by police service, so please check with your local police to see what they offer.

### **98. What exactly does the court-based victim services office do for victims?**

Generally speaking these programs provide victims and witnesses with:

- courtroom orientation;
- information regarding the criminal justice system;
- information specific to your case, such as **bail, probation** conditions, etc.;
- court accompaniment; and
- referrals to community agencies for counselling and other support services.

### **99. Where is the court-based victim services office?**

Where the service exists the office is generally located in the courthouse. If you are from a small town, it is likely that this service may not be available to you. Please contact your Crown to find out what services are available to you.

### **100. What type of psychological services are available to crime victims?**

Each province offers different psychological services to victims and survivors of crime. Many municipalities across the country have community health centres that employ professional social workers, accredited therapists and counsellors. Services offered may include crisis intervention services such as: children's mental health services, adult's mental health services, programs for youth at risk and services to prevent violence against women. Many community health centres offer a limited number of sessions free of

charge, but may offer reduced or sliding-scale fees for continued therapy. Fees vary from centre to centre, and may not be available at all centres.

Most victims of crime end up seeing a community counsellor because private therapists such as psychologists are very expensive, usually charging in excess of \$100+ an hour and services covered under provincial health care programs are generally not available or have very long waiting lists.

Financial **compensation** programs for victims may also be available to assist with other or continued psychological treatment expenses.

**101. I feel very traumatized by the violent act committed against me or my loved one. I am having a difficult time resuming “normal” life activities. Do I need to see a psychiatrist?**

You might wish to consult with your family doctor to find out what options are available to you. They may be able to refer you to a range of therapists or supports, and that may include a psychiatrist.

Victims and survivors should be aware that psychiatrists are trained to use medication as the primary treatment option, along with supportive therapy sessions. While some victims do need medication to help them cope, others may not feel that being medicated is the best solution. Talk to your family doctor about the best treatment option for you.

Your family doctor may also refer you to a psychotherapist in private practice, or to a therapist/counsellor at a community health centre or similar agency. You may seek individual, couple, family, or group counselling to help to reduce the impact of the trauma, and its associated symptoms. There is generally a fee for these services, although it may be reduced by public funding, or may be covered by private health insurance or your province's crime **compensation** program.

**102. What is financial assistance/victims' compensation? How do I apply for it?**

Some provincial and territorial governments offer financial assistance to victims of crime. The service is designed to compensate innocent victims and their families for some, but not all, expenses incurred as the direct result of a violent crime ([see question #106](#)). This may include **compensation** for medical, dental or counselling expenses, funeral expenses, pain and suffering and/or loss of wages.

The distribution and amount of compensation varies depending on which province/territory you live in. It is imperative to note that legislation concerning criminal injuries compensation differs from province to province to territory. Thus, what may be covered in one province/territory may not be in another. In some provinces or territories, there is no compensation for victims at all. At the present time, Newfoundland & Labrador, the Yukon, and Nunavut do not offer such compensation.

In most cases, you have one year from the date of the crime to file your claim for compensation (this time limit is often extended if the victim has a reasonable excuse). You may be able to apply even if your attacker is not identified or found (a police report, however, is usually an essential part of your request).

You may also be eligible even if the accused is found not guilty. Applications must be made in the province where the crime took place. There is no cost for applying for compensation and you do not need a lawyer. For more information about criminal injuries compensation funds, call the board's office in your province/territory or ask the police or the Crown's office.

**103. Where is the compensation board in my province?**

Financial *compensation* is only available for crime victims in the following provinces:

**British Columbia:** The Crime Victim Assistance Program, (604) 660-3888 / Toll free (in BC): 1-866-660-3888

**Alberta:** Victims of Crime Financial Benefits Program, (780) 427-7217 / Toll free (in Alberta): 310-0000, ask for (780) 427-7217

**Saskatchewan:** Victims Compensation, (306) 787-3500 / Toll free 1-888-286-6664

**Manitoba:** Compensation for Victims of Crime Program, (204) 945-0899, Toll Free in Manitoba: 1-800-262-9344

**Ontario:** Criminal Injuries Compensation Board, 1-800-372-7463, 416-326-2900

**Quebec:** Direction l'indemnisation des victimes d'actes criminels, (800) 561-IVAC

**New Brunswick:** Victim Services Program, Tel: (506) 453-3992

**Nova Scotia:** Criminal Injuries Counselling Program, (902) 424-4651

**Prince Edward Island:** Victim Services, (902) 368-4582

**Northwest Territories:** Victims of Crime Emergency Fund, 1-867-873-7002

**104. Do I require a lawyer to file a claim for compensation? Is there anyone to assist me with this process?**

You do not require a lawyer to file a *compensation* claim, but you can have one if you need assistance or feel that it is necessary. Contact your provincial office for more information. They have trained personnel available to answer your questions and assist you with the application process.

**105. Will I have to physically appear before the Compensation Board?**

You may or may not have to physically appear before the Board depending on the circumstances of your case. If you do wish to appear in person, you should request this when you make your application.

**106. What criterion has to be met before a victim can apply for financial benefits?**

Each province sets the criteria to qualify for *compensation*. In general, the injury or death must be a result of one of the following:

- the commission of a crime of violence constituting an offence against the *Criminal Code* and outlined in the Schedule of offences prescribed by the legislation, excluding impaired driving offences (every province but Ontario has a schedule of offences);
- lawfully arresting or attempting to arrest an offender or suspected offender, or assisting a peace officer in executing his or her duties; or
- preventing or attempting to prevent the commission of an offence or suspected offence.

**107. If my province/territory has criminal injuries compensation, how much money can I be compensated for?**

The amount of the award varies according to the circumstances of the case and the province/territory in which the crime occurred. The range is from a maximum of \$2,000 for counselling in Nova Scotia, to \$110,000 for primary victims in Alberta. Ontario can award up to \$11,000 per month in periodic payments to a maximum of \$365,000. There is no maximum set in Quebec.

**108. Who can I write to if I need financial help to attend the trial?**

It may be difficult to get financial assistance to attend the trial. Some provinces, like BC, do have financial assistance for victims to attend a portion of their trial or sentencing. In Ontario, there is financial assistance for victims to attend sentencing to present a victim impact statement. Other provinces may, however, be able to provide you with other forms of assistance by attending the trial in your place and/or taking notes.

For a listing of the services in your area, do not hesitate to contact the Canadian Resource Centre for Victims of Crime.

**109. If I cannot attend court, who will keep me up to date?**

If you are unable to attend court proceedings, contact the Crown for an update in your case. Or, you may have other family members or a support system that will attend in your place. Some victim services will attend a trial with you or in your place if you cannot attend. Check with the victim services in your area.

**110. Who do I complain to about the justice system?**

The Canadian Victims Bill of Rights (2015) provides victims with a right to file a complaint for an infringement or denial of any of their rights under the Act. Each government office that assist victims of crime is required to offer a procedure for victims to file a complaint. Read more here about the CVBR: <http://laws-lois.justice.gc.ca/eng/acts/C-23.7/page-1.html>

Effective 23 April 2007 the office of the Federal Ombudsman for Victims of Crime was established. The mandate of the Federal Ombudsman for Victims of Crime relates exclusively to matters of federal responsibility and includes:

1. Facilitating access of victims to existing federal programs and services by providing them with information and referrals;
2. Addressing complaints of victims about compliance with the provisions of the *Corrections and Conditional Release Act* that apply to victims of offenders under federal supervision and providing an independent resource for those victims;
3. Enhancing awareness among criminal justice personnel and policy makers of the needs and concerns of victims and the applicable laws that benefit victims of crime, including to promote the principles set out in the *Canadian Statement of Basic Principles of Justice for Victims of Crime*; and
4. Identifying emerging issues and exploring systemic issues that impact negatively on victims of crime.

For more information, visit the Ombudsman's web site at <http://www.victimsfirst.gc.ca>. Or, contact the office directly by calling 1-866-481-8429.



## The Court's Decision

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### 111. What if the jury can't reach a verdict?

In criminal trials the **verdict** must be unanimous, and this is one reason why some juries spend several hours, even days, to reach a verdict. Although jurors have the right to disagree about various aspects of the case, all jurors must be in agreement with the final verdict decision. If the jury is unable to come to a unanimous decision - either of conviction or **acquittal** - there is a 'hung jury'.

When and if the jurors cannot reach a decision, a mistrial will be declared, the jury will be dismissed, and the charges will either be dropped, or the accused will be retried by a new jury.

### 112. What is a "stay of proceedings"?

Commonly referred to as stayed charges, this refers to the suspension of criminal proceedings, prior to a judgment (or decision) being made by the judge/jury. In general terms, a stay of proceedings pauses the prosecution for up to one year. If, at the end of that year, the proceedings have not recommenced (generally because new evidence is found), they are deemed to have never happened.

A stay of proceedings can be quite devastating for victims who see the accused essentially go free. When the proceedings are stayed, it is often a termination of the proceedings.

### 113. What happens after a not guilty verdict?

If the accused is acquitted (found not guilty), it means that there was not enough evidence before the court to prove the guilt of the accused **beyond a reasonable doubt**, and the accused will go free. It does not mean the offence did not occur or that the judge or jury thinks you / the witnesses are lying. Proof beyond a reasonable doubt is a very high standard to meet. If you are afraid that the accused might try to get back at you, you should speak to the police or the Crown.

After a not guilty **verdict**, the Crown may make an **appeal**, but can only appeal on a point of law. Unless the trial judge made an error of law, the **acquittal** stands. The Crown cannot retry an accused who is acquitted even if new evidence comes to light later.

### 114. What happens after a guilty verdict?

If the offender is found guilty, the sentencing process will begin. Sometimes the judge will decide on the penalty right away, but usually sentencing is put off for a while, maybe months. At this time, the accused must be given an opportunity to address the court, and the court will generally also hear from the Crown, and may receive submissions or information from victims, **probation** officers, and so on. The accused's criminal record, if any, will also be considered now (repeat offenders are usually given a harsher penalty), and the court may also require that a psychological or psychiatric assessment be completed and the results presented.

In deciding an appropriate sentence, the judge will gather all of the information about the crime, the offender, and his/her history (much of it through the **pre-sentence report** that will be compiled by a probation officer). As noted previously, it is at this time that you have a right to complete a '**victim impact statement**', and read it aloud, if you wish.

### 115. Does the judge have to go by the jury's decision?

The jury's decision is final. This principle, which originally developed in England, says that the jury is independent and free to decide as it sees fit. Even though the jury has its critics, many believe the role of

the jury is an important and fundamental component of our legal system because it is the only way in which ordinary citizens can participate directly in the judicial process and allow the community to make its voice heard.

**116. What is a victim surcharge?**

A **victim surcharge** is a mandatory monetary penalty that *may be* imposed on offenders, in addition to any other punishment imposed, at the time of sentencing. It is collected by the provincial and territorial governments, and the revenue is used to provide programs, services and assistance to victims of crime within their jurisdictions (it is **NOT** paid to the victim).

The amount of the victim surcharge is 30% of any **fine** that is imposed on an offender as a sentence, and, in the absence of a fine, \$100 for **summary conviction offences** and \$200 for **indictable offences**. This amount may be increased in appropriate circumstances if the judge is satisfied that the offender has the ability to pay the increased amount.

## Sentencing

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### 117. What is a pre-sentence report?

A **pre-sentence report** is a report prepared by a **probation** or parole officer that the judge may use in determining a sentence for a person who pleads guilty or is found guilty. The pre-sentence report may include information regarding the accused's background such as their family, education and employment history.

According to section 721 of the *Criminal Code*, the report must contain the offender's age, maturity, character, behaviour, attitude and willingness to make amends, the history of previous dispositions or **alternative measures** used to deal with the offender, and any information that the province determines should be included. These reports have a great influence in determining a sentence.

### 118. Are victims allowed to read a pre-sentence report?

Once a **pre-sentence report** is entered into evidence in the courtroom, the information within it becomes public and victims should be able to access and read this report. Ask the Crown to provide you with a copy of this report.

Please note that if your case involves young persons, it may not be possible to view the pre-sentence report because of the privacy protections afforded to young persons.

### 119. What is a victim impact statement? Does the judge request it? Can I present my impact statement orally?

A **victim impact statement** is a written account of the personal harm suffered by the victim as a result of the crime. It may include a description of the physical, financial and emotional effects of the crime. Where a victim impact statement has been prepared, it must be taken into consideration by the sentencing judge

It should not reiterate the facts of the case because this may give the defence an opportunity to challenge the facts as they have been presented. Do not recommend a sentence for the offender and avoid repeating any rumours or allegations about the offender. Try to concentrate on the following impacts:

- **Financial** - The actual costs incurred such as medical, funeral expenses, therapy and lost wages.
- **Physical** - Account for all the injuries you or your family has suffered. Make the court aware of whether these injuries are temporary or permanent. It is appropriate to note any future medical problems that may arise as a result of the crime.
- **Emotional** - The distress that the crime has caused you. Note depression, mood swings, or nightmares.

Speak to the Crown about how and when to prepare a victim impact statement as soon as possible, as it may take you some time to prepare it. Victims may choose to read their impact statements out loud at the time of sentencing. It is advisable to discuss this option with the Crown. Judges are required by law to ask a Crown, before imposing a sentence, whether the victim has been informed of the opportunity to prepare a victim impact statement.

### 120. Can the accused's lawyer question me about my statement?

The victim should be aware the defence has the right to question victims about their statement, but that this is a rare occurrence.

**121. Who will get a copy of my victim impact statement? Does the media have access to it?**

The victim should note that the *victim impact statement* will be shared with the defence and therefore the offender will see it. Once an impact statement has been entered into court, it becomes public record, and thus the media will also have access to it, but all personal information should be blacked out/protected.

**122. When do I have to submit my impact statement?**

An impact statement will not be used unless or until a criminal conviction has been rendered. It can also be used in the case of a plea bargain. Victims should discuss when to submit their statement with the Crown or the victim witness assistance program worker. You should plan to have it ready for submission to the Crown immediately after the conviction is entered.

**123. Does the judge really consider a victim impact statement?**

Although the decision to write an impact statement is voluntary, consideration of it by a judge is mandatory. Where a *victim impact statement* has been prepared, it must be taken into consideration by the sentencing judge.

**124. What happens to my impact statement once the judge has read it? Is it placed in the offender's prison records?**

Yes, your *victim impact statement* is placed in the offender's prison file. Copies of it will be forwarded to the Parole Board of Canada and Corrections Canada. These institutions may refer to your statement when considering an offender for temporary passes and/or parole in the future. Note that victims can update their victim impact statement for consideration at future parole hearings. Once updated, forward your statement to the board that will be considering the offender for parole.

**125. Is my community allowed to give the judge a victim impact statement?**

Yes, the Canadian Victims Bill of Rights (2015) allows members of the community to provide a Community Impact Statement (CIS). The Bill provides a new standardized mandatory form that provides clarity on what can/cannot/may be in the CIS.

**126. What is restitution? If ordered, how do I collect the money?**

The Canadian Victims Bill of Rights (2015) provides victims with a right to ask the court to consider restitution. If ordered, the offender's sentence may include *restitution*, requiring the offender pay an amount directly to the victim of the offence to help cover monetary losses or damage to property caused by the crime. Victims have to establish the value of the goods taken or destroyed and any expenses. Victims should speak to the Crown if they wish to seek restitution. The order for restitution may be for the whole amount or part. The judge has to take into account whether the offender has any ability to pay this amount, because it is part of the entire sentence.

Victims will receive a notice of restitution if a court has ordered that restitution be paid to them. The offender may pay you the amount after the order is made or work out a payment schedule. The notice will refer you to an office where you are able to pick up the money owed to you. You cannot collect the money directly from the offender. It is usually paid to the court clerk.

Restitution can be very difficult to collect, especially if the order is stand-alone. If restitution is part of a *probation* order it is somewhat easier to collect. If the offender makes no efforts to pay, you can file the order in the civil courts and use the same methods to collect as if you had successfully sued the offender.

You should be able to pursue these remedies on your own, although you may need some legal advice to do so. A student legal aid clinic may be able to help.

### 127. What types of sentences can the offender get?

The law gives a judge a great deal of discretion in deciding the most appropriate penalty for each case. Although the judge can decide on the penalty from a wide range of options, the maximum possible sentence depends on the crime.

An individual, depending on the crime, may receive (alone or in combination with another):

- **Absolute discharge:** the accused is found guilty, but does not gain a criminal record and is given no punishment (jail time) or restrictions placed upon them.
- **Conditional discharge:** similar to an absolute discharge except the offender is placed on probation, with various conditions, and if the offender satisfies all of the conditions within the specified period, he or she is discharged and considered never to have been convicted.
- **Suspended sentence:** a judge convicts an accused but technically gives no sentence. The offender is actually put on probation, and if he or she conforms to all the conditions and does not commit a new offence, no sentence ever is given.
- **Probation:** the most frequently used sentence in our criminal justice system. It is where the offender is released into the community under the supervision of a probation/parole officer and must follow certain conditions such as good behaviour, abstaining from alcohol, not contacting the victim, etc.
- **Prohibition order:** the offender can be banned from owning a certain object or performing a certain activity for either a certain time period or for life (e.g. prohibition from possessing a firearm, prohibition from working with children).
- **Fine:** the most frequently used sentence next to probation. It involves the payment of a specific amount of money within a specified period of time.
- **Restitution order:** similar to a fine however instead of paying the government, the offender compensates the victim for loss of or damage to property.
- **Community service order:** the offender is required to work a set number of hours for a community agency and those who fail to complete the required hours can be charged with another offence.
- **Imprisonment:** the most serious sentence of all. It is the punishment of incapacitation where someone convicted of a crime is placed into prison.
- **Conditional Sentence:** A conditional sentence is a sentence that is served by the offender in the community. Conditional sentences allow offenders, who are sentenced to less than two years in prison, to serve the sentence in the community (under a number of conditions).
- **Intermittent Sentence:** where the court imposes a sentence of 90 days or less, the court may order that the sentence be served intermittently, that is in blocks of times, such as on weekends, which permits the offender to be released into the community for a specific purpose such as going to work or school or caring for a child or for health concerns. An **intermittent sentence** must be accompanied by a probation order, which governs the offender's conduct while he or she is not in jail. The probation order will contain terms for the accused to follow, such as reporting to a probation officer, performing community service or abstaining from drugs or alcohol. If the offender breaches probation, they can be charged and may face being imprisoned full time.
- **Long Term Supervision Order:** Generally reserved for sexual and violent offenders, this order adds up to ten additional years of supervision (parole) added onto the end of their sentence.

- **Indeterminate Sentence for Dangerous Offenders:** following a special application and **hearing**, a person who commits a violent offence may be declared to be a **dangerous offender** and sentenced to an indeterminate period of detention. Indeterminate means that the judge does not specify when the offender's sentence will end, he/she is kept in jail with no fixed date for release.
- **Life Sentence:** The most severe punishment, generally only imposed on convictions for murder. The offender spends a portion of the sentence in prison (anywhere from seven to twenty-five years or longer), and remains on parole for the rest of his/her life. Does not necessarily mean life in prison.

**128. Can serious violent offenders receive sentences like discharges and probation?**

Yes. When the maximum penalty for a crime is fourteen years in prison or longer, and there is no minimum punishment prescribed, the minimum sentence a judge can give is an order to report to a probation officer for a set period of time (a **suspended sentence** with **probation**). When the maximum penalty is less than fourteen years in prison, and there is no minimum punishment prescribed, the minimum sentence a judge can give is an absolute discharge.

Unless an offence has a minimum punishment, for example first-degree murder, second-degree murder and offences involving the use of a firearm, violent offenders can receive the above mentioned type of sentences. Some offenders may also receive a '**conditional sentence**'. Conditional sentences allow offenders who are sentenced to less than two years in prison to serve the sentence in the community (under certain conditions).

**129. What is a non-custodial sentence?**

This is a sentence that does not involve the offender being housed in an institution. These generally come in the form of an absolute discharge, a **conditional discharge** or a **suspended sentence**.

**130. How likely is it that the offender will be sent to prison?**

There are a variety of dispositions or sentences that can be imposed upon an offender and imprisonment is only one of them. In fact, only a minority of convicted offenders will be sent to prison. A sentencing judge is required by law to consider all alternatives for an offender and to reserve imprisonment for the worst offence/worst offender scenarios. Repeat offenders are more likely to go to prison.

That being said, each case is unique, and the more serious the conviction, the greater the chance of a prison sentence. If an offence has a minimum punishment, for example first-degree murder, second-degree murder and offences involving the use of a firearm, those convicted of these offences are assured of a prison sentence.

**131. What is the most severe punishment that an offender can get?**

The most severe punishment in our criminal justice system is a **life sentence** (the death penalty was abolished by Parliament in 1976). While a number of offences list a life sentence as their maximum punishment, in reality, it is usually only administered on convictions for murder (first and second-degree). Life sentences other than those for first and second-degree murder (i.e. manslaughter) allow offenders to apply for parole after seven (7) years. It is important to understand that a life sentence does not necessarily mean life in prison.

Our criminal justice system also allows for an indeterminate period of incarceration for those offenders labeled as '**dangerous offenders**', who typically have committed a number of violent and/or sexual offences. Just as with those given life sentences, dangerous offenders will not necessarily be in prison for

the rest of their life, but will technically be under some type of supervision - either in prison or on parole - for the remainder of their life.

For repeat sex offenders that do not qualify as a 'dangerous offender', the court may declare the offender a 'long-term offender'. If declared a long-term offender, the offender can have up to ten additional years of supervision (parole) added onto the end of their sentence.

**132. How do judges decide upon a sentence?**

While taking into account information presented in *pre-sentence reports*, *victim impact statements*, sentence recommendations from the lawyers, and various other information, judges still have a great deal of discretion with respect to the type and severity of sentences that they can impose. For most offences, the *Criminal Code* prescribes only a maximum penalty, and the rest is left to the individual judge (most maximum penalties are never imposed). When determining a sentence, judges usually rely quite strongly on precedents (previous decisions in similar cases), which prevent different courts from deciding similar cases in contradictory ways, ensuring a measure of certainty in the law.

In imposing a sentence, judges are also guided by various principles of sentencing, found in section 718 of the *Criminal Code*. These include punishment and the need to express society's abhorrence for the accused's conduct, deterrence, rehabilitation, and so on. Since some offenders may spend a considerable amount of time in custody between *arrest* and sentencing, a judge may take this time into account to give a shorter prison term than would otherwise be appropriate, or even no prison term at all ([see question #67](#)).

The fact that all of these factors are considered when the judiciary makes sentencing decisions results in the potential for wide disparity in sentences across the country.

**133. Why can an offender convicted of two (or more) offences get the same sentence that they would get if they were convicted of only the one?**

One of the many bizarre features of our criminal justice system is the concurrent sentence. With a concurrent sentence, separate sentences imposed for two or more offences are served at the same time (e.g. an offender sentenced to two concurrent terms of ten years each, serves ten years in total, rather than twenty; an offender given concurrent sentences of three and five years would serve five years in total, not eight). It is as though only the first offence or the most serious offence is the one that matters. Sentences in Canada are automatically deemed to be served concurrently unless the judge specifically states they must be served consecutively (one after another).

## Process for mentally ill accused

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### 134. What will happen if the accused is found to be unfit to stand trial?

If an accused is deemed to be unable to participate in their defence, they can be found unfit to stand trial. This generally occurs when the accused is suffering from a mental disorder. Fitness can be reviewed at any point during the trial, prior to a judge/jury rendering a decision.

If an accused is found to be “unfit”, he or she will be supervised by a provincial/territorial review board, who will determine when, if ever, the accused will be fit to stand trial. The review board also has three disposition options: a **conditional discharge**, detention in hospital, or a treatment order (which cannot usually exceed 60 days). Many of those confined to mental health hospitals are confined for long periods - sometimes even longer than if they had been found guilty and sentenced for the crime with which they were charged - however, the opposite is also true. There is often no fixed sentence period for those confined to mental hospitals and cases are reviewed annually.

### 135. What does not criminally responsible on account of mental disorder mean?

According to the section 16.(1) of the *Criminal Code*, no one is criminally responsible for an offence he/she committed while suffering from a mental disorder that rendered him/her incapable of appreciating the nature or quality of the act or of knowing that it was wrong. If an accused is found to be mentally ill at the time of committing an offence, the person can be found ‘not criminally responsible on account of mental disorder’ (NCRMD).

Where a **verdict** of NCRMD is rendered, there are three possible dispositions (sentences). As with the dispositions for offenders found to be unfit to stand trial, in making a decision in respect of an accused found NCRMD, the court or a review board (made up of 5 or more members, including a psychiatrist) must take into consideration the various needs of both the accused and the public. A few options are available for those found NCRMD including: an absolute discharge (which is required by law if the accused is found not to be a ‘significant threat’ to the public), a **conditional discharge**, or a period of detention in a hospital.

### 136. How are victims impacted when an accused is found Unfit or NCRMD?

When an accused is found Unfit or NCRMD he/she will have a hearing every year to assess mental health and to decide the Review Board’s disposition in the case. Victims can participate by submitting a victim impact statement to the Board and/or attending the hearing in person.

Victims should note that some accused do very well when they are held in mental health hospitals as they are closely supervised and medical staff ensures their medications are taken. This can mean that an accused may return quickly to the community – first, conditionally discharged from the hospital and then absolutely once they are no longer deemed a threat to the public. Many survivors are rightfully fearful for public safety given the nature of some of the crimes committed.

See our [guide for victims of mentally ill offenders](#) for much more comprehensive information about the forensic hospital system and mental health review boards.



## Appeals

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### **137. What is an appeal? Is this automatic?**

The court process may not be over once the accused is sentenced. An **appeal** is an application for judicial review by a higher court of a lower court's decision. Appeal courts exist to make sure that courts do not make mistakes applying the law.

Only the defence or the Crown can appeal in regards to a conviction, **acquittal** or a sentence. In order for an appeal to be heard, there usually needs to be a question of law (not guilt). The accused generally has to demonstrate that the judge or the jury made a legal error during the trial. From the Crown's perspective, the decision to appeal a conviction or sentence is not made by the individual Crown, but by a review committee within the **Crown Attorney's** office.

Criminal cases are heard in superior courts across Canada. Upon appeal, the court transcripts will be reviewed by the Court of Appeal for the province or territory. If the Court of Appeal does not reach a unanimous decision, the case will automatically be reviewed by the Supreme Court. If either the Crown or defence believes that an error of law or fact existed, they may submit leave to appeal to the Supreme Court of Canada.

Appeals must be started at least thirty days from the imposition of the sentence. In some cases, the accused may be able to be released on **bail** until his/her appeal is heard. In most instances, there is no automatic right to an appeal as the Crown or defence must apply for one.

### **138. What is an inmate appeal?**

An inmate appeal is an appeal filed when the offender is in custody and is not represented by a lawyer. In the case of inmate appeals, the offender usually attends and argues his/her own appeal. Given the absence of opposing counsel, these appeals require special attention from Crown counsel to ensure fairness and balance in the appeal process. Such cases also carry with them additional administrative and judicial involvement to ensure fairness and a timely resolution.

### **139. Are witnesses forced to testify again if there is an appeal?**

A higher court does not always agree to hear the appeal, but if it does, it will usually use the transcript (the written copy) of the trial and arguments from the lawyers to decide whether or not the trial court made a mistake. While witnesses are not called to testify at this stage, if a new trial is ordered, you may have to testify again. An appeal is a technical process that is not generally heard until several months have passed.

### **140. Am I allowed to attend the appeal trial?**

Victims and other members of the public are allowed to attend the appeal trial. Keep in mind that appeals are generally on a point of law (i.e. a judge made an error in his charge to the jury), can be very complex, and will discuss the victim.

### **141. Who will advise me if the accused is granted an appeal?**

The Crown should advise the victim if the accused is granted an appeal. They will also be able to advise you of future court dates.

**142. How many times can the Crown appeal its case? Is there a limit?**

Both the Crown and the defence may only appeal a decision until the Supreme Court of Canada (SCC), which is the highest court in the land. However, the SCC only reviews cases and issues of national importance and has the authority to refuse to hear any case, without giving reasons as to why this is so.

**143. Is it possible for the court of appeal to increase or decrease an offender's sentence?**

Yes. Appeal courts often enter judgments regarding an offender's sentence. If a sentence is perceived as too lenient, it may be increased. The Court of Appeal may also decrease a sentence if it is perceived as too harsh.

**144. What circumstances would allow the accused to successfully appeal their conviction?**

The appeal may be successful if the appeal court finds that the trial court made a mistake of law and/or of fact, (i.e., allowed evidence that should not have been allowed, error in a judge's charge [instructions] to the jury, etc.).

**145. If the appeal court orders a new trial, can the accused apply for bail while awaiting trial?**

Yes, an accused may apply for *bail* while awaiting a new trial. The same procedures would apply as during the initial trial.

**146. If an appeal is granted, does that mean that the trial starts all over again?**

If an appeal is granted, the trial will not always start over. It depends upon the issue of appeal. If the appellate court orders a new trial, the process may then start all over again.

## After Sentencing

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### **147. What happens when the offender is sentenced to prison?**

An offender who has been sentenced to a federal prison term (two years or more) may remain in a local jail for a few days before being transferred into a federal penitentiary. This allows them to attend to their personal affairs, including filing an *appeal*.

After attending to personal business, the offender will normally be transferred to an institution to have an assessment done. The assessment will look at the offender's risk to the other inmates and staff, identify needed programs, and will recommend a security classification and penitentiary location (the location will not necessarily be in your own province/territory). Upon the completion of the assessment, the offender will be transferred to the appropriate federal penitentiary and assigned an institutional parole officer who will follow up on their progress and assist them in preparing for their eventual release into the community.

A similar process occurs for provincially sentenced offenders (those sentenced to two years less a day). They are assessed upon intake into an institution and may later be transferred to a different facility/detention centre.

### **148. If an offender gets a prison sentence, who decides to which jail the offender will be sent?**

The Correctional Service of Canada assesses federally sentenced offenders (those sentenced to more than two years) and decides in which institution he/she will serve their time. Judges have no say in this decision and cannot make recommendations. There are a number of factors to be considered to ensure that the institution meets the offender's security classification, support needs, and institutional programming needs.

Offenders serving provincial sentences (those less than two years), are assessed by the detention centre to which they are initially sent. These offenders are given a number of psychological assessments and may be transferred to a different detention centre depending upon their treatment needs. Some provinces have information lines for victims to call for details about offenders sentenced in their province.

### **149. Once sentenced, how do I keep track of the offender?**

Victims must register to receive information about the offender who harmed them from the Parole Board of Canada or Correctional Services Canada. If you (or your agent/representative) do not register, you will not be kept up to date. Call 1-866-789-4636 to register or visit <http://www.pbc-clcc.gc.ca/forms/pdf/pbc0031e.pdf>.

Once registered, you may request certain information, for example: when the sentence began; the length of the sentence; and dates the offender becomes eligible for unescorted *temporary absences* and parole. More information can be released if it has been determined that a victim's interest outweighs any invasion of the offender's privacy. This may include: whether the offender is in custody; the penitentiary in which the offender is incarcerated; the date of any *hearing*, the date and type of release; the destination of the offender; and conditions of release.

The following are examples of commonly requested information (depending on the sentence that the accused has received and if he/she is serving time in a federal or provincial institution). Feel free to use this list in your letter to the authorities:

1. The date the sentence commenced;

2. The conviction and length of sentence;
3. Unescorted Temporary Absence Date;
4. Escorted Temporary Absence Date;
5. **Day Parole** Eligibility Date;
6. **Full Parole** Eligibility Date;
7. **Statutory Release** Date;
8. The location of the penitentiary in which the sentence is being served;
9. Current Security Classification;
10. Decisions made or proposed regarding detention;
11. Next hearing date for any form of early or **conditional release**;
12. Any previous early or conditional release granted on this or other sentence and result thereof;
13. Judicial Review Eligibility Date;
14. Any applications made for judicial review.

For information on inmates in the provincial systems of Ontario, Quebec, or British Columbia, you should contact the provincial parole board and inquire about their particular services.

**150. What if the offender is subject to a deportation order?**

If the accused is under an order to be deported to another country, the deportation will occur upon his or her release from prison, on either parole or at the end of their sentence. Victims do not have the right to be informed if/when an offender is deported. The Correctional Service of Canada will notify registered victims that an offender has been given into the custody of federal immigration services, but no further information is provided.

**151. How is deportation different from extradition?**

Deportation is when a country expels a person from a country. Foreign offenders will frequently be the subject to deportation orders. Extradition refers to the transfer of a suspect or convicted criminal from one country to another, at the request of the receiving country. Extraditions are governed by treaties (or agreements) between nations. An offender may be extradited to serve a sentence in their home country, or to answer charges in other offences.

## Prisons

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### 152. What does the Correctional Service of Canada do?

The Correctional Service of Canada (CSC) is a division of Public Safety Canada that administers the sentences of those sentenced to prison for periods of two years or greater. More specifically, CSC is responsible for:

- The gathering of relevant information about offenders from a variety of sources, including the courts and the police.
- In the absence of a **Victim Impact Statement** and if the victim wishes, a **Community Assessment** may be completed by a community parole officer.
- The care, custody and control of offenders during imprisonment.
- Providing programs to offenders; for providing the Parole Board of Canada with case information and recommendations to assist in **conditional release** decisions;
- Some conditional release decision-making authority (**work releases**, most escorted **temporary absences**, some unescorted temporary absences).
- Supervising offenders on all forms of conditional release.

### 153. What's the difference between prison security levels?

Federal institutions are designated as maximum, medium, minimum, or multi-level security (most provinces/territories have similar designations for their institutions).

- Maximum-security classifies offenders as posing a serious risk to staff, offenders, and to the community, and as offenders who are expected to make active attempts to escape. As such, maximum-security is characterized by strict control over offender movements and activities.
- Medium-security includes offenders who pose a limited risk to the safety of the prison 'community', and who are not as likely to escape. As such, medium-security is characterized by moderate control over inmate activities and privileges, with increased freedom to inmates.
- Minimum-security includes offenders who pose the lowest risk to the safety of the prison 'community', and who are not expected to make any attempt to escape. As such, they have minimal control and supervision of inmate activities, associations, and privileges. Minimum-security inmates have relatively unrestricted movement. They generally don't have fences, and inmates come and go freely, traveling to and from **day parole** and/or work/program placements.

It is expected that offenders will gradually move to institutions with lower security levels over the course of their sentence. An inmate may also be transferred from one security level to another for security or program-related reasons. Inmates are eventually moved to a lower security level in order to prepare them for their eventual transition back into the community. This reduction in security level must be earned.

Some offenders may be housed in community correctional facilities or halfway houses. These facilities are similar to minimum-security facilities, allowing offenders to come and go with permission and conditions. These facilities are often used to house offenders who have just come out of a more formal facility and to help them return to society. If you are curious about the institution in which your offender is housed, and would like to arrange a tour, speak to the Correctional Service of Canada.

Recent amendments to Correctional Service of Canada policy now requires those offenders convicted of murder to remain in a maximum-security institution for at least the first two years of their *life sentence*.

**154. What kinds of programs do inmates take in a federal penitentiary?**

Offenders may take:

- education programs, including adult basic education, secondary education, vocational, college and university level programs (post-secondary education must be paid for by the inmate);
- 'living skills programs' which are designed to prepare an offender for their return into the community (e.g., parental skills, anger management);
- substance abuse programs;
- various programs for sex offenders;
- violence prevention programs;
- family violence programs;
- programs specifically for aboriginal offenders;
- programs specifically for female offenders;
- ethno cultural programs;
- employment programs;
- chaplaincy programs;
- services for offenders with mental health problems; and/or
- Industrial and Agribusiness Program (CORCAN).

**155. Do the programs offenders take in prison work?**

Research evaluating the effectiveness of treatment programs in terms of reducing recidivism (commission of new offences) or reducing the severity of new offences remains inconclusive. The best that can be said is that some treatments 'work' for some offenders, some of the time.

In general, treated offenders do better than those without treatment. Needless to say, not all high-risk groups respond well to treatment. Those diagnosed as psychopaths for example, are considered among the most difficult offender groups to 'successfully' treat. Overall, the recidivism rates at the provincial level are very high compared to the federal level.

It should also be noted that offenders are not required to participate in any treatment program while incarcerated. Although active participation is beneficial in terms of seeking parole, offenders cannot be forced into programs.

**156. Do offenders work and get paid in prison?**

Offenders can be 'employed' in a prison or penitentiary either through working in the kitchen, doing maintenance work, or cleaning. Some prisons have farming opportunities for inmates. Federal inmates are also offered training and may actually work in the penitentiary system's CORCAN program, which is responsible for the manufacture and provision of a wide range of products and services including office furniture, clothing, shelving, agricultural products, metal fabrication, data entry, digital imaging and

telemarketing. CORCAN also offers community-based short-term employment, job counselling and placement programs.

Inmates may earn around five to seven dollars per day in an institution, depending on their performance on the job, while unemployed inmates receive an allowance rate of around two dollars per day (Basic Facts About Corrections in Canada, 1997).

**157. If an offender escapes from the institution where he/she is serving his/her sentence and is found guilty of escaping lawful custody, will his/her new sentence be served once the first sentence is completed?**

Whether sentences for crimes are to be served consecutively (one after the other) or concurrently (sentences for different crimes are served at the same time as one another), is a determination to be made by the sentencing judge. If a judge does not specify consecutive or concurrent terms in their decision, the law states that sentences must be served concurrently.

**158. If an inmate commits a violent crime while in jail, will he/she be charged and tried in a court of law? If so, will the new sentence be served after the original one is served?**

If an inmate commits a serious crime, the prison authorities will decide whether to proceed with formal charges against the inmate or whether to deal with the matter internally. If the crime is very serious, formal charges may be laid against the inmate. Again, it is the sentencing judge who determines whether sentences are to be served concurrently or consecutively.

## The Parole System

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### 159. Who will explain the parole system to me?

Call the Parole Board of Canada for information. The Parole Board of Canada has a toll-free victim information line that can be dialed from anywhere in Canada and the United States and directed to the PBC regional office, which serves that area code. This toll-free number is **1-866-789-INFO (4636)**.

The Parole Board of Canada has several offices that can also provide assistance to you. Or, visit their website at <http://pbc-clcc.gc.ca/contus/offices-eng.shtml>.

Different victim services providers in your area may also be able to explain the parole system to you. Contact your local supports or the Canadian Resource Centre for Victims of Crime for answers to questions you may have.

### 160. What is the difference between probation and parole?

**Probation** is a sentence imposed by a judge, usually instead of, but sometimes in addition to, a term of imprisonment. It allows the person to live in the community under the supervision of a probation officer. Probation can only be given for sentences of less than two years (provincial).

Parole may be granted after the offender has served part of the sentence in an institution, allowing the offender to live in the community under supervision for the remainder of the sentence. The decision to grant parole is the responsibility of the Parole Board of Canada. Parole is a privilege, not a right.

### 161. What is the Parole Board of Canada?

The Parole Board of Canada (PBC) is an independent administrative tribunal that has exclusive authority under the [Corrections and Conditional Release Act](#) to grant, deny, cancel, terminate or revoke **day parole** and **full parole**. The PBC may also order certain offenders to be held in prison until the end of their sentence. This is called detention during the period of **statutory release**. In addition, the Board makes **conditional release** decisions for offenders in provinces and territories that do not have their own parole boards. Only the provinces of British Columbia, Ontario and Quebec have their own parole boards that have authority to grant releases to offenders serving less than two years in prison.

The Board has no control over juveniles convicted under the Youth Criminal Justice Act, or escorted **temporary absences** which are usually under the jurisdiction of the Correctional Service of Canada (except in cases of offenders serving life or indeterminate sentences).

### 162. Will I automatically receive information about an offender following his incarceration?

No. This information will only be given to victims in response to a request from them. Victims may also wish to receive ongoing information so they may be kept informed of changes such as an offender's move from one institution to another or the grant of **conditional release**.

Victims may contact any regional office of the Parole Board of Canada or the Correctional Service of Canada. These agencies have designated staff ready to assist victims and their families.



**163. Who is considered a victim?**

The Parole Board of Canada (PBC) defines a victim as:

- Someone who was harmed by a crime or who suffered physical or emotional damage as the result of a crime, or
- Where the victim is deceased, ill or otherwise incapacitated, the person's spouse, an individual who is cohabiting, or was cohabiting at the time of the person's death, with the person in a conjugal relationship, having so cohabited for a period of at least one year, any relative or dependent of the person, or anyone who has in law or fact custody or is responsible for the care or support of the person.
- Victims who were harmed by an offender may present a statement whether or not the offender was prosecuted or convicted for this crime as long as a complaint was made to the police or the Crown, or an information was laid under the Criminal Code. The PBC must have a written confirmation that a complaint was laid.

These definitions apply to victims of the current offence, as well as to victims of previous offences.

**164. Can someone request and receive information about a federal inmate on my behalf?**

Yes. While many victims wish to deal with the Correctional Service of Canada and the Parole Board of Canada directly, you might not. For these reasons, victims are allowed to have an agent who will request and receive information on their behalf.

You may also authorize someone to act for you at a parole hearing. The Board will recognize someone as your representative if you make a written declaration to the Board. You may also designate an individual or an agency, such as the Canadian Resource Centre for Victims of Crime, to serve as your contact with the PBC and CSC.

**165. What information can be obtained?**

Victims, like any member of the public, may receive the following information about offenders from the Parole Board of Canada or the Correctional Service of Canada, as outlined in the Corrections and Conditional Release Act (1992):

- the length of the offender's sentence;
- when the offender becomes eligible for parole; and
- All Board decisions made after November 1, 1992 (by written request).

**166. Can victims obtain additional information?**

Yes. Victims are entitled to receive additional information following a written request if the appropriate authority of the Parole Board of Canada and/or the Correctional Service of Canada decides that the victim's interest clearly outweighs any invasion of the offender's privacy that could result from the release of information. That information includes:

- whether the offender is in custody, and if not, why;
- where the offender will be released;
- where the offender is being held;
- when the offender is released;

- what type of release the offender received; and
- any conditions attached to an offender's release.

**167. Am I allowed to write to the parole board?**

Yes. Victims may correspond with the Parole Board of Canada at any time. Most often, correspondence usually takes the form of a Victim Statement (VS), which is used to assist with assessing risk.

Your statement may include a description of the continuing impact of the crime since sentencing. This could include information about the physical, emotional, medical and financial impact of this crime on yourself, your children and family members, or others who are close to you. It may also include concerns you have for the safety of yourself, your family, or the community with regard to the offender should he or she be released. It is helpful to explain why you believe there may be a risk. Victims can also include any new information they feel is relevant and the Board will consider it.

A victim may choose to forward their VS from the court proceedings, or to update their statement if many years have passed. Victim Statements are not altered or edited by Board officials.

The Canadian Resource Centre for Victims of Crime has found that parole board members take statements provided by victims very seriously. In fact, members will often directly question offenders about information provided in the victim statement. The VS is a good way for victims to have their feelings and concerns noted and addressed.

**168. Where and when should the information be sent?**

A victim may contact any regional office of the Parole Board of Canada or Correctional Service of Canada to find out where to send their victim statement. Although information can be received at any time, victims are encouraged to send this information in written form as soon as possible after the offender is sentenced or before an offender becomes eligible for parole. By law, an offender must be able to review all documents 15 days prior to the parole hearing and if information is not given in time, he/she may postpone the *hearing*. The board requires the statement in writing thirty days before the hearing or if translation is required, forty-five days before hearing date. Victims can submit updates at any time.

**169. Do parole boards and prison officials consider information provided by victims?**

Yes. Information from victims can help both the parole boards and correctional services assess offenders. Because all offenders become eligible for consideration for *conditional release* at some point during their sentence, victims can provide valuable information through their victim statement about offenders, and about the seriousness of the offence.

Victim statements also help decision-makers assess what programs may be needed to change the offender's behaviour. They can also assist Board members in assessing whether the offender understands the impact of the crime on the victim, or is likely to re-offend, and whether special conditions may be needed if release is granted (e.g., to stay away from you).

The law requires however, with few exceptions, that the authorities share any information with the offender that will be considered during any decision-making process, and this includes information provided by the victim. Rare exceptions to this rule include situations such as jeopardizing the safety of a person, the security of a correctional institution, or an ongoing investigation.

**170. Can someone else write a letter to the parole board on my behalf?**

Yes. A victim can appoint an agent to submit a statement on their behalf. Also, any member of the public may write to the Parole Board of Canada to express their concern about an offender's pending parole. Victims may also wish to seek the support of victims' groups or police forces and associations and forward them to the Board.

**171. What is the role of an agent?**

A victim can designate an agent to be the recipient of all information that they would be entitled to from the Board. This includes, but is not limited to notification of transfers, passes, *hearings*, breaches or other information that the victim may need to receive. The Board will treat the agent as the victim's representative. Many victims choose to use individuals or agencies like the Canadian Resource Centre for Victims of Crime to receive this information so that it can be delivered by someone who is not affiliated with the Parole Board of Canada or Correctional Service, someone who is known to have their interests come first.

**172. If I write a letter to the parole board, is the offender able to read it? Can my address be excluded?**

According to law, disclosure of the information that will be presented at the parole hearing must be available to the accused before the hearing. Therefore, the prisoner will be able to read it.

If however, the Board believes that the disclosure of evidence would threaten the safety of someone, they are not required to disclose this information to the accused but may provide a summary of the information.

Rest assured that offenders will not receive any personal information such as the address or phone number of the victim.

**173. What is a parole hearing?**

A parole hearing is a meeting between the offender and members of the Parole Board of Canada. It usually takes place in the institution where the offender is incarcerated, but it can take place at a regional office if the offender is already on parole in the community and is seeking a parole extension.

A hearing is conducted to assess the risk that the offender may pose to the community should he/she be granted *conditional release* (while most decisions are made after a hearing, some decisions are made on the basis of a file review).

There are generally two board members presiding. They will take into account various criteria, review the offender's case, make their decision, and explain the reasons for their decision to the offender. The whole process, on average, usually takes about two hours. Unlike court proceedings, parole board hearings are designed to be informal. Members of the Board are not restricted in any manner as to the questions they may ask of an offender. Participants are encouraged to use everyday language, the offender and members of the Board sit around the same table (observers usually sit in chairs against the wall).

The process begins with the hearing assistant explaining the procedure to the offender and with Board members introducing themselves. The Parole Officer may then give a summary of the case and his/her recommendations. The Parole Board members then question the offender. If the offender has an assistant present, he/she is given a chance to say something and then the offender is allowed to say something. Everyone except the Board members and their assistant will leave the room while the board deliberates. They will then return when the Board is done for the decision.

The hearings are held in the official language of the offender's choice. However, victims may present the statement in either French or English. The Board will arrange for the statement to be translated into the language used at the hearing. Victims can also request that translation be provided if they require it.

The Parole Board of Canada has a virtual tour of a hearing on their website at <http://www.PBC-cnrc.gc.ca/hearing/index-eng.shtml>. You should note that the specific set-up for the hearing room will be different in each institution.

**174. Can I attend a federal parole hearing?**

Yes, usually anyone can attend as long as they are eighteen years of age. To apply to observe an offender's hearing, an application form must be filled out and sent to the office of the Parole Board of Canada in the region where the hearing will take place.

Applications should be made in writing and as early as possible, preferably at least sixty days before the hearing, to permit the security check that is required by law before a victim can be admitted to a penitentiary. While it is rare, applications can be refused if security is a concern, space is limited, or if it is believed that the observer will upset the Board's ability to assess the case or will adversely affect someone who has given information.

While you will be able to attend the hearing, you will not be allowed to be present while the Board members discuss their decision. If you are unable or would feel uncomfortable attending a hearing, you may either attend the hearing via video conference, or authorize someone to act for you at a parole hearing provided you make a written declaration to the Board. There are also victims' agencies like the Canadian Resource Centre for Victims of Crime that will attend with you or on your behalf (where possible).

Each of the provincial boards determines their own rules on victim attendance at provincial parole hearings. Currently, neither Ontario nor Quebec allows victims to attend parole hearings, while British Columbia does.

**175. Is there financial assistance available for victims to attend parole hearings?**

Yes, since attending parole hearings often involves travel and accommodation away from home. Financial assistance, called the **Victims Fund**, is available as of November 1, 2005, to registered victims who wish to attend parole hearings of the offender who harmed them. Funding assistance allows victims to participate more freely and fully in the criminal justice system, without having the burden of out of pocket expenses. The Victims Fund is administered by the Department of Justice's Policy Centre for Victim Issues.

**176. Who is eligible to apply for financial assistance to attend parole hearings?**

Victims may apply to the Department of Justice for travel funding assistance if they are registered with Correctional Service of Canada or the Parole Board of Canada, been approved to attend the hearing, and wish to attend a hearing related to the offender who harmed them, either to observe or present a *victim impact statement*.

**177. What are the specific expenses which the Victims Fund will cover?**

The **Victims Fund** will help cover the following expenses: travel costs, in accordance with Treasury Board, Government of Canada Travel Guidelines (gas mileage rates, air, bus or train travel at economy rates). Hotels, generally to a maximum of two nights at prevailing government business travel rates may also be covered. Meals and travel to and from parole hearings will also be covered. In all cases, victims must keep receipts.

**178. What if two or more victims travel together?**

A separate application is required for each victim who seeks funding. Where two or more victims travel together, one of them should apply for and claim all the expenses of shared transportation (gas mileage) and accommodation, and only his or her own meals and incidentals. The application form must clearly identify which expenses cover both the applicant and other victims. The other victims would apply for and claim their own meals and incidentals and their own transportation if not shared.

**179. Can the expenses of a person attending to support me at the hearing be covered?**

If the person is attending with you, as your support person, their expenses will be covered. They will need to apply using the same process as victims do, with the same guidelines. If, for whatever reason, they attend the hearing without you, their expense will not be paid.

**180. Where can I obtain an application form for the Victims Fund?**

You can obtain a copy of the *Victims Fund* application if you wish to be compensated for attending parole hearings by writing to the Victims Fund Manager. You can also receive an application by calling 1-866-544-1007, or online [here](#).

**181. Who is present at a federal parole hearing?**

There will usually be two Board members present, the offender, the offender's assistant (such as a family member, friend, lawyer or spiritual advisor), the offender's parole officer, and a hearing assistant from the Parole Board of Canada. Other observers who show a demonstrated interest, such as victims, the media, or criminal justice professionals may also attend. A representative from the Parole Board will attend with you to answer any questions that you may have.

**182. Can I participate in the parole hearing?**

Victims in Canada can participate in both provincial and federal parole hearings by submitting written victim statements for consideration by the Board ([see question #168](#)).

As of July 1, 2001, victims are able to read their statements at federal parole hearings, at either the beginning or end of the hearing. If a victim is unable to attend they may choose to write, or send an audiotape or videotape of their statement. Please contact your regional office for more information about presenting impact statements at hearings.

**183. Can I get a copy of a Parole Board of Canada decision?**

Yes, however you must request the decision in writing. The Parole Board of Canada maintains a record of its decisions and the reasons for those decisions in a data bank called the decision registry. The registry allows individuals who demonstrate an interest in a specific case to access Board decisions relating to an offender. Anyone interested in a specific case may request in writing to the Parole Board of Canada for a copy of a *conditional release* decision (made after November 1, 1992). This process is separate from registering to receive information about an offender's movements while incarcerated ([see question #150](#)).

For the Board to be able to release information about offenders, anyone requesting information must give the reason for the request. The only information the Board will withhold is that which may jeopardize the safety of someone, reveal a confidential source of information, or adversely affect the return of an offender to society as a law-abiding citizen, in such cases personal information may be blocked out.

Decisions made by heads of federal correctional institutions concerning *temporary absences* and *work releases* are not included in the PBC decision registry.

**184. What is conditional release?**

**Conditional release** is a program allowing an offender to be released from prison to serve part of their sentence in the community under supervision, provided they abide by certain conditions (e.g. obeying the law, curfews, and prohibitions on alcohol use). It does not shorten the offender's sentence, but it does shorten the time spent in prison.

Ontario, British Columbia and Quebec have their own provincial parole boards that determine the conditional release of prisoners in the provincial system (those with sentences less than two years), while the Parole Board of Canada and the Correctional Service of Canada determine the conditional release of inmates in the remaining provincial and territorial prison systems, as well as those offenders serving their prison time in the federal system.

**185. Who supervises offenders when they are on conditional release?**

The Correctional Service of Canada (CSC) is responsible for supervising offenders on **conditional release** from a penitentiary and institutions in provinces or territories without their own boards of parole.

Supervision is also provided by contract through the Correctional Service of Canada with provincial governments and non-government agencies such as the Salvation Army, John Howard Society, and Elizabeth Fry Society. These agencies are required to follow the same standards for supervision as those applied by the Correctional Service of Canada. CSC usually also informs the police whenever an offender is released which can assist in monitoring the offender.

Provincial correctional services in Quebec, Ontario, and British Columbia are responsible for supervision of inmates from provincial institutions in those provinces.

**186. Why are offenders released before the end of their sentence of imprisonment?**

By law, all offenders must be considered for some form of **conditional release** during their sentence. This does not mean that release is guaranteed. In order to help prevent offenders from re-offending, most are released early in their sentence with conditions so that they can be monitored. If not, they will be released at the end of their sentence with no supervision.

**187. What are the types of conditional release?**

There are numerous ways in which an offender can be released from prison, at least temporarily, before the end of their court-decided sentence:

- **Work release:** involves work or community service outside the penitentiary; supervised by a staff member or other person or organization and authorized by the institutional head. Decisions regarding work release are made by CSC, not the Parole Board.
- **Temporary Absence:** there is usually no hearing to determine if an offender should be granted a temporary absence, it will either be escorted (ETA) or unescorted (UTA).
- **Day Parole:** may be granted six months prior to full parole, to prepare an offender for release on full parole or statutory release by allowing the offender to participate in community-based activities. Offender must report nightly to an institution or a halfway house unless otherwise authorized. The decision is made by the Parole Board of Canada at a hearing.
- **Full Parole:** Generally the offender serves the final one third of the sentence under supervision in the community, but this is not always the case. The decision is made by the Parole Board of Canada at a hearing.

- **Statutory Release:** By law, federal offenders are released after serving two-thirds of their sentence (except those serving life or indeterminate terms). The decision for release is not a discretionary one, it is virtually automatic, and most offenders are released at this point.

**188. How do they decide if an offender should be granted conditional release?**

The Parole Board of Canada must make the protection of society the most important consideration in a **conditional release** decision. At the same time, members must make the least restrictive decision consistent with public safety.

Thus, the Board will grant parole if, in their opinion, the offender will not by re-offending present an undue risk to society, and if they believe that the release will contribute to the protection of society by helping the offender return to society as a law-abiding citizen. If the offender's risk is manageable in the community, he/she can be released.

To make their decision, the Board members will first review all available and relevant information about the offender to make an initial assessment of risk. This will include information about the offence, the offender's criminal history, any social problems (such as substance abuse), their mental status, relationships, employment, opinions from professionals and others such as aboriginal elders, judges, police, information from victims, and their performance on previous release, if any.

After this initial assessment, the Board looks at such specific factors as their behaviour in prison and information from the offender that indicates evidence of change and insight into criminal behavior. While most parole Board members insist that their decisions are guided by federal legislation, Board policy and numerous inmate files, the judge's reasons for sentencing, psychiatric assessments, and **victim impact statements**, other Board members have conceded in the past that they often rely on intuition during the inmate interview.

**189. I have concerns about my safety once an offender is released. Who do I tell?**

Victims should write to the Parole Board of Canada (PBC) to express any concerns they have for their safety, the safety of their family and/or community. Information from victims allows the board to assess the offender's release plans and manage any risk that the offender might present, especially if the offender will be near the victim or is a member of the victim's family. The PBC may, for example, impose a special condition for the offender not to contact a victim or not to be in the presence of children.

**190. Is parole the same as statutory release?**

No. Most federal inmates are released automatically by law on **statutory release** after serving two-thirds of their sentence. On the other hand, parole is (except for accelerated parole review) at the discretion of the Parole Board of Canada and the inmate usually has to prove that they are worthy of release into the community. In both cases, offenders are subject to conditions and supervision in the community.

**191. Can an offender be detained past their statutory release date?**

Yes, offenders can be detained past their **statutory release** date, but this is a rare occurrence. The Parole Board of Canada can only consider detaining an offender if recommended by the Correctional Service of Canada. CSC recommends detention only when an offender meets certain criteria. They must believe that the offender is likely to commit an offence causing death or serious harm to another person, a sexual offence involving a child, or a serious drug offence before the end of their sentence.

The only offenders that are not released after two-thirds are those serving life or indeterminate terms, and those who meet the detention criteria. Most federal inmates are automatically released into the

community with conditions after serving two-thirds of their sentence. The offender does not have to prove that she or he is worthy of release, unlike other types of **conditional release**. The Parole Board of Canada reserves the right to add conditions to those imposed on all offenders on statutory release, as well as revoke a release if there is a breach of a condition.

**192. Will all inmates be eventually let out of prison?**

As a general rule, yes. Since most inmates are serving definite sentences, meaning that after completing a specific period of days, months or years of incarceration, the offender must be released.

Inmates given life or indeterminate sentences can be kept in prison for life. However, most will eventually be allowed out of prison (temporarily or for good). It is important to note that all lifers will be subject to some form of supervision for the remainder of their life.

In Canada, few murderers will truly serve a **life sentence**. In fact, 1<sup>st</sup> degree murderers in Canada serve an average of 28 years in prison for their crimes. 'Life' does not mean life in Canada, and this can be particularly difficult for victims and other members of the public to accept. In some exceptional cases, certain offenders who are either 'lifers' or '**dangerous offenders**', will be denied every time they apply for parole. These offenders are considered extremely likely to re-offend, and thus will never be set free.

It is important to note that even those offenders who will never receive **full parole** into the community may still be granted **temporary absences**. Those inmates with 'fixed' sentences however (not life or indeterminate) must be released once their sentence expires (warrant expiry), regardless of the danger they present. Of course, the police will be informed of such danger and in turn will likely watch him/her quite closely.

There is, however, no legal mechanism in Canada to hold an offender once their sentence expires. In some cases, society is simply forced to wait for the next victim.

**193. Why do we have conditional release?**

The reason cited for having **conditional release** is that, given that the majority of inmates will eventually be released back into society conditional release allows a gradual and safe transition back into the community. It is viewed as favorable to being released at the end of a sentence without any supervision.

From this view then, conditional release is viewed as a bridge between incarceration and the return to the community. Former inmates - particularly those who have served long sentences – agree that parole is a vital bridge between the tedium of prison and a high-speed, bewildering society.

Officially then, the main purposes of conditional release are the rehabilitation and reintegration of the offender. Conditional release also encourages offenders to have good behaviour while in prison.

**194. How successful is conditional release?**

**Conditional releases** generally have good success rates. They become controversial when an offender breaches one or more conditions, yet they are not returned to prison or charged with a new offence so their release is considered successful. For example, if an offender comes back to a halfway house stoned, even though this may be a violation of conditions to abstain from intoxicants, this case is considered a success. Such criteria undermine the true "success" rate of conditional release and simply create more public skepticism of the system.



**195. When can I expect the offender to be considered for conditional release?**

Most offenders may be released into the community on **full parole** after serving one-third of their sentence, or the first seven years, whichever is less. The sentencing court may also determine, for some offenders, that the portion of the sentence that must be served before parole eligibility is one-half or ten years, whichever is less. Whether granted parole or not, most federal offenders are automatically released after serving two-thirds of their sentence. Eligibility dates do tend to vary slightly from one offender to another however. The eligibility dates specific to any offender can be provided by the Parole Board of Canada, upon request by a victim.

**196. What is 'Judicial Review' for offenders serving life sentences?**

Section 745.6 (1) of the *Criminal Code* was repealed in March of 2011. It used to allow people who are convicted of murder and have served fifteen years of their sentence to have their parole ineligibility period reviewed and possibly shortened. It was known as the 'faint hope' clause, and sought to provide an incentive for offenders to behave by affording them the opportunity to seek parole eligibility sooner than their sentence permits. The faint hope clause is no longer available for any offences committed after December 2, 2011. Those who received life sentences prior to December 2, 2011 may be eligible for faint hope hearings, with [new restrictions](#).

**197. If an offender is denied parole, can they apply again?**

An offender who has been denied **full parole** can have his or her case reviewed again within two years. Offenders can also **appeal** a conditional release decision to the Appeal Division of the Parole Board of Canada. The offender will often apply before the two years have expired, sometimes as early as six months after a denial.

**198. What is community supervision?**

Community supervision involves monitoring and helping the offender to reintegrate into society. The parole supervisor reviews the offender's file and sets a schedule to meet with the offender, gives instructions, contacts community resources and the police, and visits the offender's family, friends, employer or others.

If offenders do not abide by the conditions of release, they may be returned to prison. The majority of offenders returned to prison while on conditional release are returned for a violation of a condition of release, not because of a new crime.

**199. What are the standard conditions of release?**

Any offender released on parole or **statutory release** must abide by following conditions:

- Upon release, travel directly to the offender's place of residence, as set out in the release certificate, and report to the parole supervisor immediately, and thereafter as instructed by the parole supervisor;
- Remain at all times in Canada, within territorial boundaries prescribed by the parole supervisor;
- Obey the law and keep the peace;
- Inform the parole supervisor immediately if arrested or questioned by the police;
- Always carry the release certificate and identity card provided by the releasing authority and produce them upon request of identification to any police or parole officer;
- Report to the police as instructed by the parole supervisor;

- Advise the parole supervisor of the offender's address of residence on release and thereafter report immediately any changes in address, employment, and personal situation;
- Not own, possess or have the control of any weapon, as defined in the Criminal Code, except as authorized by the parole supervisor;
- For an offender released on **day parole**, return to the penitentiary of community residential facility at the date and time on the release certificate;

An offender released on a **temporary absence** must also return to the penitentiary from which he/she was released at the date and time provided for in the absence permit.

The Parole Board of Canada can also impose special conditions to control behaviour, such as curfews, prohibiting the offender from contacting the victim or their family, remaining within or outside of specific geographical areas, and any condition, which relates to previous criminal behaviour, such as abstaining from alcohol use, or not associating with convicted criminals.

If offenders do not abide by the conditions of release, they may be returned to prison. The majority of offenders returned to prison while on conditional release are returned for a violation of a condition of a release, not because of a new crime.

**200. Can a victim ask that additional conditions be added?**

Yes, a victim can ask the Board to impose additional conditions or ask an advocate, such as the Canadian Resource Centre for Victims of Crime, to do so on their behalf. Additional conditions must relate to previous criminal behaviour.

**201. What happens if conditions are violated?**

The Correctional Service of Canada can take action if it believes the offender is violating release conditions or may commit another crime. It can suspend the release and return the offender directly to prison until the risk is reassessed. Some offenders may remain in prison if the Parole Board of Canada revokes their parole. Others may be released again but under more severe restrictions and after more supervision or community support services are in place.

**202. Can an offender be charged when he/she violates his/her conditions?**

An offender cannot be charged for violating a parole condition. If offenders do not abide by the conditions of release, they may be returned to prison. The majority of offenders returned to prison while on conditional release are returned for a violation of a condition of a release, not because of a new crime.

**203. Are victims told what an offender did to violate his/her conditions of release?**

No. Privacy laws protect the offender and victims are not told what the offender did to violate his/her conditions of release. The Canadian Resource Centre for Victims of Crime is advocating for this policy to be changed. Since victims are able to receive information about violations of conditional release if they attend a parole **hearing** or receive parole decision sheets, it does not make sense that this information is restricted when the violation occurs, especially if it pertains to the safety of the victim.

**204. What does a parole officer do?**

Upon release, the offender, with the assistance of the parole officer, must follow a pre-approved release plan. A parole officer's duties are thus to monitor the offender and to help him or her reintegrate safely into society. Their job is therefore part police officer, part social worker. Fairly regular meetings with the

offender are supposed to focus on compliance with the conditions of release, employment, income, family relations, housing, and other matters contributing to becoming a law-abiding citizen.

The parole officer will often visit the offender at home or at their job, or demand that the offender provide a urine sample to ensure that he or she is complying with his or her parole conditions. Parole officers routinely write reports on the progress of offenders, discuss cases with their supervisors, and may also maintain contact with the offender's family, the police, employers, community agencies and persons who may be assisting the offender in a program.

If the offender breaches parole conditions or seems likely to do so, the parole officer may take disciplinary measures, which may include taking the necessary steps to send them back to prison.

Parole officers are guided in their work by rules and standards. Parole officers routinely write reports on the progress of each offender and discuss cases that require additional attention with their supervisors. Officers work together with many community agencies to help secure stable housing, employment, income, and positive personal contacts.

Parole officers are usually quite overworked with a caseload of, on average, 25 to 30 offenders.

**205. What steps are taken to apprehend a parolee, who, upon release, has failed to report to the parole officer?**

Failure to report to a parole officer may constitute a violation of the parole conditions. When a parolee violates conditions, a suspension warrant is issued and the parolee (if he is found) is held in custody. Within forty-five days, the parole board will hold a *hearing*. If it is found that the parolee did violate the conditions placed upon him/her, the parole board may do one of two things:

- order the offender to return to a correctional facility for the remainder of his/her sentence; or
- upon determining that the offender is not a risk to society, cancel the suspension and return the offender to the community, possibly with additional conditions.

**206. Can an offender have their criminal record erased?**

Through the granting of a pardon, an offender who has completed their sentence and demonstrated that they are law-abiding citizens, can have their criminal record sealed. Pardons, or record suspensions as they are now called, are not automatic, do not erase the fact of conviction, do not declare the conviction wrong, or excuse the criminal behaviour. What happens is that the record of conviction is removed from police computers and kept separately.

For offenders whose pardon eligibility date is prior to June 29, 2010, the offender can apply for a pardon three years after finishing their entire sentence (including parole) if convicted of a summary (less serious) offence, and after five years if convicted of an indictable (more serious) offence. Police will maintain some information about sex offenders who obtain a pardon for volunteer agencies who work with children. In addition, pardons are not available to lifers and *Dangerous Offenders* since their sentences never end.

New legislation came into force on June 29, 2010 that lengthens and changes the process for record suspensions (as pardons are now called). There are now more offences for which record suspensions are ineligible, and the process now puts more onus on the offender. The waiting periods have also increased, to five years for *summary conviction* offences and ten years for *indictable offences*.

**207. What is the Royal Prerogative of Mercy?**

Clemency through the Royal Prerogative of Mercy is an exceptional remedy, which may be granted where there exists circumstances of extreme hardship or inequity beyond that intended by the Courts, or out of proportion to the nature and seriousness of the offence. The Parole Board of Canada conducts the investigations into the merits of the applications and makes a recommendation to the Solicitor General. Where the Minister supports the grant of clemency, he/she submits his/her recommendation to the Governor-in-Council, or in some cases, to the Governor General of Canada, who will make the final decision.

**208. The offender who murdered my family member was on parole for a violent offence. Why was this person even released?**

While not a common occurrence, there have been instances when offenders on release commit horrific crimes. The Parole Board of Canada must consider public safety while balancing the rights of an offender to be housed in the least restrictive means when deciding to release offenders into the community. It is certainly very difficult for victims to understand why and how a dangerous criminal would ever be released to commit new crimes.

**209. Who will investigate the parole board for me to ensure that I am given rational and honest answers?**

When a federal offender on some form of conditional release commits a serious offence in the community, the Correctional Service of Canada and/or the Parole Board of Canada may convene a Board of Investigation into the crime. They will examine the offender's criminal history, the circumstances surrounding his/her release and the circumstances of the new crime. The report may make recommendations to the authorities about how to prevent similar tragedies in the future.

If such an investigation has occurred, victims can receive the report through Access to Information laws. The Correctional Service of Canada has its own Access to Information officers that can supply the report for a small fee. Victims should be aware that the reports are often difficult to read and make sense of due to entire portions being literally blacked out or entire blank pages. Personal information is often restricted in these reports to protect the privacy of the offender and other third persons (e.g., employees).

You should be told an investigation is being done and you may be given a chance to make suggestions for issues that should be examined. You may not be given a copy of the report until after the trial is over.

The provincial correctional systems produce a similar type of report for offenders that commit crimes while on **probation** or parole. These reports can also be accessed, but the process can be much more restrictive than obtaining a federal investigation.

## The youth criminal justice system

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### **210. Is the criminal justice system for youths different from that for adults?**

Yes. In Canada, those aged twelve to seventeen are considered youths under criminal law, and fall within the scope of the Youth Criminal Justice Act (YCJA). Under the YCJA, a youth who is suspected of having committed a crime will have a **hearing in youth court** (which is like a trial). Under the YCJA the very same laws apply to youths; yet the procedures, courts and manner in which they are managed are distinctly separate. Special youth courts deal with young persons' cases.

The creation of the two systems is intended to reflect the fact that young people lack the maturity of adults. Emphasis is placed on rehabilitation and on giving youths a second chance.

Several of the many ways in which YCJA differs from the adult system include:

- measures of accountability are consistent with young person's reduced level of maturity;
- procedural protections are enhanced;
- rehabilitation and reintegration are given special emphasis;
- sentences are dispositions;
- and the importance of timely intervention is recognized.

### **211. Are crimes committed by youths investigated in the same manner as crimes committed by adults?**

The answer is yes and no. The police will conduct an investigation as they would if suspects are adults. Once a youth is identified as a suspect, there are different rules for how the youth is investigated and how evidence is treated. These differences in procedure may be problematic, as they could lead to errors that result in the exclusion of evidence if the special measures for youth accused are not observed.

### **212. How different are youth sentences from adult sentences?**

In youth court, sentences are usually called dispositions, however they are quite similar to those available to adult court judges. Youth in conflict with the law receive much more supervision, guidance and closer monitoring under the YCJA.

For example, **probation** is more intensive, and the custody requirement now has an accompanied supervision element. One difference is 'open custody'. Open custody refers to facilities such as community or residential centres, group homes, or forest or wilderness camps. Limits and curfews are imposed on the youth, yet they can still leave the facility to attend school or for appointments. 'Secure custody' is defined as any facility for the secure containment or restraint of young persons (it cannot, however, be in an adult prison, or even on the same floor of a building where adults are held). Secure custody is to be reserved primarily for violent offenders and serious repeat offenders.

Prior to imposing a custodial sentence, the Court must have considered alternatives to custody. A special sentence for serious violent offenders is Intensive Rehabilitative Custody and Supervision Order. The Department of Justice has set aside special funding for the province and territories to ensure that this sentencing option can be made available throughout the country.

The main difference between youth and adult sentences is the length of the sentence. Where the maximum length of a sentence for an adult is life, the maximum possible sentence for a young person is two years unless the offence is murder, in which case the maximum penalty is up to ten years, six years in closed custody, followed by four years of open custody.

**213. What are alternative measures?**

For young people, the police and the court system may decide that criminal court proceedings are not in the best interests of the youth or society. In such cases, the youth is referred to an **alternative measures** program where the youth and the justice system agree on an appropriate penalty.

Alternative measures, which can only be used for certain offences and under certain conditions (usually reserved for the non-violent, first-time offenders), can be applied either before or after a youth has been charged. Once a youth has agreed to participate, an alternative measures agreement is negotiated between the youth and the Crown. If the youth does not comply with the agreement, the case can be referred back to the court.

Alternative measures may include such things as volunteering for a non-profit organization, **community service orders**, attending a wilderness camp that allows youths access to counselling and teaches life skills, attending substance abuse or aggression programs, and even reconciliation programs where the victim and offender talk about and discuss what happened.

**214. Under what conditions can a youth court impose an adult sentence?**

Provisions found in the old Young Offenders' Act regarding the transfer to adult court were removed in the YCJA. The legislation now provides for the imposition of adult sentence only following the determination of guilt. The youth court judge has been given the authority to impose this sentence in five categories of offences; murder, attempted murder, manslaughter, aggravated sexual assault and serious violent offences for which an adult would be liable to imprisonment for a term of more than two years.

The YCJA sets the age for the presumption of an adult sentence at 14. The individual provinces, however, have the authority to set the age at 15 or 16. If the Crown decides not to seek an adult sentence, the youth court may not impose an adult sentence.

The requirements to test for suitability for adult sentence include whether the length of the youth sentence is sufficient to hold the youth accountable. The accountability of the young person must be consistent with the greater dependency of young persons and their reduced level of maturity. If a youth sentence is sufficient, this is the sentence the court must impose.

The YCJA also contains new provisions relating to placement of a young person who receives an adult sentence. Unless the judge is satisfied that it would not be in the best interest of the young person or would jeopardize the safety of others:

- A young person who is under the age of eighteen at the time of sentencing will be placed in a youth custody facility; and
- A young person who is over the age of eighteen at the time of sentencing will be placed in an adult facility.

**215. Are there juries in youth court?**

Yes. Youths charged with offences that may be subject to an adult sentence (listed in [question 216](#)) where the **Attorney General** has given notice of the intention to seek an adult sentence are given the option of choosing a trial by youth justice court judge or judge and jury. If they do not so choose, then a judge and jury will automatically try them.

**216. Can young people get parole?**

Youths that receive a youth disposition are not eligible. Incorporation of the new YCJA shows significant improvements regarding custody orders, non-custodial sentencing options, and sentencing for serious violent offenders.

Also, mandatory reviews of youth dispositions do occur which can result in changes to their disposition. Where a young person has been sentenced to custody for a period of more than one year, the offender will automatically be brought before a youth court to review this disposition after he or she has served one year of the sentence. Review of young person dispositions may also be available, upon application in some cases, to young offenders who have been sentenced to less than one year of custody.

**217. What happens if the offender is less than 12 years of age?**

Children under the age of twelve are not held criminally responsible for their actions, and will usually be dealt with under provincial child welfare and mental health legislation.

## Suing the offender or others

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### 218. Can I sue the accused in civil court?

If the accused has caused you, intentionally or unintentionally, personal injury or financial loss you may sue him/her in civil court.

It should be noted that the civil litigation system is very costly and much more time consuming than the criminal process. Civil litigation also provides for an enormous emotional burden on the victims, as it does not restrict the flow of information or questioning like the criminal system does. A victim's past can be cross-examined liberally. Civil litigation is also a risky avenue to pursue, as criminal defendants often do not have the financial means to compensate a victim for their pain and suffering.

Legal Aid programs generally do not accept civil litigation matters either, so victims will have to pay a lawyer at their own expense.

### 219. What's the difference between a civil case and a criminal case?

While there are some similarities between civil and criminal cases, including the potential for a jury trial, there are a number of distinct differences. The main differences are that:

- Criminal cases are actions between the Crown and the accused, whereas civil cases are between the plaintiff (you) and the defendant;
- In criminal cases the burden of proof rests upon the Crown to prove the accused's guilt beyond reasonable doubt, whereas in civil cases it is the plaintiff who usually bears the burden of proof;
- Civil cases have a much lower standard of proof than criminal cases: the plaintiff only has to prove his/her case according to a balance of probabilities; and
- The objectives of a successful civil suit are varied - **compensation** for the plaintiff, a court order in her or his favor, or a declaration as to her or his rights, etc.

### 220. Can I get financial compensation from the offender?

**Restitution** cannot be ordered for pain and suffering or other **damages** that can be assessed in the civil courts. Thus, if you are seeking such damages, you may want to consult a lawyer, legal aid clinic or community law office about taking civil action. The amount that you can sue for will be impacted by the harm suffered, the future expenses, and whether the victim is deceased.

The fact that the accused was not charged by the police or has not been found guilty in criminal court does not necessarily mean you will be unsuccessful. You can only take civil action if you can identify the person who attacked you and if you know where to find the person. It is important to point out that if you have already received money from a victims' **compensation** fund, you may have to repay it if you receive money in a civil action. It would therefore be wise to check with the compensation fund before proceeding with your civil case.

### 221. Can victims sue the Correctional Service of Canada or the Parole Board of Canada for releasing an offender who went on to commit a serious crime?

Victims can and have sued the correctional and paroling authorities in such circumstances. It has been done in the interest of holding such institutions accountable for their actions. Victims should keep in mind that the civil litigation process is very time-consuming and very costly. Victims will likely have to pay lawyers' fees in the range of 25-35% of the **damages** awarded or settlement amount.



## Legal Aid

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### **222. What is legal aid? Are victims entitled to it?**

Legal aid is free or subsidized legal counsel given to those who qualify. Legal aid offers different kinds of help depending on your legal problem and where you live in Canada. Each region will have differing criteria and income thresholds for those seeking Legal Aid.

The Legal Aid office will look at your family responsibilities and your expenses to determine whether you are eligible for assistance. Your application will be rejected if the assessment shows that you can pay your own legal costs.

Legal aid may cover issues relating to victims of crime depending on what you are seeking it for, however, this is unlikely. Some victims have received Legal Aid for civil suits against the corrections and paroling authorities. Also, you may choose to apply for legal aid in order to secure a publication ban of your case, or to prevent the defence from accessing your personal/medical records in sexual assault cases. You should contact your local legal aid office and advise them of your circumstances to see if you may be entitled to legal aid.

Be aware that the funding for many legal aid programs has been cut substantially during the last decade. Thus, funding for victims to get legal assistance may not be possible in many cases.

### **223. Why is the accused entitled to a free Legal Aid defence?**

Every Canadian is entitled to a full and fair legal defence. As such, the government has a duty to provide legal resources to those who cannot afford it. The services of a lawyer are very costly. Legal Aid is the most just way to ensure that all members of society secure a legal defence, not just the wealthy.

### **224. What is the maximum amount of Legal Aid that an accused is allowed to receive?**

Each province will have different maximums set as to the amount of legal aid services a criminal accused may receive. Usually, the provinces set a maximum amount of hours allowed. Please consult your provincial Legal Aid office for more information.

## Restorative Justice

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### **225. What are the principles of restorative justice?**

Restorative Justice (RJ) is a way of looking at crime. It can be defined as a response to crime that focuses on restoring the losses suffered by victims, holding offenders accountable for the harm they have caused, and building peace within communities.

We have begun to see a litany of criminal justice programs that try to apply various principles of restorative justice. These programs should involve the voluntary participation of the victim of the offence, the offender and members of the community. Those affected directly by the crime may come together for discussions about it and its impact on their lives. The process requires wrongdoers to recognize the harm they have caused and to accept responsibility for their actions. Wrongdoers must also want to make reparation to the victims and the community.

Programs that incorporate Restorative Justice principles are not suitable for all victims and for all crimes. The individual victim's needs and the severity and details of the crime may make certain cases unsuitable.

### **226. Are there conditions that must be met before beginning?**

A strong program requires that both the victim and the offender voluntarily agree to them. Most programs also require the offender to accept responsibility for his/her actions.

It is also important to note that programs can take place at different stages of the criminal justice process. Some programs may require the offender to plead guilty before proceeding with the program. Others may take place after charges have been laid. Some initiatives take place after conviction but before sentencing occurs (pre-sentence programs), while others take place after an offender has been sentenced (post-sentence programs).

Please note that not all programs apply all the principles of RJ. Some may not require victim participation and instead apply other principles. That does not make the program futile, but it is important to understand when assessing a program.

Victims should also be prepared for frustration and disappointment should the offender in their case be uninterested or unwilling to participate. Some offenders are simply not willing to accept responsibility for their actions or to show remorse. This may be devastating to a victim who thought they might finally be able to receive answers to their lingering questions about the crime.

### **227. My case involves the commission of a serious violent crime. Am I eligible to participate?**

Far more advanced training of mediators and preparation of the parties is required in cases involving sexual assault, attempted homicide and murder. There are only a couple of such programs in Canada. In Langley, British Columbia, Dave Gustafson developed the Fraser Region Community Justice Initiatives Association – which fosters peacemaking and resolution of conflict in the community through the development and application of mediation and conciliation. They offer a day treatment program, a victim offender mediation program and a victim offender reconciliation program. In Ottawa, the Collaborative Justice Project – mediates cases of violent crime and is based in the courthouse.

### **228. What are the limits of the current justice system?**

In the current criminal justice system, we go out of our way to encourage the accused party to deny guilt, even when guilty. We exclude the injured party – the victim. We focus more on how evidence was

gathered than we do about what that evidence means. The current criminal justice system is one designed by lawyers, for lawyers and the result is that victims and offenders are often bystanders in the proceedings.

**229. What are the limitations of Restorative Justice?**

There will always be a need for the traditional justice system, as some cases are simply not appropriate for RJ. Remember that restorative justice can only take place when:

- An offender admits guilt, accepts responsibility for his/her actions and agrees to participate in the program;
- The victim of the crime freely agrees to participate in the program and without feeling pressured to do so; and
- Trained facilitators are available in the community and a restorative program is in place.

There are offenders who are not appropriate candidates for such programs, as well as victims and their families who do not want to have a role in restorative programs. Even if an offender participates in a RJ program, he/she may still be dangerous and therefore must still be sent to prison. Also, a person who has been wrongfully charged with an offence must have an opportunity to prove his/her innocence in a court of law. Thus, restorative justice programs are not appropriate in every situation.

Victims should also be aware that restorative programs are time consuming and emotionally draining. For some victims, even the idea of meeting the offender can be overwhelming. Victims may also suffer further distress if they feel at all pressured to participate in such programs.

During the past 30 years, a restorative justice movement has emerged in Canada. It is a movement that finds the current justice system inadequate in terms of dealing with offenders, victims and communities in the aftermath of crime. The current criminal justice system is seen as retributive, concentrating solely on fixing blame and guilt. Restorative Justice asserts that victims are forgotten entities in the current justice process and should have a greater role in determining the outcome of their case.

**230. Will restorative justice help me find out more details about the crime?**

Restorative justice may provide the opportunity for you to communicate with the offender. Some options include writing letters, video conferencing or face-to-face meetings in the presence of a mediator. Restorative justice projects give interested victims an opportunity to talk about the crime, express their feelings and concerns, and try to get some answers.

**231. I want to talk to the offender and find out why he/she did this to me. Am I allowed to meet with him/her?**

There are restorative justice programs across the country that can help to facilitate meetings between victims and offenders. Some of these programs take place before a trial as an *alternative measures* program. Other programs deal with cases that have gone through the trial process and may be many years later. If you do wish to meet with the offender you should contact your Crown (during trial stage) or the correctional service (after trial stage) responsible for administering the inmate's sentence.

**232. What are some examples of restorative justice programs?**

Some examples of restorative programs are victim offender mediation, circle sentencing, family group conferencing, mediation, and alternative dispute resolution. There are also specialized RJ projects to deal with young offenders and serious crime.

**233. What is victim/offender mediation?**

Victim Offender Mediation is a process that provides victims of crimes with the opportunity to safely and confidentially gain information about the crime and about the offender, express the full impact of the crime on their lives, get answers to questions they have and achieve a greater sense of closure on some issues. The mediation process is entirely voluntary and explicitly flexible. It does not necessarily aim to involve parties in face-to-face meeting. The pace and extent of involvement is determined by the participants. Interventions can include:

- support, counselling, legal transmission of needed information to both parties (where that information is freely provided for such release);
- indirect communication by means of letters and/or video tapes;
- direct communication through one or more face-to-face meetings facilitated by a trained mediator/facilitator;
- aftercare: follow-up support, as desired and appropriate, for both parties

These interventions are not meant for all crime victims nor for all offenders and an assessment is always a part of the process. Protocols are in place, which are highly sensitive to participant needs and readiness to proceed.

**234. Do I have to forgive the offender?**

No. It is true that some victims have found the principles of forgiveness, reconciliation and restoration very rewarding in their journey toward healing. While forgiveness may be appropriate for some victims and it may result naturally for some participants in RJ programs, it should not be the goal. Victims must not be pressured to forgive an offender. The burden on the victim is heavy enough without being made to worry about forgiveness. If there is pressure to forgive and at the end of the process the victim is unable to do so, this may be unnecessarily interpreted as a failure.

**235. How can victims benefit from restorative justice based programs?**

Restorative justice programs can be beneficial in that victims can express their thoughts, feelings and emotions about the crime and the harm arising from it. Such programs offer a variety of settings and circumstances through which victims, offenders and communities can address and repair the harm caused in a particular case. Since the goal of the process is repairing harm and restoring relationships victims are given an important voice in making things right. Many victims have expressed high levels of satisfaction with the justice system after having participated in such programs. Involvement may also help victims heal emotionally in the aftermath of the crime, as well as reduce the fear of the offender and further criminal victimization.

Victims of crime should proceed through the criminal justice system in the manner they are most comfortable. While not appropriate for every case, victims who have an interest in pursuing restorative programs, have every right to do so.

**236. How do I ensure my rights are considered?**

Good restorative programs have well-trained facilitators who are sensitive to the needs of victims, who know the community in which the crime took place and who understand the dynamics of the criminal justice system. If you are considering taking part in a restorative program, make certain that it considers your safety, provides you with all of the information you require, allows you to choose the path you wish to follow, allows you to tell your story, validates your loss as a victim and considers *restitution* for you.

## Peace Bonds

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### 237. What is a peace bond?

A peace bond is a criminal court order that sets out specific conditions to protect the safety of others or property. It can be ordered where there is a reasonable fear that another person will cause personal injury to them or their family, will damage his/her property, or where there is a reasonable fear that another person will commit a sexual offence against them. A peace bond may be issued under section 810 of the *Criminal Code*.

Peace bonds are often used in cases of family violence and harassment/stalking. They include specific terms that may, for example, forbid the defendant from calling, contacting or visiting the applicant's home or workplace, forbid them from carrying firearms or ammunition, or require that they go to counselling. A Peace Bond does not cost anything and you do not need a lawyer to get one.

There are limits to peace bonds that should also be considered by victims before applying. The peace bond is essentially a piece of paper that tries to prevent harm. It can take up to three months before it is put in place, and it does not stop that person should they attempt to harm you. It can only deter a person - the police must be called to stop them. This can be difficult, especially in rural areas.

### 238. How can you get a peace bond?

Only a judge, Justice of the Peace, or a magistrate can issue a peace bond. If you live in Manitoba, Newfoundland, Nova Scotia, or Ontario you can apply directly for a peace bond at a Provincial Court. If there is no Provincial Court in your community, go to your local police station. If you live in Alberta, British Columbia, New Brunswick, Northwest Territories, Prince Edward Island, Quebec, Saskatchewan, or the Yukon you can go to the police.

Once you have told the police or the Provincial Court that you want a peace bond, they will **summons** the other party and tell them when to go to court. The applicant must also appear in court on that day.

### 239. What happens in court?

You must show that you have a reasonable fear the defendant will harm you or your family, or will damage your property. You will give evidence under oath describing why you are in need of the Peace Bond. You cannot make emotional pleas without evidence; therefore, you should:

- document every time the person stalked you or threatened you;
- keep any evidence of abuse such as hospital records, photographs, etc.;
- in the case of a partner/ex-partner, if applicable, evidence of his mistreatment of your children; and
- document every time the person damaged your property or threatened to; take photographs, if possible.

If the judge believes, on reasonable grounds, that an order should be made, terms of the order will be decided. The defendant will then be asked to enter into the bond. If he/she agrees, the peace bond will be ordered. If he/she refuses, there will be a **hearing** where the judge will hear both sides, and then decide on ordering the peace bond. If the defendant still refuses to sign it, they can face up to twelve months imprisonment.

**240. What should I do if asked to sign a ‘mutual’ peace bond?**

If possible, avoid signing a mutual peace bond. Sometimes, the person you are trying to protect yourself against will tell the court that they need to be protected from you. Or, they will refuse to sign the peace bond unless you do so as well.

In such cases, the justice of the peace or judge may issue a mutual peace bond requiring that you cannot seek out your partner/ex-partner, as well. This suggests that you have done something to provoke the harassment, which is not often the case. Also, your partner/ex-partner may try to set you up to break the mutual peace bond. The CRCVC strongly recommends speaking to a lawyer before signing anything like a peace bond.

**241. What must be proved?**

A peace bond may be available if you:

- have been threatened;
- have a reasonable fear for the safety of yourself, your spouse or your child; or
- have a reasonable fear that someone will damage your property.

You do not need to prove that an assault has been committed.

**242. Do I need a lawyer?**

You do not need a lawyer. You can present your case to the court without a lawyer. If you wish, you may hire a lawyer or you may be able to get Legal Aid. If there is a **hearing**, depending on where you live, either a Crown will be appointed, or you may have to tell the court about your own case.

**243. Will the defendant get a criminal record?**

The defendant will not get a criminal record just for signing the peace bond. If, however, it is found that a term has been breached, they may get a criminal record.

**244. What can you do if the terms are broken?**

Go to a safe place. Make sure that you retain an official copy of the order and keep it with you at all times. If a term is breached call the police. If you are in immediate danger, call 911. The person may be arrested and criminal charges may be brought against them.

It is important to note that the police may not always respond positively in enforcing peace bonds. If the officer responding to your call does not provide an effective remedy, you should talk to his/her supervisor. You should also talk to the Victim supports in your community (police or court-based) about what should happen next time the order is broken.

**245. Can the terms be changed?**

Yes, the terms can be changed. They can only, however, be changed by a judge or Justice of the Peace and this process is complicated and difficult. If you would like to change the terms, contact the police or Provincial Court.

**246. How long is it in effect?**

Peace bonds can only last for up to twelve months. They are not renewable. If you need another one, you must make a new application.

**247. What is the difference between a peace bond and a restraining order?**

Restraining orders are non-criminal court orders that have certain conditions such as prohibiting contact. They are usually made in connection with a custody or separation action in a Family Court. If you and the defendant are married, living common-law, separated, divorced, or if you are a parent of a child that is involved in the proceeding you may also apply for a restraining order. To get a restraining order however, you will probably need a lawyer.

## Families of Murder Victims

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### **248. Who will explain the cause of death to me?**

The police are responsible for explaining the cause of death to the victim's family. This usually occurs along with the death notification. More information may be revealed at the *preliminary hearing* or during the trial when forensic witnesses testify.

### **249. Do I have the right to donate my loved one's organs in a murder situation?**

Generally, whether or not the victim had previously signed a donor card, family members have the final say on whether or not the person's organs are donated. However, organ donation may prove to be difficult in murder cases because of delays with the police investigation and with the autopsy. There have been cases of homicide where the victim's organs were successfully donated to multiple recipients.

### **250. How do I initiate a formal inquiry into the death of my family member?**

Victims may choose to write to their provincial coroner's office to request that an inquiry be held. This however, will not guarantee that an inquiry is launched.

Please note that the coroner's office will usually require that all legal matters are complete before beginning an inquest. In some cases, legal proceedings, including *appeals*, can continue for many years following the death of a loved one. Victims should be aware that coroner may still refuse to hold an inquest even after all legal proceedings are completed because so much time has passed and the availability and reliability of witnesses may be compromised.

### **251. My loved one has been murdered. I am confused about what charge will be laid. How will the decision be made?**

The *Criminal Code* can be very confusing for families involved in a murder case. This is because there are three different definitions for murder and each of them have very different outcomes regarding sentencing.

The killer may be charged with first-degree murder, second-degree murder or manslaughter, and the sentences that may be handed down upon conviction for any of these charges can vary greatly. The important difference between the three categories is the intent involved.

First-degree murder is planned and deliberate. The planning and deliberation must come before the homicide. For example, someone makes a conscious decision to kill someone else, sets a plan in place and carries it out.

Second-degree murder is not planned, but it is intentional. The murder must still be intentional, or it is not murder, but it becomes second-degree murder when the intention to cause the person's death did not occur before the act began. In other words, there was no planning or deliberation. For example, someone assaults another person without having had any plan ahead of time to kill this person, but once the assault is commenced, intends to kill him.

Manslaughter is the killing of another person by an unlawful act such as an assault at a time when the accused was provoked. Where there was no intent to cause death (or bodily harm that is likely to cause death), but the person causing the death was negligent as to whether death occurred, the appropriate charge is manslaughter. Manslaughter is sometimes referred to as an accidental killing committed in the heat of passion.



Remember that it is at the discretion of the police (and/or Crown) to lay charges. If and when criminal charges have been laid, it is the discretion of the Crown to make the decision about whether the criminal process ceases or continues.

If you have questions about the initial charges (or changes made to charges) you should speak to the arresting officer. If there is confusion about the law or the legal process, you should address the Crown's office.

**252. Will the deceased victim's photo be shown in the courtroom and to whom?**

It is possible that a picture of the victim may be shown in the courtroom as evidence. If a picture of the victim is used as evidence, it will be shown to the judge and/or jury, the Crown, the defence, and to witnesses who may be giving information regarding the picture.

It may be possible for victims to view the photographs before they are presented in court. Speak to the Crown about viewing the photographs to avoid being shocked by graphic photographs in the courtroom.

**253. Can the family of a murder victim prepare a victim impact statement?**

Yes. If you are a relative, spouse, parent, guardian, or dependent of a victim who was murdered, you may prepare a *victim impact statement* ([see question #119](#)).

**254. Will my loved one's belongings be returned to me?**

In murder cases, it may not be possible to have the victim's property returned to the family immediately or at all. Survivors should speak to the police and the Crown about this issue. In some cases, it has taken more than a decade to have loved one's belongings returned to family.

**255. How can I find answers if there is no court process?**

Families of homicide victims often find it difficult to process their grief if they do not know what happened leading up to the murder, and why it happened. In many cases the only witness is their deceased loved one, so they must look to a trial for answers. Unfortunately, trials do not always occur, and if they do, they may be cut short by a plea, a stay of proceedings or the accused may not provide any answers. If there is a conviction entered, they can potentially look to a parole hearing for some of the missing pieces of information, but this will not address their immediate needs. Unfortunately, there is no real source of information for these victims.

## Glossary of Terms

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**Absolute Discharge:** An absolute discharge may occur where the accused is found guilty or has pleaded guilty, but is deemed not to have convicted of the criminal offence and is given no punishment or restrictions placed upon them. Such a discharge cannot be given if the offence carries a minimum punishment, or is punishable for 14 years or greater.

**Accused person:** a person charged with a criminal offence.

**Acquittal:** A court finding of not guilty.

**Act:** An act is a law that has been passed by the federal or provincial legislature.

**Adjournment:** A temporary delay of court proceedings.

**Affirmation:** A non-religious oath given by a witness before testifying, promising that the evidence they offer is, to the best of their knowledge, the truth.

**Alternative or extra-judicial measures:** These programs are used most often for young offenders and provide an opportunity for a young person to avoid the formal justice system. They may include victim/offender reconciliation, community service, and payment of fines. Such programs are usually reserved for first time, non-violent offenders.

**Appeal:** An appeal is an application for judicial review by a higher court of a lower court's decision.

**Appearance notice:** a legal document that states that the person is charged with an offence and must appear in court on the date named in the notice.

**Arrest:** Where the police take a person into their custody for the purpose of charging them with a criminal offence.

**Attorney General:** The member of government who is responsible for prosecuting those who break the criminal law.

**Bail:** Financial or other security put up by the accused or by someone on the accused's behalf as an assurance that the accused will appear on the date of his/her trial.

**Bail hearing:** a hearing held by a judge to decide if a person should be released from jail before a trial.

**Beyond a Reasonable Doubt:** In criminal cases the Crown has to meet a standard of proof beyond a reasonable doubt. The Crown must show that the evidence is so complete and convincing that the judge/jury has no reasonable doubts regarding the accused's guilt.

**Canadian Victims Bill of Rights:** On April 23, 2015, Parliament passed legislation creating the Canadian Victims Bill of Rights (CVBR), and amending other existing laws, including the *Criminal Code* and the *Corrections and Conditional Release Act*. The CVBR provides clear rights for victims of crime at the federal level, which include the right to information, protection, participation, and the right to seek restitution. Under the CVBR, victims also have the right to make a complaint to a federal department or agency if they believe that their rights have not been respected by them.

**Challenge for Cause:** During jury selection, both the Crown and Defence may make an unlimited number of challenges for cause. A challenge for cause is a challenge that must be proven on specific grounds, such as jury impartiality.

**Change of Venue:** Generally, cases are tried in the community courthouse nearest to where the offence took place. A change of venue is where the case has been moved to another courthouse in another place.

**Compensation:** Also referred to as financial assistance or victim's compensation. Programs offered by provincial and territorial governments compensate innocent victims and their families for some, but not all, expenses incurred as the direct result of a violent crime. This may include compensation for medical, dental or counselling expenses, funeral expenses, pain and suffering and/or loss of wages. Not available in all regions.

**Complainant:** The victim of an alleged offence.

**Community assessment:** This is a report that captures complete, accurate and quality information that assists in every activity related to the offender's progress.

**Community service order:** the offender is required to work a set number of hours for a community agency and those who fail to complete the required hours can be charged with another offence.

**Conditional discharge:** similar to an absolute discharge except the offender is placed on probation, with various conditions, and if the offender satisfies all of the conditions within the specified period, he or she is discharged and considered never to have been convicted.

**Conditional release:** Programs such as day parole, full parole and statutory release that provide an offender with a period of supervised transition from prison to the community.

**Conditional Sentence:** A conditional sentence is a sentence that is served by the offender in the community. The offender would essentially remain in the community under supervision, and would be required to abide by a number of conditions.

**Contempt of court:** To willfully disobey a court order or interfere with the administration of justice.

**Conviction:** When a person is found guilty of an offence and receives a sentence other than a discharge.

**Crown Attorney:** A government appointed agent who prosecutes criminal offences on behalf of the Attorney General of Canada. The Crown presents all relevant evidence to the trier of fact (the trial judge or the jury) that sheds light upon the offence of which the accused is charged.

**Dangerous Offender:** A dangerous offender is an offender who has been convicted of a serious personal injury offence and the court has found him/her to be a danger to society. If the court finds an offender to be a dangerous offender, a sentence of incarceration for an indeterminate period will be imposed.

**Damages:** Damages include monetary compensation for financial loss, property loss, emotional injuries, physical injuries, loss of earnings, and costs of care.

**Day Parole:** Day parole is a type of early conditional release from incarceration. It may be available at six months prior to full parole and allows the offender to participate in community-based activities during the day and return the institution by night.

**Direct Indictment:** When the Attorney General or the Deputy Attorney General sends a case directly to trial without a preliminary inquiry or after an accused has been discharged at a preliminary inquiry (if, for example, new evidence came to light after a preliminary inquiry).

**Dual Procedure Offence:** A category of criminal offences where the Crown has the choice to proceed by **summary conviction** or **indictment** (also called hybrid offences).

**Defence:** A denial or answer to a charge against an accused person.

**Defence lawyer:** A lawyer who represents an accused person.

**Defendant:** An accused person in a criminal case.

**Election:** An accused person's choice of trial, that is, by a provincial court judge, by a superior court judge alone or by a superior court judge and a jury.

**Fine:** Sentencing option that involves the payment of a specific amount of money within a specified period of time.

**Full Parole:** Generally the offender serves the final one third of the sentence under supervision in the community, but this is not always the case. The decision is made by the Parole Board of Canada at a hearing.

**Hearing:** A proceeding where witnesses are heard and evidence is presented.

**Imprisonment:** the most serious sentence of all. It is the punishment of incapacitation where someone convicted of a crime is placed into prison.

**Indictable Offences:** Indictable offences are a category of criminal offences that are usually more serious crimes and carry greater maximum sentences.

**Information:** A written accusation against a person charged with a criminal offence.

**Intermittent Sentence:** A sentence that allows the offender to serve his/her time of incarceration in intervals.

**Laying an information:** The formal means of laying a charge. The *Criminal Code* requires that a charge be brought in writing and under oath before a justice of the peace.

**Leave to appeal:** Permission or authorization to appeal.

**Legal Aid:** Legal Aid offers legal services to those who cannot afford counsel. Legal Aid offers different kinds of help depending on your legal problem and where you live in Canada.

**Life Sentence:** The most severe punishment, generally only imposed on convictions for murder. The offender spends a portion of the sentence in prison (anywhere from seven to twenty-five years or longer), and remains on parole for the rest of his/her life. Does not necessarily mean life in prison.

**Long Term Supervision Order:** Generally reserved for sexual and violent offenders, this order adds up to ten additional years of supervision (parole) added onto the end of their sentence.

**Parole:** Parole is the early release of an offender from incarceration in which he/she serves the remainder of his/her sentence in the community under supervision and specific conditions.

**Perjury:** Perjury occurs when a person gives evidence in court that he/she knows is false. As outlined in the Criminal Code, anyone who commits perjury is guilty of an indictable offence and may be liable to imprisonment for a term not exceeding fourteen years.

**Plea bargaining:** Plea bargaining occurs when the Crown and the defence come to an agreement wherein the accused pleads guilty. The guilty plea usually comes in exchange for a benefit such as reducing the charge against the accused or where the two sides agree upon a sentence.

**Preemptory Challenge:** A preemptory challenge is a challenge made by the Crown or defence counsel to eliminate a potential juror during jury selection. Counsel can only make a limited number of preemptory challenges, for which no reason need be given.

**Preliminary Hearing:** A preliminary hearing is a court proceeding that is held before the trial to determine if there is enough evidence to proceed with the charges. During the preliminary hearing the Crown prosecutor can call witnesses to convince the judge that there is sufficient evidence against the accused to proceed with a trial.

**Pre-Sentence Report:** A pre-sentence report is a report prepared by a probation officer that the judge may use in determining a sentence for a person who pleads guilty or is found guilty. The pre-sentence report may include information regarding the accused's background such as their family, education and employment.

**Probation:** Probation is a sentence in which the offender is released into the community under the supervision of a probation officer and must follow certain conditions such as being of good behaviour, abstaining from alcohol, not contacting the victim, etc.

**Prohibition order:** the offender can be banned from owning a certain object or performing a certain activity for either a certain time period or for life (e.g. prohibition from possessing a firearm, prohibition from working with children).

**Promise to appear:** A legal document signed by the accused person in which the person promises to appear in court on a named date.

**Prosecute:** To lay a charge in a criminal matter and to prepare and conduct legal proceedings against a person accused of a crime.

**Reception centre:** This is a special penitentiary, or part of a penitentiary, dedicated to the assessment of offenders.

**Recognizance:** A promise, made by an accused pending trial, to appear in court and answer to the criminal charges that have been brought against him/her.

**Restitution:** A type of sentence that can be imposed on an offender that requires him/her to make restitution (compensation) to the victim for the loss or destruction of property and/or bodily harm.

**Sentence:** A formal judgment imposing a punishment upon conviction for a criminal offence.

**Statutory Release:** Statutory release is a form of conditional release that allows most federal offender to serve the last one-third of his/her sentence in the community.

**Subpoena:** A subpoena is a command that a witness attend court at a certain time to give evidence.

**Summary Conviction Offences:** Summary offences are a category of criminal offences that are usually less serious crimes and carry lower sentences.

**Summons:** A legal document ordering an accused person to appear in court

**Suspended sentence:** a judge convicts an accused but technically gives no sentence. The offender is actually put on probation, and if he or she conforms to all the conditions and does not commit a new offence, no sentence ever is given.

**Temporary Absence:** An escorted or unescorted temporary absence may be granted to incarcerated offenders in order for them to receive medical treatment; have contact with their family; undergo personal development and/or counselling; and participate in community service work projects; may also be granted for compassionate reasons (e.g. a funeral).

**Testimony:** Evidence given by a witness who is under oath or affirmation.

**Trier of Fact:** In a criminal case, the trier of fact refers to the jury who listens to the evidence and decides on the guilt of the accused based on the facts of the case against him/her.

**Verdict:** A verdict is the jury's (or the judge's) finding of a case. In criminal cases, the verdict must be unanimous.

**Victim:** Someone to whom harm was done or who suffered physical or emotional damage as result of an offence.

**Victims Fund:** Allows for victims to seek travel and accommodation expenses for attending federal parole hearings.

**Victim Impact Statement:** A victim impact statement is a written account of the personal harm suffered by a victim of crime. The statement may include a description of the physical, financial and emotional effects of the crime. Where a victim impact statement has been prepared, it must be taken into consideration by the sentencing judge.

**Victim Surcharge:** A victim surcharge is a monetary penalty imposed on offenders, in addition to any other punishment imposed, at the time of sentencing. It is collected by the provincial and territorial governments, and the revenue is used to provide programs, services and assistance to victims of crime within their jurisdictions (it is not paid to you). The amount of the victim surcharge is 15% of any fine that is

imposed on an offender as a sentence, and, in the absence of a fine, \$50 for summary conviction offences and \$100 for indictable offences.

***Voir dire:*** A voir dire is a trial within a trial. It is a hearing held, without the presence of the jury, to determine whether an issue of fact or law would be admissible. For example, a voir dire may be used in order to decide whether certain aspects of an expert witness' testimony will be allowed.

***Warrant:*** A court order authorizing the police to arrest a person or to search a place.

***Work Release:*** Work release is a correctional program that enables inmates to leave the correctional facility to work during the day and return to the facility at night.

***Young Offender:*** In Canada, those aged twelve to seventeen are considered youths under criminal law, and fall within the scope of the Youth Criminal Justice Act.

***Youth Court:*** The court that deals with criminal charges against young offenders.

# Navigating the Canadian Criminal Justice System—A Guide for Victims Evaluation Form

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## INSTRUCTIONS

Please circle your response to the items

1 = "Strongly disagree," or the lowest, most negative impression

3 = "Neither agree nor disagree," or an adequate impression

5 = "strongly agree," or the highest, most positive impression

Choose N/A if the item is not appropriate or not applicable to you. Feel free to elaborate in the comments section, as needed. Your feedback is sincerely appreciated. Thank you.

Alternatively, this evaluation form can be found online here:

<http://crcvc.ca/en/navigating-the-justice-system/evaluation.php>

### *Content of the Guide*

The Guide flows well and it presented in a logical order.	1	2	3	4	5	N/A
The length of the Guide is appropriate.	1	2	3	4	5	N/A
The Guide is easy to understand.	1	2	3	4	5	N/A
The Guide is user-friendly. I can easily find the topics I am interested in.	1	2	3	4	5	N/A
Comments:						

### *For service providers:*

I find this Guide helpful in my work.	1	2	3	4	5	N/A
I will recommend this Guide to my clients.	1	2	3	4	5	N/A
I feel the content is complete	1	2	3	4	5	N/A
I now have a firm understanding of questions victims commonly ask when navigating the criminal justice system.	1	2	3	4	5	N/A
Comments:						



***For Victims and Survivors***

This Guide was helpful to me.	1	2	3	4	5	N/A
I have gained an understanding of the Canadian criminal justice system.	1	2	3	4	5	N/A
The Guide provided answers to my questions in a clear and understandable manner.	1	2	3	4	5	N/A
I feel the content is complete.	1	2	3	4	5	N/A
Comments:						

In what ways could this Guide be improved?

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