

<p>TYPE OF DOCUMENT – TYPE DE DOCUMENT : Policy – Politique</p>	<p>EFFECTIVE DATE – ENTRÉE EN VIGEUR : September 1, 2015 Le 1^{er} septembre 2015</p>	<p>DOCUMENT ORDER – No. DU DOCUMENT: Policy – Politique 33</p>
<p>CHAPTER V – CHAPITRE V : Witnesses and Victims Témoins et victimes</p>	<p>Readers are referred to the list of Related Documents at the end of this Policy for additional information. Les lecteurs peuvent se référer à la liste des documents connexes notés à la fin de cette politique pour information supplémentaire.</p>	

VICTIMS

1. Introduction

Victims of crime should be treated with courtesy, compassion and respect. The goals of Public Prosecution Services include the encouragement and facilitation of the participation of victims in the criminal justice system, the protection of victims' rights, the minimization of inconvenience to victims, the consideration of victims' concerns where decisions to be made may affect them, and ensuring that victims are adequately informed.

2. Scope of the Policy

This Policy provides guidance to the Crown Prosecutors when speaking with and assisting a victim.

A "victim" is a person:

- (a) against whom an offence (under a provincial or federal statute) has been committed, or is alleged to have been committed;
- (b) who has suffered, or is alleged to have suffered, physical or emotional harm, property damage or economic loss as the result of the commission or alleged commission of the offence (under a provincial or federal statute); and

includes, for the purposes of sections 672.5, 722 and 745.63, of the *Criminal Code of Canada* a person who has suffered physical or emotional harm, property damage or economic loss as the result of the commission of an offence (under a federal statute) against any other person.

A victim includes the spouse, sibling, child, or parent of a victim, or persons who in fact, although not in law, stand in such a relationship to a victim, and who suffer significant emotional trauma as a result of the offence or an alleged offence committed against a victim. For the purposes of sections 606, 672.5, 722, 737.1 and 745.63, this policy adopts section 2.2 of the *Criminal Code of Canada* with respect to who may act on a victim's behalf if the victim is dead or incapable of acting on their own behalf.

This Policy is intended primarily to deal with those who have been directly affected by conduct that contravenes or allegedly contravenes federal or provincial legislation.

For information relating to the role of victims as witnesses see Policy 32, Witnesses.

3. The Role of the Crown Prosecutor

Where possible, the Crown Prosecutor should, take reasonable steps to ensure that the victim has the opportunity for meaningful participation in the justice process.

Where appropriate, the Crown Prosecutor may meet with the victim to explain the role of the Crown Prosecutor and the prosecution process, prepare the victim for court and provide such other information as may be required.

3.1 Specific Aspects of the Role of the Crown Prosecutor

Where appropriate, the Crown Prosecutor should draw the attention of the victim to the following aspects of his or her role:

- (a) that the Crown Prosecutor owes an overriding duty to the proper administration of justice;
- (b) that the Crown Prosecutor's goal is not to obtain a conviction but to assist the court in eliciting the truth while ensuring that the accused receives a fair trial;
- (c) that, at each stage of the criminal justice process, the discretion vested in the Crown Prosecutor shall be exercised with independence, objectivity, and impartiality; and
- (d) that the Crown Prosecutor shall make sentence recommendations consistent with the principles of sentencing.

3.2 Referral to Victim Services

The Victims Services Act assigns the responsibility for the management of a program for services for victims of crime to the Department of Public Safety. The Victims Services Program operates in every region of the province.

The Department of Public Safety is also responsible for providing certain information to the victim in respect of the accused person or offender.

Where appropriate, the Crown Prosecutor should inform the victim of the existence of the Victims Services Program and should provide the contact information for the local office of the Victims Services Program to the victim. In particular, the Crown Prosecutor should refer the victim to the Victim Services Program, and provide Victim Services with the victim's name, date of birth, address, phone number, name of accused and list of charges, where the victim requests the following:

- (a) Information about the criminal justice system and the victim's role therein;
- (b) Information about services and programs available to them as a victim, including restorative justice;
- (c) Information about their right to file a victim impact statement; and
- (d) Information about their right to file a complaint for an infringement or denial of any of their rights under the Canadian Victims Bill of Rights.

3.3 Other Information

When the victim requests information relating to the status and outcome of an investigation into an offence, without confirming the existence of any investigation known to the Crown Prosecutor, the Crown Prosecutor shall redirect the victim to the relevant policing agency, regardless of whether or not charges have been approved at the time of contact.

When the victim requests information relating to the location, date, progress and outcome of the proceedings (including disposition hearings pursuant to section 672 of the *Criminal Code*), the Crown Prosecutor shall advise the victim of this information or ensure that the victim is kept informed by requesting the relevant policing agency to so inform the victim

When the victim requests information relating to unpaid restitution orders, the Crown Prosecutor shall redirect the victim to the relevant court services office for information on how to file the order as a civil court judgment enforceable against the offender

When the victim requests information relating to reviews under the *Corrections and Conditional Release Act*, including information about the offender's conditional release, and the timing and conditions of that release, the Crown Prosecutor shall redirect the victim to the appropriate Corrections Canada office for such information

When the victim requests information about their right to file a complaint for an infringement or denial of any of their rights under the *Canadian Victims Bill of Rights* relative to their contact with Public Prosecution Services, the Crown Prosecutor shall advise the victim of the complaint process to follow in accordance with Policy 18, Public Complaints.

In the event the victim advises the Crown Prosecutor that they have a complaint relating to another service provider within the justice system, the Crown Prosecutor shall redirect the victim to that service provider for information on how to make a complaint.

3.4 Plea Agreement Information

When a prosecution involves a charge of murder and/or serious personal injury offences, the Crown Prosecutor shall be in a position, after the plea has been accepted by the court, to advise the court if reasonable steps were taken to inform the victim of the plea agreement.

If reasonable steps were not taken to inform the victim of a plea agreement as described above, the Crown Prosecutor shall, as soon as feasible, take reasonable steps to inform the victim of the plea agreement and the acceptance of the plea.

When a prosecution involves an indictable charge for which the maximum punishment is 5 years or more, and is not a charge of murder or of serious personal injury, the Crown Prosecutor shall be in a position, after the plea has been accepted by the court, to advise the court if any victim has expressed a desire to be informed if a plea agreement has been entered into, and if so, if reasonable steps were taken to inform the victim of the plea agreement.

If reasonable steps were not taken to inform the victim of a plea agreement as described above, the Crown Prosecutor shall, as soon as feasible, take reasonable steps to inform the victim of the plea agreement and the acceptance of the plea.

4. Alternative Measures

Not all criminal offences require criminal proceedings. In some cases, the interests of both the victim and the accused might be properly addressed through the use of Alternative Measures. However, in cases involving physical violence, the severity of the offence or its impact upon the victim may be such that a prosecution is required. The Crown Prosecutor should consider the position of the victim. Where an alternative to prosecution is appropriate and the victim inquires with respect to a decision to proceed with Alternative Measures, the Crown Prosecutor should ensure that the decision is explained to the victim, particularly with respect to how the disposition will protect the victim's interests.

For additional information see Policy 45, Intimate Partner Violence and Policy 9, Alternative Measures.

5. Judicial Interim Release

The *Criminal Code* contains a number of provisions relevant to hearings with respect to judicial interim release with which every Crown Prosecutor should be familiar, some of which relate to victims.

For additional information see Policy 23, Judicial Interim Release.

6. Trial Testimony

The victim may be obliged to testify at court to support the Crown's case.

For additional information see Policy 32, Witnesses, which sets out the conduct required of the Crown Prosecutor when preparing a victim for testimony.

If the victim is under the age of 18 or has a mental or physical disability and the victim requests:

- (a) the aid of a support person while testifying;
- (b) the opportunity to testify behind a screen in court or *Criminal Code* Review Board Hearing in the case of Not Criminally Responsible (NCR) accused;
- (c) the opportunity to testify outside the court or *Criminal Code* Review Board hearing in the case of NCR accused; or
- (d) that the accused not personally cross-examine the victim/witness,

the Crown Prosecutor shall make an application to the court or the *Criminal Code* Review Board to request such testimonial support pursuant to sections 486.1, 486.2, or 486.3 of the *Criminal Code*. In all other circumstances where the victim requests any of the above testimonial aides, the Crown Prosecutor shall consider making such an application, and shall consider the following factors, wherever applicable, when determining whether to make an application:

- (a) the age of the witness;
- (b) the witness' mental or physical disabilities, if any;
- (c) the nature of the offence;
- (d) the nature of any relationship between the witness and the accused;
- (e) whether the witness needs the order for their security or to protect them from intimidation or retaliation;
- (f) whether the application is needed to protect the identity of a peace officer who has acted, is acting or will be acting in an undercover capacity, or of a person who has acted, is acting or will be acting covertly under the direction of a peace officer;
- (g) society's interest in encouraging the reporting of offences and the participation of victims and witnesses in the criminal justice process; and
- (h) any other relevant factors.

7. Victim Impact Statements

Section 722 of the *Criminal Code* permits the victim to make a statement to the court, which the court shall consider for the purpose of determining the sentence to be imposed on the offender or whether the offender should be discharged.

The Crown Prosecutor should ensure that sentencing does not proceed for an offence where there is a victim until the victim has been informed of the possibility of making a Victim Impact Statement, and the Crown Prosecutor is aware of the victim's wishes with respect to making a statement. Where appropriate, the Crown Prosecutor should refer the victim to the Victims Services Program for the purpose of the preparation of a Victim Impact Statement.

Where the victim wishes to submit a Victim Impact Statement or other victim impact information and that statement or information is not available at the time of sentencing, and the Crown Prosecutor is aware of the victim's wish, the Crown Prosecutor shall advise the court of the situation, and where appropriate, request an adjournment.

Where a Victim Impact Statement has been filed with the court, the Crown Prosecutor shall consider its contents in making submissions on sentence.

8. Restitution

Section 737.1 of the *Criminal Code* provides a mechanism for the victim to seek restitution in respect of a loss caused by an offence committed under the *Criminal Code*. In such circumstances, the Crown Prosecutor should ensure that the victim is advised of the right to seek restitution and shall determine whether a completed restitution form, Form 34.1 of the *Criminal Code*, is included, or should be included, in the investigation file forwarded by the policing agency. In the event a completed Form 34.1 is not present in the file and the circumstances of the file are such that it should be included, the Crown Prosecutor shall request that the policing agency contact the victim to have the victim complete the form and return it to the policing agency to forward it to the Crown Prosecutor.

The Crown Prosecutor shall review any completed Form 34.1 to ensure that any losses and damages claimed by the victim are readily ascertainable as required by sections 737.1(2) and 737.1(4) of the *Criminal Code*. The Crown Prosecutor shall present a properly completed claim for restitution to the court regardless of the prosecutor's assessment of the ability to pay of the accused, in accordance with section 739.1 of the *Criminal Code*.

In the event a completed Form 34.1 is not available at the time of sentencing, the Crown Prosecutor may request an adjournment of the proceeding to permit the victim to indicate whether they are seeking restitution, provided the Crown Prosecutor determines that such request for an adjournment does not interfere with the proper administration of justice.

9. Right to Security

The Crown Prosecutor shall consider the victim's right to security, and will take any reasonable and necessary measures required to protect the victim from intimidation and retaliation, including requesting orders pursuant to sections 486 to 486.5 of the *Criminal Code* when circumstances so dictate, giving consideration to the following:

- (a) society's interest in encouraging the reporting of offences and the participation of victims and witnesses in the criminal justice process;
- (b) the safeguarding of the interests of witnesses under the age of 18 years in all proceedings
- (c) the ability of the witness to give a full and candid account of the acts complained of if the order were not made;

- (d) whether the witness needs the order for their security or to protect them from intimidation or retaliation;
- (e) the protection of justice system participants who are involved in the proceedings; and
- (f) any other relevant factors.

When the victim requests that their identity be protected as a complainant to the offence or as a witness in the proceedings, the Crown prosecutor shall consider an application to the court pursuant to sections 486.31, 486.4 and/or 486.5 of the *Criminal Code*, when it is in the interests of the proper administration of justice, for an order:

- (a) prohibiting the disclosure of the victim/witness' identity in the course of the proceedings;
- (b) prohibiting the publication and/or transmission of any information that could identify the victim/witness; or
- (c) prohibiting the publication and/or transmission of any information that could identify a justice system participant, as defined in the *Criminal Code*, when involved in proceedings in respect of an offence under section 423.1, 467.11, 467.111, 467.12 or 467.13; or a terrorism offence.

The proper administration of justice includes consideration of the following:

- (a) the right to a fair and public hearing;
- (b) whether there is a real and substantial risk that the victim, witness or justice system participant would suffer harm if their identity were disclosed;
- (c) whether the victim, witness or justice system participant needs the order for their security or to protect them from intimidation or retaliation;
- (d) society's interest in encouraging the reporting of offences and the participation of victims, witnesses and justice system participants in the criminal justice process;
- (e) whether effective alternatives are available to protect the identity of the victim, witness or justice system participant;
- (f) the salutary and deleterious effects of the proposed order;
- (g) the impact of the proposed order on the freedom of expression of those affected by it; and
- (h) any other relevant factors.

10. Right to Privacy

The Crown Prosecutor shall consider a victim's right to privacy, including any "record" as defined by section 278.1 of the *Criminal Code* that contains any personal information for which there is a reasonable expectation of privacy by the victim and/or witness, and the prosecutor shall:

- (a) ensure that no such record, possessed and/or controlled by PPS, is provided to the accused in relation to offences under section 151, 152, 153, 153.1, 155, 159, 160, 170, 171, 172, 173, 210, 211, 212, 213, 271, 272, 273, or for any offence, as it read at any time before July 23, 2015, wherein the conduct alleged involves a violation of the complainant's sexual integrity and that conduct would be an above-listed offence if it occurred on or after July 23, 2015;

- (b) upon an application served on PPS by the accused for production of a section 278.1 record, the prosecutor shall ask the court to consider the victim and/or witness' right to privacy, personal security and equality;
- (c) consider an application pursuant to section 486.4 of the *Criminal Code* prohibiting the publication and/or transmission of any information that could identify a victim and/or witness in proceedings in respect of offences under section 151, 152, 153, 153.1, 155, 159, 160, 162, 163.1, 170, 171, 171.1, 172, 172.1, 172.2, 173, 210, 211, 213, 271, 272, 273, 279.01, 279.011, 279.02, 279.03, 280, 281, 286.1, 286.2, 286.3, 346 or 347, or for any offence, as it read at any time before July 23, 2015, wherein the conduct alleged involves a violation of the complainant's sexual integrity and that conduct would be an above-listed offence if it occurred on or after July 23, 2015; and
- (d) consider an application pursuant to section 486.4(2.1) or (2.2) of the *Criminal Code*, in proceedings in respect of offences other than those above listed at paragraph 23c, prohibiting the publication and/or transmission of any information that may identify a victim and/or witness under the age of 18 years.

Upon an application served on the Crown Prosecutor by the accused for production of a section 278.1 record, the Crown Prosecutor shall inform the victim with a privacy interest in the record of their right to be present at the hearing and to be represented at the hearing by counsel retained by the victim.

11. Right to Participation

When a victim conveys their views about decisions to be made by the Crown Prosecutor that affect the victim's rights under the *Canadian Victims Bill of Rights* the Crown Prosecutor shall consider those views to the extent that they do not:

- (a) cause interference with prosecutorial discretion or cause excessive delay in, or compromise or hinder, the prosecution of any offence;
- (b) endanger the life or safety of any individual;
- (c) cause injury to international relations or national defence or national security; or
- (d) cause any adverse inference against a person charged with an offence from the fact that a victim has been identified in relation to the alleged offence.

12. Related Documents

Policy 9	Alternative Measures
Policy 23	Judicial Interim Release
Policy 32	Witnesses
Policy 40	High Risk Offenders
Policy 45	Intimate Partner Violence
<i>New Brunswick Woman Abuse Protocols</i>	
<i>New Brunswick Child Victims of Abuse and Neglect Protocols</i>	
<i>The Canadian Victims Bill of Rights Victim/Witness Protocol</i>	