Multi-Site Survey of Victims of Crime and Criminal Justice Professionals across Canada:

Summary of Crown Attorney Respondents

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The views expressed in this report are those of the author and do not necessarily represent the views of the Department of Justice Canada.

These summaries are extracted from the *Multi-Site Survey of Victims of Crime and Criminal Justice Professionals across Canada*, completed by Prairie Research Associates Inc. on behalf of the Department of Justice Canada.

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Introduction

The *Multi-Site Survey of Victims of Crime and Criminal Justice Professionals* was conducted in 2002 under the direction of the Policy Centre for Victim Issues (PCVI) of the Department of Justice Canada in collaboration with the Research and Statistics Division. The PCVI implements the Victims of Crime Initiative which, through the Victims Fund, legislative reform, research, consultations and communication activities, works to increase the confidence of victims in the criminal justice system and responds to the needs of victims of crime as they relate to the Department of Justice.

The purpose of the *Multi-Site Survey of Victims of Crime and Criminal Justice Professionals* is to gather information on a wide range of issues concerning the criminal justice system as it pertains to victims and criminal justice professionals, with a particular emphasis on recent *Criminal Code* provisions, specifically Bill C-79, which was introduced in 1999. This legislation amended the *Criminal Code* in several areas, such as:

- giving victims the right to read their victim impact statement at the time of sentencing if they wish to do so;
- requiring the judge to inquire before sentencing whether the victim has been informed of the opportunity to give a victim impact statement;
- requiring that all offenders pay a victim surcharge of 15% where a fine is imposed or a fixed amount of $50 or $100 for summary or indictable offences, respectively, and can be increased by the judge (except where the offender can demonstrate undue hardship)
- clarifying the application of publication bans and providing a discretion to order, in appropriate circumstances, a publication ban on information that could disclose the identity of victims as witnesses.
- expanding the protection of victims and witnesses under the age of 18 years from cross-examination by a self-represented accused in sexual and personal violence offences
- allowing any victim or witness with a mental or physical disability to be accompanied by a support person while giving evidence
- ensuring that the safety of victims and witnesses are taken into consideration in judicial interim release determinations.

To a more limited extent, the survey also explored perceptions regarding amendments recently made to the *Corrections and Conditional Release Act* to provide victims with the opportunity to present prepared victim statements at parole board hearings.

Findings from this study will generate evidence to inform future legislative reforms and policy changes by providing insight on the use and awareness of recent reforms by criminal justice professionals as they pertain to victims of crime, the nature of information provided to victims during the criminal justice process, victims' experiences with the legal provisions and other services that are intended to benefit them throughout the criminal justice process, and barriers to the implementation of recent reforms for criminal justice professionals.

Given the breadth of findings in the final report the PCVI has prepared seven summary reports based on respondent groups in the survey.[1] This report is a summary of the findings from Crown Attorneys who participated in the study. Additional summaries are available that speak to the findings of Police respondents, Crown Attorney respondents, Defence counsel respondents, Judiciary respondents, Probation Officers and Parole Officer respondents, Victims of Crime, and Victim Advocacy and Victim Service Organizations.

[1] The full report and other summaries are available at: http://canada.justice.gc.ca/en/ps/voc/pub.html For copies contact the Policy Centre for Victim Issues, 284 Wellington Street, Ottawa, Ontario, K1A 0H8.

Methodology

The multi-site survey was conducted in 16 sites within the 10 provinces in Canada; the territories were not included in this study. The 16 sites represent five regions: Atlantic (Nova Scotia, Prince Edward Island, New Brunswick, and Newfoundland and Labrador), Quebec, Ontario, Prairie (Saskatchewan and Manitoba), and Western (British Columbia and Alberta). Each region included at least three sites of varying size (small, medium, and large), with consideration of diversity in geography (rural, urban, northern) and population (especially cultural and linguistic). A subcommittee of the Federal Provincial Territorial Working Group (FPTWG) on Victims of Crime guided the research team and recommended some of the locations selected for site visits.

Data for this study came from criminal justice professionals and victims of crime. A total of 112 victims of crime participated in in-depth interviews, which were conducted in order to obtain detailed data on each individual victim's experience in the criminal justice system. Victim services providers assisted in contacting victims and obtaining their consent to participate in the study, which may have introduced selection bias into the research.

Criminal justice professionals who participated in the study were from 10 different groups: judges, Crown Attorneys, defence counsel, police, victim services providers, victim advocacy groups, probation officers, and three types of parole representatives (from the National Parole Board [NPB], Correctional Service Canada [CSC], and the provincial parole boards in Quebec, Ontario, and British Columbia). They participated through either self-administered questionnaires or interviews. Relying on two forms of data collection allowed for the most complete method of gathering information on the research questions. The use of self-administered questionnaires ensured that a large proportion of the criminal justice professionals in each site could participate, while the use of interviews meant that more in-depth, qualitative data could also be obtained.

Interviews were conducted with 214 criminal justice professionals from five respondent groups: victim services providers; police; Crown Attorneys; judiciary; and defence counsel. Interview results were captured as part of the quantitative data corresponding to that generated by the self-administered surveys. Self-administered questionnaires were also distributed to all 10 respondent groups. A total of 1,664 criminal justice professionals completed the self-administered questionnaire. Overall (in interviews and self-administered questionnaires), a total of 1,878 criminal justice professionals participated in this survey.

A total of 37 Crown Attorneys completed interviews, and 151 Crown Attorneys completed self-administered questionnaires (interview guides are included in appendix a).

Findings from Crown Attorney Respondents

This section of the report integrates the findings from the survey self-completed questionnaires and interviews with Crown Attorneys.

1. Role of the Victim in the Criminal Justice Process

There is considerable agreement among all respondent groups, including Crown Attorneys, that victims of crime have a legitimate role to play in the criminal justice process.

Crown Attorneys regard the victim primarily as a witness and a source of information. They generally believe that victims are entitled to be consulted to some extent, especially before irrevocable steps are taken. They cautioned that the criminal justice system must deal with the accused in a manner that serves the public interest and protects society, and emphasized that decision-making ultimately must remain with the court and the Crown Attorney, who are more knowledgeable about the law and can be more objective. Concern was expressed that allowing too large a role for victims would erode the principle of innocent until proven guilty and thereby distort the criminal justice process. However, as Table 1 indicates, almost half of Crown Attorneys surveyed think the victim should be consulted at bail decisions, plea negotiations and sentencing.

TABLE 1:
WHAT ROLE SHOULD VICTIMS HAVE IN THE FOLLOWING STAGES OF THE CRIMINAL JUSTICE PROCESS, I.E., SHOULD VICTIMS BE INFORMED, CONSULTED OR HAVE NO ROLE?

	Victim Services (N=318)	Crown Attorneys (N=188)	Defence Counsel (N=185)	Judiciary (N=110)	Police (N=686)	Advocacy Groups (N=47)
Bail decisions						
Victim should be consulted	64%	48%	34%	46%	59%	70%
Victim should be informed only	32%	42%	49%	40%	35%	30%
Victim should not have any role	2%	4%	17%	9%	4%	--
No response	3%	6%	0%	4%	3%	--
Totals	101%	100%	100%	99%	101%	100%
Plea negotiations						
Victim should be consulted	61%	44%	25%	N/A	N/A	81%
Victim should be informed only	32%	35%	38%	N/A	N/A	13%
Victim should not have any role	3%	14%	37%	N/A	N/A	2%
No response	4%	6%	1%	N/A	N/A	4%
Totals	100%	99%	101%	N/A	N/A	100%
Sentencing						
Victim should be consulted	64%	49%	23%	56%	N/A	75%
Victim should be informed only	31%	36%	54%	33%	N/A	21%
Victim should not have any role	2%	9%	23%	8%	N/A	--
No response	3%	6%	1%	3%	N/A	4%
Totals	100%	100%	101%	100%	N/A	100%

* Respondents could give only one response. Totals that do not always sum to 100% due to rounding.

Bail Decisions

While about half of Crown Attorneys surveyed believe that victims should be consulted in bail determinations, several emphasized in interviews that they should not be involved in the decision to release or detain the accused.

Plea Negotiations

Compared to bail decisions, a slightly smaller proportion of Crown Attorneys support consulting with victims during plea negotiations with 44% of Crown Attorneys surveyed believing that victims should be consulted at this stage. Several Crown Attorneys acknowledged in interviews that consultation helps to ensure that the Crown Attorney considers all of the relevant facts and issues in any negotiations, and a few said that it is appropriate for victims to have input where restitution and conditions are involved. However, even Crown Attorneys who think that victims should be consulted emphasized that the victim's views are only one element in the Crown Attorney's decision. Observing that victims lack objectivity and knowledge of the law, Crown Attorneys said in interviews that prosecutorial discretion must prevail in order to ensure that decisions accord with the interests of society. Fourteen percent of Crown Attorneys surveyed believe that victims should have no role at all in plea negotiations.

Sentencing

There is also considerable support for consulting victims at sentencing. In interviews, Crown Attorneys said that consultation at the sentencing stage should occur primarily by way of the victim impact statement. Several Crown Attorneys supported consulting victims for sentences served in the community. However, Crown Attorneys believe that it is inappropriate for victims to suggest or determine a sentence, since the court is obligated to consider society's interests in sentencing, which may differ from those of the individual victim. From their perspective, introducing a personal or emotional element into sentencing would result in dissimilar sentences for similar crimes based on individual victims' characteristics. Such a practice would threaten the credibility of the criminal justice system.

2. Responsibility of Criminal Justice Professionals to Victims

In both the interviews and self-completed questionnaires, Crown Attorneys were asked to describe their responsibility to victims of crime through an open-ended question (i.e., no check list of possible responses was provided). They identified responsibilities such as explaining the criminal justice system, keeping victims informed of the status of their case, and providing them an opportunity to be heard and considering their views.

Crown Attorney Responsibility to Victims

A substantial proportion of Crown Attorneys surveyed in this research believe that they have a responsibility to keep victims informed of developments as their case proceeds through the criminal justice system (46%); to explain to them the functioning of the criminal justice system

(40%); and to listen to their views and concerns and take these into account when making decisions (25%).

As shown in Table 2, 15% of those surveyed observed that the Crown Attorney has a responsibility to act in the public interest. In interviews, Crown Attorneys explained that they, as the representative of the state, must see that cases proceed with respect to the *Criminal Code*. Crown Attorneys have an obligation to remain objective, to consider the whole facts, and to advance admissible evidence in what are alleged to be crimes. Their duties therefore include correcting the common misperception that the Crown Attorney is counsel for the victim. An important aspect of the Crown Attorney's role is to explain to victims the limits of criminal law and the criminal justice system, to make sure they understand the rules and criteria used in decision-making, and to make sure they have a realistic expectation of how their case might unfold. Although Crown Attorneys said that they always bear the victim's experience and opinions in mind, the victim does not and should not control the prosecution.

TABLE 2:
WHAT IS THE CROWN ATTORNEY'S RESPONSIBILITY TO VICTIMS?[2]

Responsibility	Crown Attorneys (N=188)
Inform victims of the status of their case	46%
Explain the criminal justice system	40%
Listen to or consider the victim's views	25%
Act in the public interest	15%
Treat victims with respect	14%
Obtain information from the victim	10%
Prepare victims for testimony	9%
Explain Crown Attorney decisions	8%
Convey the victim's views to the court	6%
Ensure victims are not re-victimized	5%
Other	3%
No response	11%
Note: Respondents could provide more than one response; total sums to more than 100%.	

Slightly fewer than 30% of Crown Attorneys surveyed believe that they have sufficient opportunity to meet with victims during a typical case; approximately two-thirds said that they do not. In interviews, many Crown Attorneys said that they prioritize their time to ensure that they devote sufficient attention to child victims and victims of sexual assault, domestic violence, murder, and other serious crimes, and meet with victims of other types of offences only if the victim initiates contact.

When asked what else Crown Attorneys should do to further assist victims if time were not an issue, 26% of those surveyed mentioned better pre-trial consultation and preparation; another 25% simply mentioned more consultation in general. In interviews, Crown Attorneys explained that they would like to be able to meet with victims well in advance of the court date, rather than

[2] Note: Crown Attorneys were asked to describe their responsibility to victims of crime through an open-ended question i.e., no check list of possible responses was provided.

on the day of the trial or hearing, and to extend to all victims the time and attention they devote to victims of violent crimes. Another 17% of Crown Attorneys surveyed said that they would like to be able to keep victims informed at every stage of the criminal justice process. However, 12% believe that they should not do anything further to assist victims.

In interviews, many Crown Attorneys emphasized the indispensable role of victim assistance workers in doing some of this work. Sixty-three percent of Crown Attorneys surveyed reported that victim and witness assistants are available to work with them in their offices.

3. Services for Victims

The following section considers the availability and accessibility of victim services in the sites studied. Respondents were asked about the types of services available in their community, the services offered by their particular victim service organization(s), challenges to accessing victim services, and how to improve accessibility, including how best to inform victims about available services.

Types of Services Available

In order to determine the full range of victim services available in the sites studied, Crown Attorneys were asked to list the types of victim services available in their community. Table 3 below provides these results.

TABLE 3:
WHAT VICTIM SERVICES ARE AVAILABLE IN YOUR COMMUNITY?

Type of service	Victim Services (N=318)	Crown Attorneys (N=188)	Police (N=686)
Police-based victim services	82%	64%	82%
Court-based victim services	57%	50%	49%
Specialized victim services for domestic violence	78%	73%	79%
Specialized victim services for sexual assault	69%	65%	73%
Specialized victim services for children	66%	64%	69%

Note: Respondents could provide more than one response, therefore, totals sum to more than 100%.
Only those categories of service named in all of the surveys are included.
Respondents who listed another type of service or those who gave no response are not represented in this table.

4. Information for Victims

Adequacy of Information Provided

Table 4 shows the proportion of Crown Attorneys who believe that victims usually receive adequate information on various aspects of their case and on the criminal justice system as a whole. Crown Attorneys believe that victims generally receive adequate information with respect to the date and location of their court proceedings; victim impact statements; victim services; the ultimate outcome of their case; and the conditions of release. Areas where improvements in information provision may be necessary include the progress of the police investigation, the rights of the accused, and alternative processes.

TABLE 4:
DO VICTIMS USUALLY RECEIVE ADEQUATE INFORMATION?

Percentage of respondents who agree that victims usually receive adequate information on…	Victim Services (N=318)	Crown Attorneys (N=188)	Police (N=686)	Advocacy Groups (N=47)
The progress of the police investigation	42%	32%	83%	19%
Outcomes of bail decisions	40%	64%	69%	23%
Conditions of release	55%	64%	79%	23%
Date and location of court proceedings	81%	70%	78%	60%
Charges laid	70%	59%	90%	49%
Charges dropped	49%	52%	67%	32%
Victim impact statements	71%	78%	74%	53%
Restitution	47%	66%	59%	15%
The ultimate outcome of the case	60%	61%	75%	43%
The criminal justice process	54%	38%	62%	21%
Alternative processes	27%	24%	57%	23%
Rights of accused	43%	28%	63%	32%
Victim services	69%	76%	93%	43%
Other community support services	66%	44%	76%	32%

Note: Respondents who gave no response are not represented in this table.

Responsibility for Information Provision

Table 5 below shows Crown Attorneys' perceptions of criminal justice professionals' responsibility for providing information to victims of crime. Crown Attorneys shared the view of other respondents in saying that police should inform victims about the progress of the police investigation and any charges laid. Similarly, a majority in all categories including Crown Attorneys believes that victim services providers should provide information about victim services and other community support services, while Crown Attorneys should provide information about the ultimate outcome of the case. As with other respondents, Crown Attorneys did not assign full responsibility for the provision of any category of information to a single agency. Instead, they regard information provision as a shared duty.

TABLE 5:
WHO SHOULD PROVIDE THE FOLLOWING INFORMATION TO VICTIMS?

	Victim services (N=318)	Crown Attorneys (N=188)	Police (N=686)	Advocacy Groups (N=47)
The progress of the police investigation				
Crown Attorneys	19%	4%	9%	26%
Police	81%	85%	90%	68%
Victim services	38%	13%	19%	43%
Outcomes of bail decisions				
Crown Attorneys	52%	34%	58%	64%
Police	38%	34%	42%	23%
Victim services	47%	51%	23%	40%
Conditions of release				
Crown Attorneys	48%	34%	51%	62%
Police	51%	35%	54%	34%
Victim services	48%	51%	23%	36%
Date and location of court proceedings				
Crown Attorneys	50%	36%	47%	57%
Police	29%	30%	47%	26%
Victim services	61%	50%	28%	45%
Charges laid				
Crown Attorneys	35%	26%	28%	49%
Police	70%	60%	79%	66%
Victim services	30%	22%	10%	17%
Charges dropped				
Crown Attorneys	56%	65%	76%	68%
Police	50%	27%	35%	38%
Victim services	31%	24%	10%	21%
Victim impact statements				
Crown Attorneys	37%	28%	35%	60%
Police	35%	34%	50%	15%
Victim services	82%	67%	46%	72%
Restitution				
Crown Attorneys	42%	36%	63%	66%
Police	21%	32%	29%	13%
Victim services	62%	48%	28%	51%
The ultimate outcome of the case				
Crown Attorneys	70%	62%	68%	81%
Police	25%	29%	42%	11%
Victim services	51%	37%	18%	45%
The criminal justice process				
Crown Attorneys	55%	44%	69%	68%
Police	30%	20%	33%	21%
Victim services	73%	66%	38%	60%
Alternative processes				
Crown Attorneys	55%	37%	65%	62%
Police	26%	30%	35%	23%
Victim services	55%	49%	32%	55%
Rights of accused				
Crown Attorneys	59%	51%	49%	60%
Police	47%	19%	53%	40%
Victim services	46%	41%	25%	43%
Victim services				
Crown Attorneys	40%	26%	19%	57%
Police	64%	43%	68%	53%
Victim services	75%	73%	61%	75%

TABLE 5: (CONTINUED) WHO SHOULD PROVIDE THE FOLLOWING INFORMATION TO VICTIMS?				
	Victim services	Crown Attorneys	Police	Advocacy Groups
Other community support services				
Crown Attorneys	31%	17%	16%	36%
Police	45%	28%	48%	49%
Victim services	87%	84%	74%	79%
Note: For each item in Table 5, respondents could provide more than one response; totals sum to more than 100%. Respondents who answered "other" or "don't know", or gave no response are not represented in Table 5.				

Obstacles to Information Provision and Possible Improvements

In interviews, Crown Attorneys explained that there are several obstacles to providing information to victims of crime. Insufficient time and limited resources are perhaps the most significant. They noted that the sheer volume of cases in the system makes it impossible for criminal justice professionals to provide all victims of crime with all of the information that they may want or require. Other difficulties in providing information include victim transience or reluctance to be contacted, and the possibility that disclosure of certain information may jeopardize the trial.

5. Bail Determinations

The 1999 amendments to the *Criminal Code* include several provisions to protect the safety of victims of crime in bail determinations. The provisions direct police officers, judges, and justices of the peace to consider the safety and security of the victim in decisions to release the accused pending the first court appearance; require judges to consider no-contact conditions and any other conditions necessary to ensure the safety and security of the victim; and ensure that the particular concerns of the victim are considered and highlighted in decisions on the imposition of special bail conditions. This section describes Crown Attorney practices with respect to victim protection in bail determinations.

Crown Attorney Practices at Bail

Although Crown Attorneys who completed a self-administered survey were not questionned about victim safety at bail, those who were interviewed said that they become aware of victims' safety concerns in bail determinations primarily through the police report. They noted that the police report usually comes to them with the victims' safety concerns identified as well as recommendations for conditions; in some jurisdictions, police complete a standardized bail report for certain types of cases (e.g., domestic violence) in which they must include information about safety concerns and conditions. A few of the Crown Attorneys interviewed mentioned that they speak directly with victims about safety if they believe that the issue is not adequately addressed in the police report.

A large majority of the Crown Attorneys surveyed (89%) reported generally not calling the victim as a witness in bail hearings. Of those Crown Attorneys who do not call the victim as a witness, 43% said that it is usually unnecessary for the witness to testify at this point in the proceedings, and that police and Crown Attorney submissions are usually sufficient to relay the

relevant safety issues to the court. More than one-fifth (22%) observed that calling the victim to testify at bail gives defence counsel the opportunity to intimidate the victim at an early stage in the proceedings and to ask questions with a view to later cross-examination. Other reasons for not calling the victim as a witness included high caseloads and insufficient time; the possibility of further trauma to the victim; the potential for inconsistent statements; and unwillingness or lack of availability of the victim. The full list of reasons given by Crown Attorneys for not calling the victim as a witness in bail hearings are shown in Table 6.

TABLE 6:
REASONS CROWN ATTORNEYS DO NOT CALL THE VICTIM AS A WITNESS IN BAIL DECISIONS
BASE: RESPONDENTS WHO DO NOT USUALLY CALL THE VICTIM AS A WITNESS IN BAIL DECISIONS.

Reason	Crown Attorneys (n=167)
Usually unnecessary or police reports are sufficient	43%
Creates opportunity for defence cross-examination	22%
High caseload or insufficient time	16%
Creates possibility of further trauma to the victim	15%
Creates potential for inconsistent statements	9%
Victim unavailable or unwilling	7%
Other	2%
No response	19%
Note: Respondents could provide more than one response; total sums to more than 100%.	

Virtually all Crown Attorneys surveyed (97%) reported that they generally request specific conditions to address the victim's safety in bail determinations. Virtually all Crown Attorneys surveyed in this research (98%) reported that judges typically grant requests for conditions to address the victim's safety in bail determinations. In interviews, Crown Attorneys said that judges are almost invariably amenable to requests for bail conditions, provided they are reasonable and designed to address specific concerns.

6. Provisions to Facilitate Testimony

Recognizing that testifying in court can be especially traumatizing for young victims or those with disabilities or victims of sexual or violent offences, the 1999 amendments to the *Criminal Code* included several provisions to facilitate testimony on the part of such witnesses. Publication bans on the identity of sexual assault victims have been clarified to protect their identity as victims of sexual assault offences as well other offences committed against them by the accused. The new provisions also permit judges to impose publication bans on the identity of a wider range of witnesses, where the witness has established a need and where the judge considers it necessary for the proper administration of justice. Other amendments restrict cross-examination by a self-represented accused of child victims of sexual or violent crime; and permit victims or witnesses with a mental or physical disability to have a support person present while testifying. The following sections describe the use of these provisions and other testimonial aids such as screens, closed-circuit television, and videotape.

Publication Bans

The 1999 amendments clarified that publication bans on the identity of sexual assault victims protect their identity as victims of other offences committed against them by the accused. For example, if the victim is robbed and sexually assaulted, her identity as a victim of robbery could not be disclosed. In addition, the amendments provided for a discretionary publication ban for any victim or witness where necessary for the proper administration of justice.

Crown Attorneys explained in interviews that while publication bans are essentially automatic at the preliminary hearing, requests for a ban in later stages in non-sexual offences are extremely rare and are only made when there is an extremely compelling reason to do so. In interviews, Crown Attorneys gave several examples of instances where publication bans are most likely to be granted. They mentioned child abuse cases, robberies, certain homicides, and extortion cases where the facts are sensitive, as well as cases where there are several accused having separate trials, and serious cases being tried before a jury.

Among Crown Attorneys surveyed, one-third reported generally requesting publication bans in appropriate cases other than sexual offences. Of the remaining two-thirds who do not, 42% said that such bans are normally not necessary, while another 17% do not often request bans because they believe that court proceedings are, and should remain, open to public scrutiny.

TABLE 7:
USE OF PUBLICATION BANS ON NON-SEXUAL OFFENCES

	Crown Attorneys (N=188) *Do you generally request publication bans in non-sexual offences?*	Defence Counsel (N=185) *Do you generally agree to publication bans in non-sexual offences?*
Yes	32%	47%
No	67%	48%
No response	1%	5%

Forty-five percent of Crown Attorneys surveyed said that such requests are usually granted in the cases where they are made.

Exclusion of the Public

Sixty percent of Crown Attorneys surveyed said that they had requested the exclusion of the public from a trial. They stated that exclusion of the public is warranted in only the most exceptional circumstances, since an open court is essential to maintaining public confidence in the criminal justice system. In interviews, they explained that the public should be excluded only if permitting it to be present would interfere with the proper administration of justice and if other testimonial aids and protections would be insufficient to guarantee it; otherwise, the exclusion may give the defence counsel a ground to appeal.

Circumstances that from Crown Attorney perspectives warrant a request to exclude the public include cases where the witness is vulnerable, fragile, or sensitive, such as child witnesses testifying in matters such as sexual abuse, as well as mentally challenged witnesses, or witnesses in sexual assault or domestic assault cases. Other circumstances include cases where the testimony of the witness would not otherwise be obtained due to extreme stress, embarrassment, or anxiety; and cases where the evidence, if it were public, would pose a risk to the safety or security of the witness (e.g., cases involving police informers or witnesses in witness protection programs).

Crown Attorneys surveyed stated that requests to exclude the public are extremely rare. Just over one-quarter of Crown Attorneys said that judges generally grant requests to exclude the public.

Screens, Closed-Circuit Television, and Videotaped Testimony

There are three testimonial aids designed to assist young witnesses or those with a mental or physical disability, namely the use of screens, closed circuit television, or videotape. Of these three aids, screens appear to be the most popular among Crown Attorneys (although only by a slight margin over videotaped testimony. Crown Attorneys are least likely among criminal justice professionals surveyed to favour closed-circuit television. Please refer to Table 8.

TABLE 8:
USE OF SCREENS, CLOSED-CIRCUIT TELEVISION, AND VIDEO-TAPED TESTIMONY IN ELIGIBLE CASES

	Judges (N=110) *Do you generally grant the use of...*	Defence Counsel (N=185) *Do you generally agree to the use of...*	Crown Attorneys (N=188) *Do you generally request the use of...*
Screens			
Yes	83%	57%	61%
No	6%	39%	32%
No response	12%	4%	7%
Closed-circuit television			
Yes	61%	44%	38%
No	20%	50%	51%
No response	19%	7%	11%
Videotaped testimony			
Yes	60%	24%	56%
No	20%	69%	33%
No response	20%	7%	11%
Note: Responses are not inter-related across groups			

Screens

About 60% of Crown Attorneys surveyed generally request the use of a screen. While many of the Crown Attorneys surveyed did not know whether there are any obstacles to the use of screens, approximately 30% of Crown Attorneys believe that such obstacles exist. Among this minority of respondents who perceive obstacles, the most frequently mentioned was judicial reluctance to grant the use of screens. In interviews, Crown Attorneys explained that there is a perception within the judiciary that the screen acts as a filter and makes it easier for testimony to

be less than truthful. They also noted that judges regard the screen as contrived or unnecessary and find testimony less compelling when a screen is used.

A second perceived obstacle is the requirement that Crown Attorney applications for the use of a screen meet a stringent legal test in order to be granted. In interviews, Crown Attorneys explained that because they are obliged to show evidence or call expert witnesses to demonstrate that the screen is necessary, they only request the screen when it is absolutely necessary. Logistical obstacles to the use of screens, including a lack of necessary equipment at small sites, were also identified. In interviews, several Crown Attorneys at small sites reported that there is only one screen for the entire area they cover or that they have to transport a makeshift screen with them when they travel on circuit. Furthermore, courtrooms at small sites are often antiquated and not set up for the use of screens. Crown Attorneys also observed that screens are impractical and cumbersome, and often in poor condition. Furthermore, if courtroom lighting is inadequate, witnesses can see the accused through one-way screens.

Finally, there is a perception among some Crown Attorneys that screens simply are not effective at facilitating testimony and can actually be counter-productive because they cause the witness to have more rather than less concern with what the accused is doing. In interviews, Crown Attorneys explained that witnesses can feel isolated or uneasy when screens are used because they cannot see what is going on in the courtroom, and others reported that the screen can be distracting for child witnesses, whose curiosity often compels them to peek around or underneath the barrier. In fact, among Crown Attorneys surveyed who do not routinely request the use of screens, a common reason is that screens are ineffective at facilitating testimony. Others had either never or only rarely had a case where the screen might be needed or argued that screens are unnecessary in most instances. Sixty-two percent of Crown Attorneys surveyed believe that judges usually grant the use of screens.

Closed-Circuit Television

Of the three testimonial aids, closed-circuit television is the least likely to be requested. Less than 40% of Crown Attorneys surveyed reported generally requesting its use in appropriate cases. Among those who do not usually make the request, the most common reason, cited by almost one-third of these respondents, is a lack of necessary technology and properly equipped courtroom facilities; another 10% said that the appropriate equipment had only recently been installed in their local courtroom. Absent technology and proper facilities are particularly acute problems at small sites. In many instances, the use of closed-circuit television requires either that the trial be moved to a larger centre, that the necessary equipment be brought into the community, or that the equipment be transported with the court when it travels on circuit to remote areas. However, availability of the necessary technology also affects some medium and large sites.

Some Crown Attorneys gave other reasons for not usually requesting closed-circuit television. About one-quarter of those surveyed said that they have never or rarely had a case where closed-circuit television might be needed, while just less than one-fifth held the view that this aid is not normally necessary.

About one-third of Crown Attorneys believe that there are obstacles to the use of closed-circuit television, although as was also the case with screens, significant proportions did not know whether any obstacles exist. Of the Crown Attorneys who believe that there are obstacles to the use of this aid, more than half mentioned the lack of necessary technology. Others noted the need to satisfy the court that the aid is necessary, judicial reluctance to grant its use, and difficulties with cross-examination. Thirty-eight percent of Crown Attorneys believe that judges usually grant requests for closed-circuit television.

Videotaped Testimony

Fifty-six percent of Crown Attorneys surveyed generally request the use of videotaped testimony in appropriate cases. In interviews, some reported having had considerable success with its use. Among those who do not generally request the use of videotaped testimony, one-quarter said that they have never or only rarely had a case where videotape might be needed, while the same proportion said that videotape is normally not necessary. Several said that they prefer it if the witness can testify without the tape and therefore only request it if absolutely necessary.

More than one-quarter of Crown Attorneys surveyed believe that there are obstacles to the use of videotaped testimony. Poor quality interviews was among the identified obstacles; Crown Attorneys explained that police interviewers often ask leading questions or fail to elicit sufficiently detailed responses from witnesses. Furthermore, videotaped testimony does not relieve witnesses of the need to adopt their testimony on the stand and be cross-examined by defence counsel. Several Crown Attorneys said in interviews that videotaped testimony leaves witnesses unprepared for their encounter with defence counsel. They said that they tend to avoid videotaped testimony because they prefer to be the first to address witnesses, as a means of helping them become accustomed to the court process. Other obstacles, from the Crown Attorney perspective, include the requirement to meet a strict legal test in order for videotaped testimony to be allowed and judicial reluctance to grant its use. About half of Crown Attorneys surveyed believe that judges usually grant requests for videotaped testimony.

Overall Perceptions

Crown Attorney requests for testimonial aids are quite common in eligible cases, provided that the necessary technology is available. However, in interviews, Crown Attorneys explained that they request these aids only when there is a compelling reason to do so, and several reported having had as much success without using testimonial aids as with them. In their view, the best way to ensure that testifying in court does not traumatize witnesses is to meet with them ahead of time to establish a rapport, prepare them for testifying, and increase their confidence and self-esteem. A few Crown Attorneys were of the opinion that testimonial aids are being improperly used as a substitute for the time investment that is required to properly prepare victims for testimony.

Support Persons

The 1999 amendments to the *Criminal Code* permit victims or witnesses with a mental or physical disability to have a support person present while testifying. Of the various provisions to

facilitate testimony, the use of support persons to accompany a young witness or witnesses with a physical or mental disability appears to be the least controversial and the most widely used. More than three-quarters of Crown Attorneys surveyed generally request that a support person accompany such witnesses.

TABLE 9:
USE OF SUPPORT PERSONS IN ELIGIBLE CASES

	Crown Attorneys (N=188) *Do you generally request the use of a support person?*	Defence Counsel (N=185) *Do you generally agree to the use of a support person?*	Judiciary (N=110) *Do you generally grant the use of a support person?*
Yes	76%	66%	82%
No	16%	30%	6%
No response	8%	4%	13%
Note: Totals may not sum to 100% due to rounding. Responses are not inter-related across groups.			

Crown Attorneys surveyed who do not usually request support persons said that support persons are not typically necessary or that they have never or rarely had a case where a support person might be needed. Crown Attorneys likewise noted in interviews that great care must be taken in the selection of a support person. In order to maintain the credibility of the witness and avoid raising defence counsel objections, the support person must be a neutral individual who is not too close to the victim and who does not have a vested interest in the outcome of the case. Furthermore, as per the *Criminal Code*, the support person cannot also be a witness in the case.

Very few of the Crown Attorneys surveyed believe that there are obstacles to the use of support persons. They cited the need to locate a neutral individual to act as a support person, judicial reluctance to grant the requests, and the need to demonstrate that the support person is necessary. A few also said that the use of a support person can be damaging to the prosecutor's case. The presence of a support person can, for example, signal a vulnerable witness to the defence. Furthermore, if the witness looks at the support person before responding to questions, the impression can be created that the witness is unsure about his or her answers, thus damaging the credibility of the testimony. Just over two-thirds of Crown Attorneys surveyed said that requests for support persons are generally granted.

Section 486 (2.3)

The 1999 amendments to the *Criminal Code* include the provisions in section 486 (2.3), which restrict cross-examination by a self-represented accused of child victims of sexual or violent crime. This section reports on the use of this provision by Crown Attorneys and the extent to which they support expanding the section to other types of witnesses or other types of offences.

Use of section 486 (2.3)

Just over one-quarter of Crown Attorneys surveyed reported having had a case where section 486 (2.3) applied. Of these Crown Attorneys, a large majority (86%) had requested that counsel be appointed to cross-examine the victim.

Expansion of section 486 (2.3)

As Table 10 shows, half of Crown Attorneys favour expansion of section 486 (2.3) to other offences and/or other victims or witnesses.

TABLE 10:
SHOULD S. 486 (2.3) OF THE *CRIMINAL CODE* BE EXPANDED TO OTHER VICTIMS OR WITNESSES OR OTHER OFFENCES? (NOTE: S. 486 [2.3] PLACES RESTRICTIONS ON CROSS-EXAMINATION BY A SELF-REPRESENTED ACCUSED OF CHILD VICTIMS OF SEXUAL OR VIOLENT CRIME.)

	Victim Services (N=318)	Crown Attorneys (N=188)	Defence Counsel (N=185)	Advocacy Groups (N=47)
Yes	73%	52%	27%	77%
No	14%	15%	70%	19%
Don't know	--	25%	--	--
No response	13%	9%	3%	4%
Note: Totals may not sum to 100% due to rounding.				

Table 11 shows Crown Attorneys' opinions on how section 486 (2.3) should be expanded. Expanding the section to adult witnesses in the category of offences to which it currently applies received the most support. There was also considerable support for expanding the section to domestic violence cases in particular, to all crimes of violence, and to any case where the witness is vulnerable or intimidated by the accused or where there is a power imbalance between victim and accused. In interviews some Crown Attorneys argued simply that the protection should be available any time the proper administration of justice requires it and that this determination should be left to judicial discretion.

TABLE 11:
HOW SHOULD S. 486 (2.3) BE EXPANDED?
BASE: RESPONDENTS WHO BELIEVE S. 486 (2.3) SHOULD BE EXPANDED.

	Victim Services (n=233)	Crown Attorneys (n=97)	Defence Counsel (n=49)	Advocacy Groups (n=36)
Expand to adults	28%	40%	45%	31%
Domestic violence	21%	33%	10%	17%
All crimes of violence	19%	33%	10%	28%
Vulnerable or intimidated witnesses	12%	23%	22%	17%
Criminal harassment	6%	14%	8%	--
All child witnesses regardless of offence	8%	11%	--	--
Whenever accused is self-represented	25%	9%	--	19%
Certain property crimes	2%	5%	--	--
Other	6%	10%	6%	17%
No response	11%	7%	12%	8%
Note: Respondents could provide more than one response; totals sum to more than 100%.				

7. Victim Impact Statements

Victim impact statements (VIS) are written statements in which victims can describe the effect of the crime on them and any harm or loss suffered as a result of the crime. The 1999 amendments to the *Criminal Code* allow victims to read their statements aloud during sentencing, require the judge to ask before sentencing whether the victim has been informed of the opportunity to complete a VIS and permit the judge to adjourn the sentencing, to give the victim time to prepare the statement.

Victims of crime can submit victim impact statements at sentencing and at parole. At parole, the victim can rely on the victim impact statement from sentencing and/or provide another statement to the parole board. The following discussion considers victim impact statements at sentencing only.

At Sentencing

Frequency of Submission

Survey respondents were asked whether, based on their experience, victims generally submit victim impact statements to the court. Half of Crown Attorneys surveyed believe that victims generally submit victim impact statements only in serious cases, such as sexual assault, other violent offences, and certain property crimes. About one-third think that victim impact statements are submitted in most cases, and about one-fifth reported that in their experience, victims usually do not submit victim impact statements, regardless of the severity of the offence. The results for frequency of submission of victim impact statements are provided in Table 12. These results include only those respondents who provided an answer to this question.

TABLE 12:
DO VICTIMS USUALLY SUBMIT VICTIM IMPACT STATEMENTS AT SENTENCING?
BASE: RESPONDENTS WHO PROVIDED A RESPONSE (DON'T KNOW AND NO RESPONSE EXCLUDED).

	Victim Services (n=195)	Crown Attorneys (n=183)	Defence Counsel (n=174)	Judiciary (n=101)	Police (n=547)	Advocacy Groups (n=38)	Probation (n=88)
Yes, in most cases	48%	32%	38%	33%	34%	42%	34%
Yes, only in serious cases	32%	50%	45%	52%	46%	37%	41%
No	20%	18%	17%	16%	20%	21%	25%
Note: Some column totals do not sum to 100% due to rounding.							

Providing Information on Impact Statements

Related to the issue of whether victims submit victim impact statements is the provision of information to victims about the statements. If awareness is low, submission rates will be correspondingly low. In interviews, a few Crown Attorneys questioned whether criminal justice professionals are completely fulfilling their roles concerning victim impact statements when discussing the frequency of submission of these statements. A few Crown Attorneys expressed

their belief that victims may not be adequately informed of victim impact statements. Some noted that it is the responsibility of police to inform victims of the opportunity to submit victim impact statements and questioned whether they are routinely doing so.[3]

Method of Submission

Of the Crown Attorney respondents with sufficient experience to respond, 90% of Crown Attorneys stated that victim impact statements are usually submitted in writing only. About one-fifth reported that Crown Attorneys read the statement. Table 13 provides the survey results of those respondents who were able to answer this question.

TABLE 13:
WHAT ARE THE MOST COMMON METHODS OF SUBMITTING A VICTIM IMPACT STATEMENT AT SENTENCING?
BASE: RESPONDENTS WHO PROVIDED A RESPONSE (DON'T KNOW AND NO RESPONSE EXCLUDED).

	Victim Services (n=194)	Crown Attorneys (n=184)	Defence Counsel (n=180)	Judiciary (n=108)
Written statement only	82%	90%	79%	87%
Victim reads statement	18%	5%	2%	7%
Crown Attorney reads statement	16%	21%	18%	16%
Other	2%	3%	4%	--
Note: Respondents could provide more than one response; totals sum to more than 100%.				

According to those Crown Attorneys interviewed, it is more common for the Crown Attorney or the judge to reference the victim impact statement than for the statement to be read in court. With only one exception, all Crown Attorneys said that victims rarely express a desire to read their statements in court; the victim reading his or her statement is apparently more common in very serious cases involving violence against the person.

Timing of Submission

When to submit victim impact statements produced conflicting views among Crown Attorneys. Early receipt of the statement ensures that it is considered during plea negotiations; however, the requirement of disclosing the victim impact statement to the defence counsel before trial puts the victim at risk of being cross-examined on the statement. Because of these competing concerns, Crown Attorneys were divided when asked about the best time for them to receive victim impact statements. Half (50%) of those surveyed prefer to receive victim impact statements as soon as possible (i.e., as soon as they receive the file or before beginning plea negotiations), and 44% think that it is better to receive them only after a finding of guilt.

Crown Attorneys who hold the former view said in interviews that victim impact statements assist them in preparing cases and negotiating pleas. These Crown Attorneys do not regard as problematic the obligation to disclose victim impact statements to defence counsel; on the

[3] In some provinces, the police provide the victim with the form for completing a victim impact statement and advise them of where to send it. However, the procedure varies from province to province.

contrary, they are of the view that such disclosure assists in the negotiation of a plea. Several of these Crown Attorneys also pointed out that having the victim impact statement early in the case helps to ensure that the contents of the statement will not damage the case. These Crown Attorneys disagree with the current *Criminal Code* provision stating that victim impact statements shall be submitted after a finding of guilt. They argued that this provision obliges Crown Attorneys and defence counsel to make decisions on possible plea agreements without full knowledge and creates the potential for victim impact statements to contain information that differs from or contradicts the evidence presented at trial. If the information contained in the victim impact statement supports a lesser or a more serious charge after a conviction or guilty plea has already been entered, the court faces a dilemma.

Several Crown Attorneys noted in interviews that there is no point in receiving the statement early because it may not be necessary (e.g., in the event that there is a stay or an acquittal). A few Crown Attorneys made the point that submitting the statement after a finding of guilt helps to ensure that it will be relevant and up to date at the time of sentencing and will not need to be revised. In addition, taking more time allows for a more complete statement.

While these timing issues raise important concerns, the submission of victim impact statements is not treated uniformly across the sites, and victims often receive little information about the pros and cons of early submission. In some sites, the victim either submits his or her statement directly to the court registry or to victim services who, in turn, provides it to the court. With these methods, the Crown Attorney, defence counsel, and the judge all receive the victim impact statement after the finding of guilt. In other sites, the Crown Attorney receives the victim impact statement earlier because the instructions to victims included with the victim impact statement form advise them to submit the statement right away and/or the forms are sent with a return envelope addressed to the Crown Attorney. In these jurisdictions, unless victims seek assistance, they will not receive full information on the best time to submit a victim impact statement.

Cross-Examination of Victim

Defence counsel can cross-examine victims on their victim impact statements both at trial (if the statement is received before a finding of guilt) and at sentencing. The survey results in Table 14 show that about one-quarter of Crown Attorneys have been involved in a case where the victim was cross-examined on his or her impact statement at trial or at sentencing. In some sites, the possibility of cross-examining the victim on the victim impact statement at trial is forestalled because the Crown Attorney, court, and defence counsel only receive the statement after a finding of guilt.

TABLE 14:
HAVE YOU EVER HAD A CASE WHERE THE DEFENCE COUNSEL OR THE ACCUSED CROSS-EXAMINED THE VICTIM ON THEIR VICTIM IMPACT STATEMENT?

	Crown Attorneys (N=188)	Defence Counsel (N=185)	Judiciary (N=110)
At trial			
Yes	24%	20%	12%
No	71%	71%	80%
Don't know	3%	4%	3%
No response	3%	5%	6%
At sentencing			
Yes	26%	23%	10%
No	65%	70%	80%
Don't know	6%	3%	5%
No response	3%	5%	6%

Note: Respondents could provide only one response. Some totals sum to more than 100% due to rounding.

In interviews, Crown Attorneys commented that cross-examination on victim impact statements is quite rare. It occurs because the contents of the statement differ from the evidence presented at trial or because the defence counsel is sceptical about a victim's claims of ongoing effects or injuries. Crown Attorneys said that cross-examination of the victim is so infrequent because they usually can agree to excise prejudicial information or other inadmissible material before submitting the victim impact statement to the court.

Judicial Use of Victim Impact Statements

As mentioned above, under the 1999 amendments to the *Criminal Code*, judges must inquire before sentencing whether the victim has been advised of the opportunity to prepare a victim impact statement and can adjourn the sentencing hearing to allow a victim to be informed and prepare an impact statement. One-third (30%) of Crown Attorneys reporting that in cases where no victim impact statement is submitted, judges generally ask whether the victim has been informed about impact statements. However, Crown Attorneys also reported that, when no victim impact statement is submitted, they often do not contact the victim about whether he or she wants to submit a victim impact statement. Less than one-tenth (7%) reported that they always contact the victim and one-fifth (19%) said that they usually do.

Under the *Criminal Code*, judges must consider victim impact statements at the time of sentencing. Eighty-six percent of Crown Attorneys surveyed reported that they remind judges to consider victim impact statements in cases where a statement is submitted. In interviews, Crown Attorneys expressed the belief that victim impact statements have a limited impact on sentencing. Although they believe that judges consider the statements, they also think that judges do not and should not base their sentencing decisions on them (the few Crown Attorneys who argued that victim impact statements should play a more prominent role in sentencing decisions were a distinct minority). Crown Attorneys pointed out that the victim impact statement is one of numerous factors that judges must consider when determining a sentence. Furthermore, judges must remain objective and fair and must impose sentences that are consistent with the *Criminal Code* and case law.

Obstacles to Use of Victim Impact Statements

As shown in Table 15 below, about half of Crown Attorneys (48%) believe that there are obstacles to the use of victim impact statements. Over a third of victim services providers and police could not provide an answer.

TABLE 15:
ARE THERE OBSTACLES OR PROBLEMS WITH THE USE OF VICTIM IMPACT STATEMENTS?

	Victim services (N=318)	Crown Attorneys (N=188)	Defence counsel (N=185)	Police (N=686)
Yes	30%	48%	80%	19%
No	22%	43%	14%	45%
Don't know	43%	6%	6%	36%
No response	5%	3%	1%	1%
Note: Respondents could provide more than one response; totals sum to more than 100%.				

Crown Attorneys were asked to explain why they believe there are obstacles to or problems with the use of victim impact statements. Table 16 shows the main reasons cited; the results are discussed in more detail below.

TABLE 16:
OBSTACLES OR PROBLEMS WITH VICTIM IMPACT STATEMENTS
BASE: RESPONDENTS WHO BELIEVE THERE ARE OBSTACLES OR PROBLEMS WITH VICTIM IMPACT STATEMENTS.

	Victim Services (n=105)	Crown Attorneys (n=90)	Defence Counsel (n=147)	Police (n=128)
Inappropriate or irrelevant material	--	43%	31%	--
Contain inflammatory or prejudicial claims	--	--	18%	--
Inject emotion into the process	--	--	13%	--
Difficulties preparing statement or insufficient assistance	32%	--	--	--
Lack of awareness or information	17%	--	--	2%
Defence counsel objections or cross-examination	16%	18%	--	21%
Difficult to challenge	--	--	10%	--
Contradict previous statement	--	--	8%	--
Delays in court proceedings	--	11%	3%	--
Literacy or language barriers	30%	10%	--	16%
Victim disinterest or fear or reluctance on part of victim	5%	6%	--	13%
Time constraints	16%	7%	--	21%
Detracts from sentencing guidelines	--	--	14%	--
Victims are coached	--	--	5%	--
Are given too much weight in sentencing	--	--	3%	--
Perception that is not considered	8%	--	--	12%
Crown Attorney or judicial reluctance	10%	--	--	8%
Lack of awareness by criminal justice professionals	--	--	--	4%
Other	12%	13%	13%	6%
No response	--	4%	5%	9%

For Crown Attorneys, the biggest obstacle or problem is the inclusion of inappropriate or irrelevant material. In interviews, several Crown Attorneys observed that rather than restricting themselves to a description of the impact of the crime, victims frequently include a recitation of the facts of the case, refer to the offender's alleged involvement in other criminal activities, or offer their views on sentencing.

An issue related to the inclusion of inappropriate information is the need to disclose the victim impact statement to defence counsel. This creates the possibility of defence counsel objections to the victim impact statement or cross-examination on the statement either at trial or sentencing. For Crown Attorneys (18%), this was an important obstacle, leading to victims or Crown Attorneys not submitting victim impact statements. In interviews, Crown Attorneys said that the victim impact statement can be detrimental to the Crown Attorney's case; it can make the victim more vulnerable and strengthen the defence. Several Crown Attorneys said that they do not use the victim impact statement if the claims contained in it are improbable or the victim is not credible. With respect to obstacles to the use of victim impact statements, a few Crown Attorneys mentioned literacy and language barriers in both the survey and interviews.

Other obstacles to the use of victim impact statements mentioned by Crown Attorneys surveyed were time constraints (7%), delays in the court proceedings caused by adjournments needed to inform victims about victim impact statements (11%) and victim disinterest in submitting a statement (6%).

8. Restitution

Restitution requires the offender to compensate the victim for any monetary loss or any quantifiable damage to, or loss, of property. The court can order restitution as a condition of probation, where probation is the appropriate sentence, or as an additional sentence (a stand-alone restitution order), which allows the victim to file the order in civil court and enforce it civilly if not paid. The following discussion of restitution considers the current use of restitution, difficulties with enforcement, and obstacles to requesting restitution.

Use of Restitution

When asked if they generally request that restitution be paid to a victim, when appropriate, most Crown Attorneys (89%) reported that they do. To determine views on when restitution should be requested, Crown Attorneys were asked what considerations motivate their decision to request restitution. According to results from the survey of Crown Attorneys, the Crown Attorney's decision to request restitution is motivated primarily by the ability to quantify the losses (86%), but also by the victim's desire for restitution (64%) and by the offender's ability to pay (55%). In interviews, several Crown Attorneys observed that there is little point in requesting restitution if the offender has no income or is going to be incarcerated, although several said that they do not always know the offender's financial situation and therefore request restitution in all cases where the losses are quantifiable.

The use of restitution among Crown Attorneys is shown in Table 17.

TABLE 17: USE OF RESTITUTION		
	Crown Attorneys (N=188) *Do you generally request, when appropriate, that restitution be paid?*	Defence Counsel (N=185) *Do you generally agree to requests for restitution?*
Yes	89%	78%
No	9%	20%
No response	2%	2%

Two-thirds (68%) of Crown Attorneys reported that judges usually grant requests for restitution. In interviews, they prefaced this response with the proviso that judges usually grant restitution when the offender has the ability to pay, although the judge sometimes reduces the amount in consideration of the offender's circumstances.

Problems with Enforcement

When asked if they think that restitution enforcement is a concern or a problem, half of Crown Attorneys (53%) responded in the affirmative. The survey asked these respondents to explain why they consider restitution enforcement to be a concern or a problem. The results are presented in Table 18 below. Crown Attorneys gave several reasons for the difficulties with enforcement. The most common reason given (one-fifth of Crown Attorneys) is that restitution orders are made in cases where the accused is not able to pay.

About one-fifth of Crown Attorneys (20%) also pointed to insufficient resources for enforcement. This was further commented on in interviews. Crown Attorneys intimated that not much effort is made, stating that payment does not often occur because the criminal justice system is not a collection agency. In their survey responses, 13% of Crown Attorneys also pointed to the difficulty of convicting an offender on a breach of probation as an obstacle to enforcement. While in theory, offenders can be charged with a breach of probation for failing to abide by their restitution order, such charges are rare because the Crown Attorney must prove that the offender wilfully broke the order. Even if the offender is charged with a breach, the typical consequence is a small fine much lower in value than the restitution order itself.

The other option is a stand-alone restitution order, where the victim has recourse to the civil courts to enforce payment. A small number of Crown Attorneys (19%) noted that the problem with this method of enforcement is that it requires the victim to engage in a difficult legal process and bear all the costs of enforcement. In interviews, Crown Attorneys pointed out that this is not a realistic option for many victims of crime. Table 18 provides the complete results.

TABLE 18: WHY IS RESTITUTION ENFORCEMENT A CONCERN OR A PROBLEM? BASE: RESPONDENTS WHO BELIEVE THAT RESTITUTION ENFORCEMENT IS A PROBLEM.			
Reasons	Crown Attorneys (n=100)	Defence Counsel (n=62)	Probation (n=128)
Accused are unable to pay	22%	47%	30%
Insufficient resources for enforcement	20%	16%	--
Civil enforcement difficult or victim responsibility	19%	8%	4%
Difficult to convict on breach of order	13%	--	18%
No penalty for failure to pay	6%	--	9%
Restitution usually not made unless paid at sentencing	--	13%	--
Probation is not involved	--	--	26%
Other	6%	11%	7%
No response	22%	10%	--
Note: Respondents could provide more than one response; totals sum to more than 100%.			

9. Victim Surcharge

The victim surcharge is a penalty of 15% where a fine is imposed or a fixed amount of $50 or $100 for summary or indictable offences, respectively, and can be increased by the judge. It is imposed on the offender at sentencing and used by provincial and territorial governments to fund services for victims of crime. The 1999 amendments to the *Criminal Code* made the surcharge automatic in all cases except where the offender has requested a waiver and demonstrated that paying the surcharge would cause undue hardship.

The following discussion considers the issue of waiving the surcharge — both the frequency of waiver and whether waivers generally occur without an application by the defence.

Frequency of Waiver

Of those Crown Attorneys who provided an answer to the survey question regarding frequency of waiver, more than two-thirds Crown Attorneys agreed that the victim surcharge is waived more often than it should be. (See table 19.)

TABLE 19: IS THE VICTIM SURCHARGE WAIVED MORE OFTEN THAN IT SHOULD BE? BASE: RESPONDENTS WHO PROVIDED A RESPONSE (DON'T KNOW AND NO RESPONSE EXCLUDED).				
	Victim Services (n=82)	Crown Attorneys (n=161)	Defence Counsel (n=170)	Advocacy Groups (n=15)
Yes	66%	70%	11%	47%
No	34%	30%	89%	53%

Crown Attorneys attributed the frequent waiver of the surcharge to judicial attitudes. According to several Crown Attorneys interviewed, the surcharge is not seen as an integral part of the criminal justice system, and, therefore, judges are quite prepared to waive it.[4] They believe that virtually any reason appears to constitute a sufficient ground to waive the surcharge, even though the surcharge amount is so small that only in extraordinary circumstances should the offender be considered unable to pay it.

Application for Waiver

Section 737(5) of the *Criminal Code* requires an application from the offender to waive the surcharge. Six percent of surveyed Crown Attorneys generally challenge defence counsel applications to waive the surcharge. In interviews, Crown Attorneys explained that contesting defence counsel applications is very difficult. There is usually no time to challenge the application because things move very quickly at that stage of the proceedings. More importantly, Crown Attorneys said that they rarely have any information or proof to contest the reasons presented by defence counsel as grounds for the waiver.

In addition, Crown Attorneys who were interviewed noted that there is frequently no application to challenge because the judge has waived the surcharge on his or her own initiative. Survey results support this, with a majority of Crown Attorneys (54%) reporting that judges generally waive the surcharge without a defence counsel request.

TABLE 20:
DO JUDGES GENERALLY WAIVE THE SURCHARGE WITHOUT A DEFENCE COUNSEL REQUEST?

	Crown Attorneys (N=188)	Defence Counsel (N=185)
Yes	54%	24%
No	33%	64%
Don't know	4%	8%
No response	10%	4%
Note: One column does not sum to 100% due to rounding.		

10. Conditional Sentences

The *Criminal Code* permits judges to order that sentences of less than two years' imprisonment be served in the community instead of in jail. Conditional sentences may be imposed only when the court is convinced that the offender poses no threat to public safety. They are accompanied by restrictive conditions that govern the behaviour of the offender and strictly curtail his or her freedom. The following sections describe the perspectives of Crown Attorneys on the appropriateness and use of conditional sentences.

[4] Crown Attorneys at one large site, where the surcharge is reportedly never applied, said that judges are offended if the Crown even mentions it.

Cases Appropriate for Conditional Sentences

Crown Attorneys explained in interviews that conditional sentences are appropriate in eligible cases, that is, in all cases except those where the minimum sentence is more than two years, and where it has been established that the offender is not a threat to public safety. However, several Crown Attorneys believe that conditional sentences are not appropriate for violent or repeat offences, since these do not meet the basic criterion of no danger to the public. Moreover, a few Crown Attorneys believe that this criterion should be interpreted more broadly to encompass certain white-collar crimes (such as breach of trust thefts where the offender has stolen a substantial amount of money) and crimes where the safety of a single individual, namely, the victim of the original crime, might be at risk if a conditional sentence were imposed. It was also suggested by several Crown Attorneys that conditional sentences are appropriate where the risk of recidivism is zero and where there is good reason to believe that the offender is able and motivated to rehabilitate.

TABLE 21:
IN WHAT CIRCUMSTANCES IS A CONDITIONAL SENTENCE APPROPRIATE?

	Victim Services (N=318)	Crown Attorneys (N=188)	Defence Counsel (N=185)	Advocacy Groups (N=47)
All offences	6%	4%	29%	--
Non-violent offences	65%	62%	44%	72%
Family violence offences	5%	16%	32%	17%
Offences against the person	6%	15%	34%	15%
Where offender is eligible	--	11%	12%	--
Depends on case or circumstances	3%	11%	13%	9%
Minor offences	4%	6%	--	6%
No prior record or good rehabilitation prospects	6%	6%	4%	--
All offences except most serious	--	--	11%	--
Less serious violent offences	--	--	2%	--
If victim is comfortable with sentence	3%	--	--	--
Never or rarely	2%	7%	--	6%
Other	3%	3%	3%	11%
No response	12%	3%	1%	9%

Note: Respondents could provide more than one response; totals sum to more than 100%.

Consideration of Victim Safety in Conditional Sentences

As Table 22 shows, the vast majority (93%) of Crown Attorneys surveyed usually request conditions for the victim's safety in conditional sentences.

TABLE 22:
USE OF CONDITIONS FOR VICTIM'S SAFETY IN CONDITIONAL SENTENCES

	Crown Attorneys (N=188) *Do you generally request conditions for the victim's safety?*	Defence Counsel (N=185) *Do you generally agree to conditions for the victim's safety?*	Judiciary (N= 110) *Do you generally grant conditions for the victim's safety?*
Yes	93%	94%	94%
No	1%	2%	4%
Don't know	2%	3%	2%
No response	4%	1%	1%
Note: Totals may not sum to 100% due to rounding.			

In interviews, several Crown Attorneys remarked that there is a lack of resources for supervision and enforcement of conditional sentences and that, consequently, offenders are not being adequately punished for breaches. Concern was expressed that unless conditional sentences are accompanied by rigorously enforced restrictions on freedom, they do not serve as a deterrent but rather as positive reinforcement for criminal behaviour. Thus, although most Crown Attorneys acknowledged that there is a place for conditional sentences, they think that they should be used with caution, and a few think that they should be eliminated altogether.

In interviews, several Crown Attorneys also suggested that the conditions imposed on offenders serving a conditional sentence are generally too lenient and do not sufficiently restrict offenders' freedom. Crown Attorneys believe that conditional sentences need to be accompanied by significant restrictions on the offender's liberty. A few Crown Attorneys argued, for example, that rather than simply being required to abide by a curfew, offenders should be under house arrest 24 hours a day, seven days a week, except to go to work. It was also suggested that it should be mandatory for offenders serving conditional sentences to have a landline and not just a cellular telephone, to facilitate monitoring of their whereabouts and enforcement of conditions.

In general, Crown Attorneys who were interviewed believe that conditional sentences should involve maximum confinement and supervision.

11. Restorative Justice

In recent years, restorative justice approaches have become more widely used at all stages of criminal proceedings. Restorative justice considers the wrong done the person as well as the wrong done to the community. Restorative justice programs involve the victim(s) or a representative, the offender(s), and community representatives. The offender is required to accept responsibility for the crime and take steps to repair the harm he or she has caused. In this way restorative approaches can restore peace and equilibrium within a community and can afford victims of crime greater opportunities to participate actively in decision-making. However, concerns have been raised about victim participation and voluntary consent, and support to

victims in a restorative process. This study included several exploratory questions to discover the extent to which Crown Attorneys have participated in restorative justice approaches and their views on the appropriateness and effectiveness of these approaches.

Participation in Restorative Justice Approaches

Forty-three percent of Crown Attorneys surveyed had participated in a restorative justice approach.

TABLE 23:
HAVE YOU EVER PARTICIPATED IN A RESTORATIVE JUSTICE APPROACH?

	Victim Services (N=318)	Crown Attorney (N=188)	Defence Counsel (N=185)	Judiciary (N=110)	Police (N=686)	Advocacy Groups (N=47)	Probation (N=206)
Yes	12%	43%	58%	26%	17%	36%	15%
No	80%	52%	34%	74%	80%	64%	84%
Don't know	5%	4%	5%	--	2%	--	1%
No response	3%	1%	3%	--	1%	--	1%
Note: Some column totals do not sum to 100% due to rounding.							

As Table 24 below shows, 61% of Crown Attorneys have participated in a restorative justice process at the sentencing stage (61%). A significant proportion of Crown Attorneys who have participated also indicated having taken part in restorative processes after charges had been laid but before sentencing.

TABLE 24:
AT WHAT STAGE IN THE PROCESS HAVE YOU PARTICIPATED IN RESTORATIVE JUSTICE?
BASE: RESPONDENTS WHO HAVE PARTICIPATED IN RESTORATIVE JUSTICE PROCESSES.

	Victim Services (n=38)	Crown Attorneys (n=81)	Defence Counsel (n=107)	Police (n=118)	Advocacy Groups (n=17)
Pre-charge	42%	52%	64%	74%	47%
Sentencing	37%	61%	66%	25%	29%
Post-charge, pre-sentencing	8%	32%	19%	--	24%
Other	18%	6%	8%	20%	29%
No response	16%	6%	2%	1%	--
Note: Respondents could provide more than one response; totals sum to more than 100%.					

Table 25 below shows that the most common explanation for Crown Attorneys' lack of involvement in restorative justice is that restorative approaches are not available or not yet widely used in their province. Several Crown Attorneys pointed out in interviews that restorative justice tends to be used primarily in rural, northern, or remote Aboriginal communities. Other explanations for respondents' non-participation in restorative justice were that such approaches do not protect the victim adequately, that such approaches do not act as a deterrent, and that restorative justice had never come up as an option or that they had never had a case suitable for restorative justice.

TABLE 25: WHY HAVE YOU NOT USED OR PARTICIPATED IN A RESTORATIVE JUSTICE APPROACH? BASE: RESPONDENTS WHO HAVE NOT PARTICIPATED IN RESTORATIVE JUSTICE PROCESSES.							
	Victim Services (n=253)	Crown Attorneys (n=98)	Defence Counsel (n=62)	Judiciary (n=81)	Police (n=549)	Advocacy Groups (n=30)	Probation (n=172)
Not available	19%	57%	61%	43%	29%	40%	59%
No opportunity or no suitable case	21%	10%	15%	26%	24%	20%	22%
Do not adequately protect victim	10%	18%	--	5%	11%	23%	4%
Do not act as a deterrent	5%	10%	--	6%	13%	13%	3%
Don't know or No response	20%	14%	18%	6%	14%	10%	4%
Notes: Respondents could provide more than one response, but not all responses have been included in this table; totals sum to more than 100%.							

Victim Involvement in Restorative Justice

About half of Crown Attorneys surveyed believed that victims are involved in the decision to use restorative justice approaches.

TABLE 26: WHAT BEST DESCRIBES THE VICTIM'S INVOLVEMENT IN THE DECISION TO USE RESTORATIVE JUSTICE? BASE: RESPONDENTS WHO HAVE PARTICIPATED IN RESTORATIVE JUSTICE PROCESSES.					
	Victim Services (n=38)	Crown Attorneys (n=81)	Defence Counsel (n=107)	Police (n=118)	Advocacy Groups (n=17)
Victim is always involved	32%	52%	44%	80%	59%
Victim is sometimes involved	45%	38%	43%	14%	24%
Victim is seldom involved	8%	5%	9%	6%	12%
No response	16%	5%	4%	--	6%
Note: Totals do not sum to 100% due to rounding.					

A few Crown Attorneys who were interviewed reported that cases do not proceed through restorative justice unless the victim approves it. Others said that restorative approaches are sometimes used even without the victim's consent simply because these cases are not worth going to court (in these instances, however, the victim is always informed of the decisions). A few Crown Attorneys added that victims always have the opportunity to participate in restorative justice beyond the initial decision to use the approach but that many victims do not wish to participate.

Cases where Restorative Justice would be most Effective

Crown Attorneys were asked to comment in interviews on when they believe that restorative justice approaches would be most effective. They indicated that such processes would be particularly effective in cases involving young offenders, first offenders, and minor property offences. Generally speaking, although Crown respondents agreed that restorative approaches should not be used for sexual assaults, child abuse, and other violent offences, several think that

some minor assault cases could potentially qualify. There was some disagreement over whether restorative justice is a suitable way of dealing with spousal violence, given the family and power dynamics involved in these cases.

12. Protection of Victim Safety

Crown Attorneys were asked in interviews about the importance of consulting the victim in the use of a restorative justice approach. Almost all respondents believe that such consultation is indeed important. They believe that in order for restorative justice to adequately address victims' needs, victims should consent to and participate in the process, and that there is less chance of success if such consultation does not occur. Additionally, Crown Attorneys expressed concern in interviews that restorative justice may not always adequately protect victims and address their interests. This concern, as already noted in Table 24 above, was also evident from the quantitative data, which showed that 18% of Crown Attorneys gave inadequate protection of victims as the reason for Crown non-participation in a restorative justice process. In interviews, Crown Attorneys reiterated that restorative justice should not be used for violent offences where there are real safety concerns or power imbalances between victim and accused because of the potential for victims in such cases to be pressured or intimidated into participating. From the perspective of these interviewees, the ability of restorative approaches to adequately protect victims depends on the structure of individual programs, on the existence of a proper support structure to guarantee victim safety, and on the facilitator's training.

13. Information for Criminal Justice Professionals

As shown in Table 27, almost three-quarters of Crown Attorneys believe that they are adequately informed of the *Criminal Code* provisions intended to benefit victims.

TABLE 27:
ARE CRIMINAL JUSTICE PROFESSIONALS ADEQUATELY INFORMED OF PROVISIONS TO BENEFIT VICTIMS?

	Victim Services (N=318)	Crown Attorneys (N=188)	Defence Counsel (N=185)	Police (N=686)
Yes	32%	71%	40%	40%
No	40%	20%	49%	46%
Don't know	25%	9%	11%	13%
No response	3%	1%	1%	1%
Note: Some column totals do not sum to 100% due to rounding.				

In interviews, Crown Attorneys mentioned receiving copies of the new provisions as well as summaries of changes as they are implemented or occasionally attending seminars, conferences, and training. In their view, this is usually sufficient to keep them well informed; several pointed out that, in any case, it is their professional obligation to remain up to date on changes to the law. However, a few said that it is sometimes difficult to stay current with the pace of legislative change due to the frequency with which such changes have been made in recent years and due to workload and time constraints. Nevertheless, Crown Attorneys who believe they are not adequately informed had few suggestions for measures to improve the situation. They

recommended information sessions or seminars, bulletins, briefs, guidelines and reference sheets from the federal Department of Justice.

14. Impact of *Criminal Code* Provisions

Crown Attorneys were asked what, in their opinion, has been accomplished by the *Criminal Code* provisions intended to benefit victims. About one-third of Crown Attorneys did not feel able to answer this question.

When asked about the impact of the provisions a number of Crown Attorneys responded that they have provided a more balanced criminal justice system; and that the rights of victims have been formally recognized within the criminal justice system through the *Criminal Code* provisions and that, as a result, there is greater awareness of and sensitivity to needs of victims on the part of judges and prosecutors. The increased profile of the victim within the system, in turn, has led to enhanced services for victims, a more approachable and personal system that responds better to victims' needs, and victims who are more informed about the criminal justice process and the status of their own case.

They also mentioned that the provisions have given victims a voice in the system. About one-quarter of Crown Attorneys cited this as an accomplishment of the *Criminal Code* provisions. Several Crown Attorneys commented in their interviews that the *Criminal Code* provisions give victims a voice in the process and an opportunity to provide input, particularly through victim impact statements. However, several others worried that the victim impact statement, as an unintended consequence, may have created the false impression among some victims that they are entitled to make sentencing recommendations. Others mentioned the possibility of defence counsel cross-examination on the victim impact statement and said that such statements can make the victim more vulnerable if they conflict with other evidence or the victim's earlier statements. About 5% of Crown Attorneys surveyed mentioned negative effects of the victim impact statement.

Some Crown Attorneys also believe that victims are now more satisfied with the criminal justice system. In the survey, 11% of Crown Attorneys listed this as an impact of the *Criminal Code* provisions. In interviews, Crown Attorneys explained further that the provisions have increased victim confidence in the criminal justice system and made victims more willing to participate in it. In particular, several Crown Attorneys said that the provisions have made it easier for victims to report crimes and to testify in court. In addition, by better protecting victims, the legislation has created more reliable witnesses who are willing to provide open and complete testimony in court. In the survey, 7% of Crown Attorneys mentioned better protection of victims, and 9% of Crown Attorneys mentioned making testimony easier as accomplishments of the *Criminal Code* provisions.

The results discussed above are shown in Table 28.

TABLE 28:
POSITIVE IMPACTS OF *CRIMINAL CODE* PROVISIONS TO BENEFIT VICTIMS

	Victim Services (N=318)	Crown Attorney (N=188)	Defence Counsel (N=185)	Judiciary (N=110)	Police (N=686)	Advocacy Groups (N=47)
Gives victims a voice or opportunity for input	11%	25%	12%	27%	9%	15%
More balanced criminal justice system	13%	19%	10%	24%	7%	4%
Victims more satisfied or informed	11%	11%	5%	16%	3%	--
Victim testimony or experience easier	--	9%	--	--	1%	--
Better protection of victims	3%	7%		12%	5%	11%
Victim impact statement positive	5%	3%		8%	2%	--
More restitution	--	2%		6%		6%
Don't know or No response	52%	28%	25%	23%	47%	35%
Note: Respondents could give more than one answer; some totals sum to more than 100%.						

While these results show that many Crown Attorneys believe that the legislative changes have improved the experience of victims of crime in the criminal justice system, others cautioned that it is impossible to accommodate everything that victims want in an adversarial system. There was concern among Crown Attorneys that the provisions have inadvertently created unrealistic expectations on the part of some victims about both the level of their involvement and how that involvement might affect any decisions made. 9% of Crown Attorneys expressed concern that if expectations are not met, this could cause disappointment or resentment.

Nine percent of Crown Attorneys also commented on the delays in the process caused by the provisions (e.g., the time required to consult with victims or the adjournments needed to inform victims of victim impact statements). Twelve percent of Crown said they believe that the *Criminal Code* provisions have accomplished little or nothing. Results are given in Table 29.

TABLE 29:
NEGATIVE IMPACTS OF *CRIMINAL CODE* PROVISIONS TO BENEFIT VICTIMS

	Victim Services (N=318)	Crown Attorneys (N=188)	Defence Counsel (N=185)	Judiciary (N=110)	Police (N=686)	Advocacy Groups (N=47)
Delays criminal justice process	--	9%	11%	6%	--	--
Unrealistic expectations on part of victims	--	9%	15%	16%	--	--
Victim impact statement negative	1%	5%	--	--	<1%	--
Curtails Crown Attorney discretion	--	3%	17%	2%	--	--
Erosion of accused rights	--	--	10%	--	--	--
Has achieved mainly political objectives	--	--	9%	--	--	--
Reduces judicial independence	--	--	7%	--	--	--
Nothing or little has been accomplished	12%	12%	13%	11%	27%	15%
Don't know or No response	52%	28%	25%	23%	47%	35%
Note: Respondents could give more than one answer; some totals sum to more than 100%.						

In summary, while Crown Attorneys commented on the limitations of the impact of the *Criminal Code* provisions, most comments revealed positive accomplishments. The two biggest accomplishments are the creation of a more balanced criminal justice system through increased awareness of the concerns and interests of victims and the provision of more formal mechanisms to ensure that the victims have opportunities to participate and have a voice in the system.

Appendix A:

Interview Guides and Self-Administered Questionnaire for Survey of Crown Attorneys

KEY INFORMANT INTERVIEW GUIDE FOR CROWN ATTORNEYS

The Department of Justice Canada has recently launched a multi-site study of victims of crime and criminal justice professionals. The main objectives of this study are:

- To provide information on the use and awareness of recent reforms with respect to victims of crime in the criminal justice system
- To identify any impediments to the implementation of recent reforms by criminal justice professionals
- To learn what information is provided to victims throughout the criminal justice process
- To gain a better understanding of the experiences of victims of crime in the criminal justice system and with various victim services.

The following questions address issues relating to the role of the victim and the Crown in the criminal justice system, victim services, and the implementation of recent reforms to assist victims of crime through the criminal justice process.

The Role of the Victim

1. In your opinion, what role should the victim have in the criminal justice system? In particular, please consider bail decisions, plea negotiations, and sentencing.

The Crown's Role

2. In general, how would you describe the Crown's responsibility toward victims?

3. During a typical case, do you have sufficient opportunity to meet with victims? If time were not an issue, what else should the Crown do to further assist victims?

Victim Services

4. What victim services are currently available in your community for victims of crime? (e.g., police-based victim services, crown-based victim services, specialized victim services for domestic violence, sexual assaults, or children)

5. In general, do you think that victims are provided with adequate information on:

- the progress of investigation
- outcomes of bail decisions
- conditions of release
- date and location of court proceedings
- charges laid
- charges dropped
- victim impact statements
- restitution
- the ultimate outcome of the case
- the criminal justice process
- alternative processes, such as diversion and restorative justice
- accused rights
- victim services
- other community support services?

For each of the above, who should provide victims of crime with this type of information?

6. What, if anything, can be done to improve the information given to victims? Are there any difficulties in providing victims of crime with the information that they require? Please explain.

7. Are victim/witness assistants available to work with Crown attorneys in your office?

8. Please describe the extent to which the Crown and victim services work together or share information.

Recent Reforms Relating to Victims of Crime

As you may know, a number of legislative changes at the federal level have been made relating to victims of crime and their participation in the criminal justice system (victim surcharge, victim impact statements, consideration of victim safety in bail decisions, assistance to victims testifying at trial, publication bans, etc.). The following questions address issues relating to the implementation of these provisions.

9. How do you address the victims' safety concerns with respect to bail determinations? Do you generally call the victim as a witness? If no, why not? Where a bail hearing is held, do you generally request specific conditions to address the victim's safety? Do judges usually grant these conditions?

10. Do you generally request publication bans in cases other than sexual offences? If yes, in what types of offences? If no, why not? Do judges usually grant these requests?

11. Do you generally request the use of a screen or closed-circuit television for testimony of a young victim/witness or a victim/witness with a mental or physical disability? If no, why not? Do judges usually grant these requests? Are there any obstacles to the use of this provision? If yes, please explain. How can these best be addressed?

12. Do you generally request the use of pre-trial videotaped testimony of a young victim/witness or a victim/witness with a mental or physical disability? If no, why not? Do judges usually grant these requests? Are there any obstacles to the use of pre-trial videotape of testimony in these circumstances? If yes, please explain. How can these best be addressed?

13. Are there any alternatives to the use of screens, closed-circuit television, or pre-trial video-taped testimony that you believe would assist victims/witnesses in testifying?

14. Do you generally request that a support person be permitted to accompany a young victim/witness or a victim/witness with a mental or physical disability to court? If no, why not? Do judges usually grant these requests? Are there any obstacles to the use of support persons? If yes, please explain. How can these best be addressed?

15. Have you ever requested the exclusion of the public from a trial? If yes, in what circumstances? Do judges usually grant these requests?

Section 486 (2.3) of the *Criminal Code* states that, unless required by *"the proper administration of justice"* a self-represented accused cannot cross-examine a child witness (under 18 years of age). This section is applicable to proceedings where an accused is charged with a sexual offence, a sexual assault under sections 271, 272, and 273, or where violence against the victim is *"alleged to have been used, threatened, or attempted."*

16. Have you ever had a case where Section 486 (2.3) applied? If yes, did you request that counsel be appointed for the self-represented accused for the purpose of cross-examination of a victim/witness? If no, why not?

17. Do you feel that s. 486 (2.3) of the *Criminal Code* should be expanded to include other victims/witnesses and/or other types of offences? Please explain.

18. Based on your experience, do victims usually submit victim impact statements? What are the most common methods for submitting a victim impact statement (written statement only, victim reads statement, Crown read statement, other)?

19. When is the best time for the Crown to receive victim impact statements?

20. When a victim impact statement is submitted, do you generally remind the judge to consider it?

21. Have you ever had a case where the defence counsel or the accused wanted to cross-examine the victim on their victim impact statement either during the trial or during sentencing? If yes, did the judge allow it?

22. How would you describe the effect of a victim impact statement on the sentencing of the accused?

23. If no impact statement is submitted, do you contact the victim about whether he/she wants to submit a victim impact statement? Do judges generally ask whether the victim is aware of the opportunity to prepare and submit a victim impact statement?

24. Are there any obstacles to the use of the victim impact statement? Please explain.

25. Do you generally request, when appropriate, that restitution be paid to a victim? If no, why not? What considerations motivate your decision to request restitution (e.g., offender's ability to pay, victim concerns, etc.)? Do judges usually grant requests for restitution?

26. Is restitution enforcement a concern or a problem? Why?

27. Based on your experience, is the victim surcharge waived more often than it should be? Do judges generally waive the surcharge without a request from the offender? Do you generally challenge an application by an accused to waive the surcharge?

28. In what circumstances do you think a conditional sentence is appropriate? Do you generally ask that conditions for the victim's safety be placed on the offender in conditional sentences?

Restorative Justice

Restorative Justice considered the wrong done to a person as well as the worn done to the community. community. Restorative justice programs involve the victim(s) or a representative, the offender(s), and community representatives. The offender is required to accept responsibility for the crime and take steps to repair the harm he or she has caused.

29. Have you used a restorative justice approach? Why or why not? At what stage in the process have you used restorative justice? (e.g., pre-charge, sentencing, other)

30. How are victims involved in the process?

31. In what kinds of cases do you think that the restorative approach would be most effective? Do you consider it important to consult the victim in the use of a restorative approach? Why or why not? Do you think that restorative approaches adequately protect victims and address their interests? Please explain.

Conclusion

32. Do you think that Crown attorneys are adequately informed of the provisions of the *Criminal Code* intended to benefit victims? If no, what can be done to better inform Crown attorneys?

33. What has been accomplished by the *Criminal Code* provisions intended to benefit victims? Have there been any unintended consequences to these provisions? Please explain.

34. Do you have any other comments?

Thank you for your participation.

KEY INFORMANT INTERVIEW GUIDE FOR CROWN ATTORNEYS (Ontario)

The Department of Justice Canada has recently launched a multi-site study of victims of crime and criminal justice professionals. The main objectives of this study are:

- To provide information on the use and awareness of recent reforms with respect to victims of crime in the criminal justice system
- To identify any impediments to the implementation of recent reforms by criminal justice professionals
- To learn what information is provided to victims throughout the criminal justice process
- To gain a better understanding of the experiences of victims of crime in the criminal justice system and with various victim services.

The following questions address issues relating to the role of the victim and the Crown in the criminal justice system, victim services, and the implementation of recent reforms to assist victims of crime through the criminal justice process.

The Crown's Role

1. What is your responsibility toward victims of crime?

Victim Services

2. What victim services are currently available in your community for victims of crime? (e.g., police-based victim services, crown-based victim services, specialized victim services for domestic violence, sexual assaults, or children)

3. In general, do victims receive adequate information on:
   - the progress of investigation
   - outcomes of bail decisions
   - conditions of release
   - date and location of court proceedings
   - charges laid
   - charges dropped
   - victim impact statements
   - restitution
   - the ultimate outcome of the case
   - the criminal justice process
   - alternative processes, such as diversion and restorative justice
   - accused rights
   - victim services
   - other community support services?

4. What, if anything, can be done to improve the information given to victims?

5. Are victim/witness assistants available to work with Crown attorneys in your office?

6. Please describe the extent to which the Crown and victim services work together or share information.

Recent Reforms Relating to Victims of Crime

As you may know, a number of legislative changes at the federal level have been made relating to victims of crime and their participation in the criminal justice system (victim surcharge, victim impact statements, consideration of victim safety in bail decisions, assistance to victims testifying at trial, publication bans, etc.). The following questions address issues relating to the implementation of these provisions.

7. How do you address the victims' safety concerns with respect to bail determinations? Do you generally call the victim as a witness? If no, why not? Where a bail hearing is held, do you generally request specific conditions to address the victim's safety? Do judges usually grant these conditions?

8. Do you generally request publication bans in cases other than sexual offences? If yes, in what types of offences? If no, why not? Do judges usually grant these requests?

9. Do you generally request the use of a screen or closed-circuit television for testimony of a young victim/witness or a victim/witness with a mental or physical disability? If no, why not? Do judges usually grant these requests? Are there any obstacles to the use of this provision? If yes, please explain. How can these best be addressed?

10. Do you generally request the use of pre-trial videotaped testimony of a young victim/witness or a victim/witness with a mental or physical disability? If no, why not? Do judges usually grant these requests? Are there any obstacles to the use of pre-trial videotape of testimony in these circumstances? If yes, please explain. How can these best be addressed?

11. Are there any alternatives to the use of screens, closed-circuit television, or pre-trial video-taped testimony that assist victims/witnesses in testifying?

12. Do you generally request that a support person be permitted to accompany a young victim/witness or a victim/witness with a mental or physical disability to court? If no, why not? Do judges usually grant these requests? Are there any obstacles to the use of support persons? If yes, please explain. How can these best be addressed?

13. Have you ever requested the exclusion of the public from a trial? If yes, in what circumstances? Do judges usually grant these requests?

Section 486 (2.3) of the *Criminal Code* states that, unless required by *"the proper administration of justice"* a self-represented accused cannot cross-examine a child witness (under 18 years of age). This section is applicable to proceedings where an accused is charged with a sexual offence, a sexual assault under sections 271, 272, and 273, or where violence against the victim is *"alleged to have been used, threatened, or attempted."*

14. Have you ever had a case where Section 486 (2.3) applied? If yes, did you request that counsel be appointed for the self-represented accused for the purpose of cross-examination of a victim/witness?

15. Based on your experience, do victims usually submit victim impact statements? What are the most common methods for submitting a victim impact statement (written statement only, victim reads statement, Crown read statement, other)?

16. When is the best time for the Crown to receive victim impact statements?

17. When a victim impact statement is submitted, do you generally remind the judge to consider it?

18. Have you ever had a case where the defence counsel or the accused wanted to cross-examine the victim on their victim impact statement either during the trial or during sentencing? If yes, did the judge allow it?

19. How is the victim impact statement used in the sentencing of the accused?

20. If no impact statement is submitted, do you contact the victim about whether he/she wants to submit a victim impact statement? Do judges generally ask whether the victim is aware of the opportunity to prepare and submit a victim impact statement?

21. Are there any obstacles to the use of the victim impact statement? Please explain.

22. Do you generally request, when appropriate, that restitution be paid to a victim? If no, why not? What considerations motivate your decision to request restitution (e.g., offender's ability to pay, victim concerns, etc.)? Do judges usually grant requests for restitution?

23. Is restitution enforcement a concern or a problem? Why?

24. How often is the victim surcharge waived? Do judges generally waive the surcharge without a request from the offender? Do you generally challenge an application by an accused to waive the surcharge?

25. In what circumstances do you agree to a conditional sentence? Do you generally ask that conditions for the victim's safety be placed on the offender in conditional sentences?

Restorative Justice

Restorative Justice considers the wrong done to a person as well as the wrong done to the community. Restorative justice programs involve the victim(s) or a representative, the offender(s), and community representatives. The offender is required to accept responsibility for the crime and take steps to repair the harm he or she has caused.

26. Have you used a restorative justice approach? Why or why not? At what stage in the process have you used restorative justice? (e.g., pre-charge, sentencing, other)

27. How are victims involved in the process?

Conclusion

28. Are Crown attorneys adequately informed of the provisions of the *Criminal Code* intended to benefit victims? If no, what can be done to better inform Crown attorneys?

Thank you for your participation.

Self-Administered Questionnaire for Survey of Crown Attorneys

1. What role do you believe victims should have in the following stages of the criminal justice process?

	Victim should be Informed	Consulted	Other (specify)	Victim should not have any role
Bail decisions	1	2	3 _____	00
Plea negotiations	1	2	3 _____	00
Sentencing decisions	1	2	3 _____	00

2. What do you think is the Crown's responsibility to victims?

_____

_____

_____

3. If time were not an issue, what else should Crown do to further assist victims?

_____

_____

_____

4. During a typical case, do you have sufficient opportunity to meet with victims?

1 Yes 2 No 8 Don't know

5. Are victim/witness assistants available to work with Crown attorneys in your office?

1 Yes 2 No 8 Don't know

6. Are the following victim services available in your community?

	Yes	No	Don't know
Police-based victim services	1	2	8
Crown-based victim services	1	2	8
Specialized victim services for domestic violence	1	2	8
Specialized victim services for sexual assaults	1	2	8
Specialized victim services for children	1	2	8
Other victim services (*Specify*) _____	1	2	8
Other victim services (*Specify*) _____	1	2	8
Other victim services (*Specify*) _____	1	2	8

7. Please indicate your level of agreement with the following:

Victims usually receive adequate information on…	Strongly agree	Agree	Disagree	Strongly disagree	Don't know
the progress of the investigation	4	3	2	1	8
outcomes of bail decisions	4	3	2	1	8
conditions of release	4	3	2	1	8
date and location of court proceedings	4	3	2	1	8
charges laid	4	3	2	1	8
charges dropped	4	3	2	1	8
victim impact statements	4	3	2	1	8
restitution	4	3	2	1	8
the ultimate outcome of the case	4	3	2	1	8
the criminal justice process	4	3	2	1	8
alternative processes, such as diversion and restorative justice	4	3	2	1	8
accused rights	4	3	2	1	8
victim services	4	3	2	1	8
other community support services	4	3	2	1	8

7a. For those items from question 7 with which you **strongly disagree** or **disagree**, what could be done to improve the information given to victims?

_____

_____

_____

8. Who should provide the following information to victims? (*Please check all that apply*)

	Crown	Police	Victim Services	Other (*Specify*)	Don't know
The progress of the investigation	1	2	3	_____	8
Outcomes of bail decisions	1	2	3	_____	8
Conditions of release	1	2	3	_____	8
Date and location of court proceedings	1	2	3	_____	8
Charges laid	1	2	3	_____	8
Charges dropped	1	2	3	_____	8
Victim impact statements	1	2	3	_____	8
Restitution	1	2	3	_____	8
The ultimate outcome of the case	1	2	3	_____	8
The criminal justice process	1	2	3	_____	8
Alternative processes, such as diversion and restorative justice	1	2	3	_____	8
Accused rights	1	2	3	_____	8
Victim services	1	2	3	_____	8
Other community support services	1	2	3	_____	8

9. Do you generally do any of the following: (*Check "Yes" or "No" for each of the following.*)

	Yes	No
Call the victim as a witness in bail hearings	1	2
Request specific conditions to address the victim's safety in bail determinations	1	2
Request publication bans in cases other than sexual offences	1	2
Request the use of a screen for young witnesses or witnesses with a mental or physical disability	1	2
Request the use of closed-circuit television for young witnesses or witnesses with a mental or physical disability	1	2
Use pre-trial videotaped testimony for young witnesses or witnesses with a mental or physical disability	1	2
Request that a support person accompany a young witness under the age of 14 or witnesses with a mental or physical disability	1	2

9a. If you answered "No" to any part of question 9, please explain why not.

Call the victim as a witness in bail _____

Request specific conditions to address the victim's safety in bail determinations _____

Request publication bans in cases other than sexual offences _____

Request the use of a screen for young witnesses or witnesses with a mental or physical disability _____

Request the use of closed-circuit television for young witnesses or witnesses with a mental or physical disability _____

Use pre-trial videotaped testimony for young witnesses or witnesses with a mental or physical disability _____

Request that a support person accompany a young witness under the age of 14 or witnesses with a mental or physical disability _____

10. In general, do judges usually grant the following requests?

	Yes	No	Don't know
Request specific conditions to address the victim's safety in bail determinations	1	2	8
Request for a publication ban in cases other than sexual offences	1	2	8
Request the use of a screen for young witnesses or witnesses with a mental or physical disability	1	2	8
Request the use of closed-circuit television for young witnesses or witnesses with a mental or physical disability	1	2	8
Request the use of pre-trial videotaped testimony for young witnesses or witnesses with a mental or physical disability	1	2	8
Request that a support person accompany a young witness under the age of 14 or witnesses with a mental or physical disability	1	2	8
Request to exclude the public from a trial	1	2	8
Request for restitution	1	2	8

11. Are there any obstacles to using the following?

	Yes	No	Don't know
A screen for young witnesses or witnesses with a mental or physical disability	1	2	8
Closed-circuit television for young witnesses or witnesses with a mental or physical disability	1	2	8
Pre-trial videotaped testimony for young witnesses or witnesses with a mental or physical disability	1	2	8
Support person to accompany a young witness under the age of 14 or witnesses with a mental or physical disability	1	2	8

11a. If you answered "Yes" to any part of question 11, please explain.

A screen for young witnesses with a mental or physical disability _____

_____

Closed-circuit television for young witnesses or witnesses with a mental or physical disability _____

_____

Pre-trial videotaped testimony for young witnesses or witnesses with a mental or physical disability _____

_____

Support person to accompany a young witness under the age of 14 or witnesses with a mental or physical disability _____

_____

12. Have you ever requested the exclusion of the public from a trial?

1 Yes 2 No

13. In what circumstances would you request the exclusion of the public from a trial?

_____

_____

8 Don't know

_____

Section 486 (2.3) of the *Criminal Code* states that, unless required by *"the proper administration of justice"* a self-represented accused cannot cross-examine a child witness (under 18 years of age). This section is applicable to proceedings where an accused is charged with a sexual offence, a sexual assault under sections 271, 272, and 273, or where violence against the victim is *"alleged to have been used, threatened, or attempted."*

14. Have you ever had a case where Section 486 (2.3) applied?

1 Yes 2 No 8 Don't recall

15. [*If "Yes" to question 14*] Did you request that counsel be appointed to cross-examine the victim/witness?

1 Yes 2 No

16. Should Section 486 (2.3) be expanded?

1 Yes 2 No 8 Don't know

16a. If you answered "Yes" to question 16, should it be expanded to other victims/witnesses? (Please describe)

_____

_____

_____

16b. If you answered "Yes" to question 16, should it be expanded to other offences? (Please describe)

_____

_____

_____

The next several questions ask you to consider victim impact statements.

17. Based on your experience, do victims generally submit victim impact statements? (*Check one)*

1 Yes 2 Yes, in serious cases 3 No 8 Don't know

18. What are the most common methods for submitting a victim impact statement? (*Check all that apply*)

1 Written statement only 2 Victim reads statement 3 Crown reads statement

66 Other (Specify) _____

19. If no victim impact statement is submitted, do you contact the victim about whether he/she wants to submit a victim impact statement?

5 Always 4 Usually 3 Sometimes 2 Rarely 1 Never

66 Depends on the case (*Explain*) _____

_____

20. When is the best time for the Crown to receive a victim impact statement? (*Check all that apply*)

1 As soon as the victim has prepared the statement 2 After a finding of guilt

66 Other (Specify) _____

21. When a victim impact statement has been submitted, do you generally remind the judge to consider it?

1 Yes 2 No 8 Don't know

22. In cases where no victim impact statement is submitted, do judges generally ask whether the victim is aware of the opportunity to prepare and submit a victim impact statement?

1 Yes 2 No 8 Don't know

23. Are there any obstacles to the use of the victim impact statement?

1 Yes 2 No 8 Don't know

Please explain _____

_____

_____

24. Have you ever had a case where the defence counsel or the accused cross-examined the victim on their victim impact statement?

	Yes	No	Don't recall
During trial	1	2	8
During sentencing	1	2	8
Other (*Specify*) _____	1	2	8

The next questions concern restitution.

25. What considerations motivate your decision to request restitution? (*Check all that apply*)

1 Offender's ability to pay
2 Ability to quantify damages victim suffered
3 Victim's desire for restitution
66 Other (Specify) _____

26. Do you generally request, when appropriate, that restitution be paid to a victim?

1 Yes 2 No 8 Don't know

27. Is restitution enforcement a concern or problem?

1 Yes 2 No 8 Don't know
Please explain _____

_____

The next two questions ask about conditional sentences.

28. In what circumstances do you think a conditional sentence is appropriate? (*Check all that apply*)

1 All offences
2 Non-violent offences
3 Offences against the person
4 Family violence offences
5 Murder
66 Other (*Specify)* _____

_____

29. Do you generally ask that conditions for the victim's safety be placed on the offender in conditional sentences?

1 Yes 2 No 8 Don't know

Restorative Justice considers the wrong done to a person as well as the wrong done to the community. Restorative justice programs involve the victim(s) or a representative, the offender(s), and community representatives. The offender is required to accept responsibility for the crime and take steps to repair the harm he or she has caused.

30. Have you ever used a restorative justice approach?

1 Yes 2 No 8 Don't know

If "Yes", what approach(es) have you used? _____

31. [*If "No" to question 30*] Why have you **not used** a restorative justice approach? (*Check all that apply*)

1 Restorative justice approaches are not available
2 Restorative justice approaches do not protect the victim adequately
3 Restorative justice approaches do not act as a deterrent
66 Other (Specify) _____

32. [*If "Yes" to question 30*] At what stage in the process have you used restorative justice? (*Check all that apply*)

1 Pre-charge 2 Sentencing
66 Other (Specify) _____

33. [*If "Yes" to question 30*] In your experience, which statement best describes the victim's involvement in the decision to use restorative justice?

1 The victim is always involved 2 The victim is sometimes involved
3 The victim is seldom involved

The next questions deal with the victim surcharge.

34. Based on your experience, is the victim surcharge waived more often than it should be?

1 Yes 2 No 8 Don't know

35. Do you generally challenge an application by an offender to waive the victim surcharge?

1 Yes 2 No 8 Don't know

36. Do judges generally waive the surcharge without a request from the offender?

1 Yes 2 No 8 Don't know

The concluding questions ask you to consider all of the *Criminal Code* provisions intended to benefit victims.

37. Do you think that Crown attorneys are adequately informed of the provisions in the *Criminal Code* intended to benefit victims?

1 Yes 2 No 8 Don't know

37a. If you answered "No" to question 37, what could be done to better inform Crown Attorneys?

_____

_____

38. In your opinion, what has been accomplished by the *Criminal Code* provisions intended to benefit victims?

_____

_____

_____

39. Have there been any unintended or unexpected consequences to these provisions?

1 Yes 2 No 8 Don't know

What are they?_____

_____

_____

40. Do you have any other comments?

Thank you for taking the time to complete this survey.
Please return the questionnaire by faxing it back to us toll-free at:

For More Information

The complete *Multi-Site Survey of Victims of Crime and Criminal Justice Professionals* report and the summary reports in this series can be ordered from the Policy Centre for Victim Issues, via mail or fax (see below).

These reports will be available online at http://canada.justice.gc.ca/en/ps/voc/pub.html

Summaries Available:

Multi-Site Survey of Victims of Crime and Criminal Justice Professionals: Executive Summary

Multi-Site Survey of Victims of Crime and Criminal Justice Professionals: Summary of Victims of Crime Respondents

Multi-Site Survey of Victims of Crime and Criminal Justice Professionals: Summary of Victim Services Providers and Victim Advocacy Group Respondents

Multi-Site Survey of Victims of Crime and Criminal Justice Professionals: Summary of Judiciary Respondents

Multi-Site Survey of Victims of Crime and Criminal Justice Professionals: Summary of Crown Attorney Respondents

Multi-Site Survey of Victims of Crime and Criminal Justice Professionals: Summary of Defence Counsel Respondents

Multi-Site Survey of Victims of Crime and Criminal Justice Professionals: Summary of Police Respondents

Multi-Site Survey of Victims of Crime and Criminal Justice Professionals: Summary of Probation Officer, Corrections, and Parole Board Respondents

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