



Improving the Experience of Victims and Witnesses in Court

What special protections are available to vulnerable victims and witnesses?

The *Criminal Code* includes provisions referred to as testimonial aids and other measures which assist vulnerable victims and witnesses in providing their testimony in criminal court. These provisions recognize that some victims and witnesses may be more vulnerable because of their youth or other factors such as the nature of the crime. Vulnerable victims and witnesses may require support and assistance when providing testimony.

Testimonial aids include:

- Allowing a witness to testify outside the courtroom by **closed-circuit television** or behind a **screen** which would allow the witness to not see the accused.
- **Allowing a support person** to be present while young victims and witnesses testify, in order to make them more comfortable.

Other measures which assist victims and witnesses in providing their testimony include:

- **All or some members of the public may be required to leave** the courtroom during all or part of the court proceedings.
- **A lawyer can be appointed** to conduct the cross-examination of vulnerable witnesses when the accused is self-represented.
- **Publication bans** can be ordered to prevent the publication, broadcast or transmission of any information that could identify a victim or witness.

How does a judge decide whether to order a testimonial aid or other measure to facilitate testimony?

The judge will consider the circumstances of the offence and the victim or witness who is giving testimony:

- Victims and witnesses **under the age of 18 years** or any witness with a disability that makes it difficult for them to communicate will receive testimonial aids or other measures when they are applied for. The judge must grant the protection unless the





judge believes it would interfere with the proper administration of justice, for example, by affecting the right of the accused person to a fair trial.

- **Other vulnerable victims and witnesses** may receive a testimonial aid or other measure if the judge feels it is necessary for the victim or witness to give full and candid testimony. The judge will consider factors such as the witness's age, whether the witness has a mental or physical disability, the nature of the offence and the nature of any relationship between the witness and the accused.
- In cases involving **victims of criminal harassment**, an order will be granted upon application for the appointment of counsel to conduct the cross-examination of the victim when the accused is self-represented. The judge must grant this protection unless the judge believes it would interfere with the proper administration of justice, for example, by affecting the rights of the accused person to a fair trial.

How do vulnerable victims and witnesses receive these protections?

The victim or Crown attorney can ask the presiding judge for a testimonial aid or other measure before or at any time during court proceedings.

Can the accused person object to the use of any of these measures?

These measures are intended to improve the experiences of victims and witnesses who testify while fully protecting the rights of accused persons.

In some cases, judges may deny or limit the use of these special protections in order to ensure the rights of the accused person are not infringed.

Are testimonial aids and other measures to facilitate testimony new?

Testimonial aids and other measures to assist victims and witnesses in providing testimony have been part of the *Criminal Code* since 1988. These provisions were most recently amended in 2006 to provide greater clarity and consistency for victims and witnesses by:

- expanding the categories of victims and witnesses who may apply for testimonial aids such as screens, testimony by closed-circuit television and support persons. Previously these aids were available only to victims and witnesses under the age of 18 in certain court proceedings, such as cases involving sexual and certain violent offences;

- ensuring that the publication ban provisions keep up with advances in technology by clarifying that they prevent the publication, broadcast or **transmission in any way** of any information that could identify the victim or witness; and
- providing victims with greater certainty that testimonial aids will be granted. Victims and witnesses under the age of eighteen will not be required to prove that the order is necessary—it must be granted when applied for by the victim or Crown attorney. Similarly, victims of criminal harassment of any age will not be required to show the need for counsel to be appointed to conduct their cross-examination when the accused is self-represented.

Where is more information available?

If you or someone you know has been a victim of crime, help is available. All provinces and territories have services for victims of crime. They can help if you need information or other assistance.

For more information about Canada's justice system and links to victim services, visit our website:

<http://www.justice.gc.ca/victim>

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