

Legislative history for victim impact statements

David Littlefield
Department of Justice, Ontario Regional Office, Federal Prosecution Service
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Introduction

Victim impact legislation was introduced into the *Criminal Code* in 1989 and was initially included with the provisions dealing with pre-sentence report by a probation officer.¹ In 1996, the provisions were given their own section number (s.722) and the court was required to consider a statement that had been prepared in compliance with the legislation.² In 1999, several substantive amendments were made including:

- (a) the right to present a victim impact statement was added [s.722(2.1)];
- (b) the admissibility of other evidence concerning any victim of the offence was re-defined [s.722(3)];
- (c) the definition of victim was widened from “the” person to whom harm was done to “a” person [s.722(4)(a)];
- (d) the copy of the victim impact statement was no longer to be provided by the clerk of the court after it was filed, but rather “as soon as practicable after a finding of guilt” [s.722.1];
- (e) the court was directed to inquire of the prosecutor or a victim of the offence whether the victim(s) had been advised of their opportunity to prepare a victim impact statement as soon as practicable after a finding of guilt and in any event before imposing sentence [s.722.2(1)]; and
- (f) the court was directed that on its own motion, or application by the prosecutor or a victim, it might adjourn the proceedings to permit the victim to prepare a statement or present evidence if satisfied to do so would not interfere with the proper administration of justice [s.722.2(2)].³

Finally, in 2000 the definition of victim was widened to include not only spouse, but also “common-law partner” [s.722(4)(b)].⁴

As the legislation has been substantially changed over the course of about ten years, it can sometimes be difficult when reading the cases to remember the statutory context for the relevant period. This summary is intended to act as a guide for the reader to the victim impact legislation that was in effect during each period. In addition, starting with the December 1, 1999 to July 30, 2000 period, the important changes from the previous legislative scheme have been underlined.

¹ R.S.C. 1985, c.23 (4th Supp.), s.7

² S.C. 1995, c.22, s.6

³ S.C. 1999, c.25, s.17

⁴ S.C. 2000, c.12, s.95(d)

November 1, 1989 to September 2, 1996

SECTION 735

Report by probation officer

735. (1) Where an accused, other than a corporation, pleads guilty to or is found guilty of an offence, a probation officer shall, if required to do so by a court, prepare and file with the court a report in writing relating to the accused for the purpose of assisting the court in imposing sentence or in determining whether the accused should be discharged pursuant to section 736.

Victim impact statement

(1.1) For the purpose of determining the sentence to be imposed on an offender or whether the offender should be discharged pursuant to section 736 in respect of any offence, the court may consider a statement, prepared in accordance with subsection (1.2), of a victim of the offence describing the harm done to, or loss suffered by, the victim arising from the commission of the offence.

Procedure for victim impact statement

- (1.2) A statement referred to in subsection (1.1) shall be
- (a) prepared in writing in the form and in accordance with the procedures established by a program designated for the purpose by the Lieutenant Governor in Council of the province in which the court is exercising its jurisdiction; and
 - (b) filed with the court.

Other evidence concerning victim admissible

(1.3) A statement of a victim of an offence prepared and filed in accordance with subsection (1.2) does not prevent the court from considering any other evidence concerning any victim of the offence for the purpose of determining the sentence to be imposed on the offender or whether the offender should be discharged pursuant to section 736.

Definition of "victim"

- (1.4) For the purpose of this section, "victim", in relation to an offence,
- a) means the person to whom harm is done or who suffers physical or emotional loss as a result of the commission of the offence, and
 - b) where the person described in paragraph (a) is dead, ill or otherwise incapable of making a statement referred to in subsection (1.1), includes the spouse or any relative of that person, anyone who has in law or in fact the custody of that person

or is responsible for the care or support of that person or any dependant of that person.

Copies to be provided

(2) Where a report or statement is filed with the court under subsection (1) or (1.2), the clerk of the court shall forthwith cause a copy of the report or statement to be provided to the offender or counsel for the offender and to the prosecutor.

R.S.C. 1985, c. 23 (4th Supp.), s. 7.

September 3, 1996 to November 30, 1999

SECTION 722

Victim impact statement

722. (1) For the purpose of determining the sentence to be imposed on an offender or whether the offender should be discharged pursuant to section 730 in respect of any offence, the court shall consider any statement that may have been prepared in accordance with subsection (2) of a victim of the offence describing the harm done to, or loss suffered by, the victim arising from the commission of the offence.

Procedure for victim impact statement

- (2) A statement referred to in subsection (1) must be
- (a) prepared in writing in the form and in accordance with the procedures established by a program designated for that purpose by the lieutenant governor in council of the province in which the court is exercising its jurisdiction; and
 - (b) filed with the court.

Other evidence concerning victim admissible

(3) A statement of a victim of an offence prepared and filed in accordance with subsection (2) does not prevent the court from considering any other evidence concerning any victim of the offence for the purpose of determining the sentence to be imposed on the offender or whether the offender should be discharged pursuant to section 730.

Definition of "victim"

- (4) For the purposes of this section, "victim", in relation to an offence,
- (a) means the person to whom harm was done or who suffered physical or emotional loss as a result of the commission of the offence; and
 - (b) where the person described in paragraph (a) is dead, ill or otherwise incapable of making a statement referred to in subsection (1), includes the spouse or any relative of that person, anyone who has in law or fact the custody of that person or is responsible for the care or support of that person or any dependant of that person.

Copies of documents

722.1 The clerk of the court shall provide a copy of a copy of a document referred to in section 721 or subsection 722(1), as soon as practicable after filing, to the offender or counsel for the offender, as directed by the court, and to the prosecutor.

R.S.C. 1985, c. 23 (4th Supp.); s. 7.; S.C. 1995, c. 22, s. 6.

December 1, 1999 to July 30, 2000

SECTION 722

Victim impact statement

722. (1) For the purpose of determining the sentence to be imposed on an offender or whether the offender should be discharged pursuant to section 730 in respect of any offence, the court shall consider any statement that may have been prepared in accordance with subsection (2) of a victim of the offence describing the harm done to, or loss suffered by, the victim arising from the commission of the offence.

Procedure for victim impact statement

- (2) A statement referred to in subsection (1) must be
- (a) prepared in writing in the form and in accordance with the procedures established by a program designated for that purpose by the lieutenant governor in council of the province in which the court is exercising its jurisdiction; and
 - (b) filed with the court.

Presentation of statement

(2.1) The court shall, on the request of a victim, permit the victim to read a statement prepared and filed in accordance with subsection (2), or to present the statement in any other manner that the court considers appropriate.

Evidence concerning victim admissible

(3) Whether or not a statement has been prepared and filed in accordance with subsection (2), the court may consider any other evidence concerning any victim of the offence for the purpose of determining the sentence to be imposed on the offender or whether the offender should be discharged under section 730.

Definition of "victim"

- (4) For the purposes of this section, "victim", in relation to an offence,
- (a) means a person to whom harm was done or who suffered physical or emotional loss as a result of the commission of the offence; and
 - (b) where the person described in paragraph (a) is dead, ill or otherwise incapable of making a statement referred to in subsection (1), includes the spouse or any relative of that person, anyone who has in law or fact the custody of that person or is responsible for the care or support of that person or any dependant of that person.

Copy of statement

722.1 The clerk of the court shall provide a copy of a statement referred to in subsection 722(1), as soon as practicable after a finding of guilt, to the offender or counsel for the offender, and to the prosecutor.

Inquiry by court

722.2 (1) As soon as practicable after a finding of guilt and in any event before imposing a sentence, the court shall inquire of the prosecutor or a victim of the offence, or any person representing a victim of the offence, whether the victim or victims have been advised of the opportunity to prepare a statement referred to in subsection 722(1).

Adjournment

(2) On application of the prosecutor or a victim or on its own motion, the court may adjourn the proceedings to permit the victim to prepare a statement referred to in subsection 722(1) or to present evidence in accordance with subsection 722(3), if the court is satisfied that the adjournment would not interfere with the proper administration of justice.

R.S.C. 1985, c. 23 (4th Supp.); s. 7.; S.C. 1995, c. 22, s. 6.; S.C. 1999, c.25, s. 17

July 31, 2000 to date

SECTION 722

Victim impact statement

722. (1) For the purpose of determining the sentence to be imposed on an offender or whether the offender should be discharged pursuant to section 730 in respect of any offence, the court shall consider any statement that may have been prepared in accordance with subsection (2) of a victim of the offence describing the harm done to, or loss suffered by, the victim arising from the commission of the offence.

Procedure for victim impact statement

- (2) A statement referred to in subsection (1) must be
- (a) prepared in writing in the form and in accordance with the procedures established by a program designated for that purpose by the lieutenant governor in council of the province in which the court is exercising its jurisdiction; and
 - (b) filed with the court.

Presentation of statement

(2.1) The court shall, on the request of a victim, permit the victim to read a statement prepared and filed in accordance with subsection (2), or to present the statement in any other manner that the court considers appropriate.

Evidence concerning victim admissible

(3) Whether or not a statement has been prepared and filed in accordance with subsection (2), the court may consider any other evidence concerning any victim of the offence for the purpose of determining the sentence to be imposed on the offender or whether the offender should be discharged under section 730.

Definition of "victim"

- (4) For the purposes of this section and section 722.2, "victim", in relation to an offence,
- (a) means a person to whom harm was done or who suffered physical or emotional loss as a result of the commission of the offence; and
 - (b) where the person described in paragraph (a) is dead, ill or otherwise incapable of making a statement referred to in subsection (1), includes the spouse or common-law partner or any relative of that person, anyone who has in law or fact the custody of that person or is responsible for the care or support of that person or any dependant of that person.

Copy of statement

722.1 The clerk of the court shall provide a copy of a statement referred to in subsection 722(1), as soon as practicable after finding of guilt, to the offender or counsel for the offender, and to the prosecutor.

Inquiry by court

722.2 (1) As soon as practicable after a finding of guilt and in any event before imposing a sentence, the court shall inquire of the prosecutor or a victim of the offence, or any person representing a victim of the offence, whether the victim or victims have been advised of the opportunity to prepare a statement referred to in subsection 722(1).

Adjournment

(2) On application of the prosecutor or a victim or on its own motion, the court may adjourn the proceedings to permit the victim to prepare a statement referred to in subsection 722(1) or to present evidence in accordance with subsection 722(3), if the court is satisfied that the adjournment would not interfere with the proper administration of justice.

R.S.C. 1985, c. 23 (4th Supp.), s. 7.; S.C. 1995, c. 22, s. 6.; S.C. 1999, c.25, s. 17;
S.C. 2000, c.12, s.95(d)