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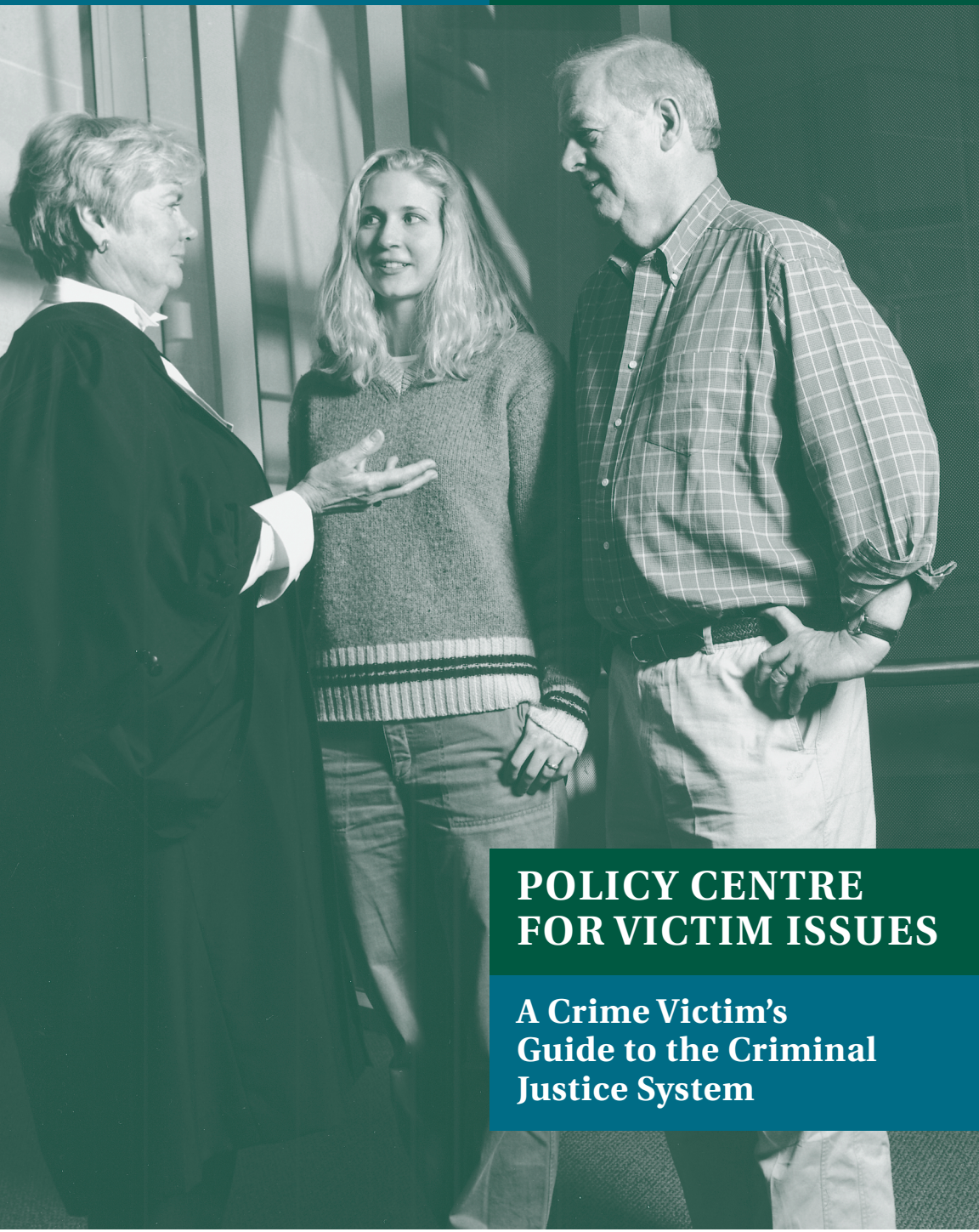

POLICY CENTRE FOR VICTIM ISSUES

A Crime Victim's Guide to the Criminal Justice System

Department of Justice Canada
Ministère de la Justice Canada

Canada

This guide contains general information only and is not intended as legal advice. For legal advice, contact a lawyer.

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A Crime Victim's Guide to the Criminal Justice System

Preface

Victims of crime often have many questions about the criminal justice system and their involvement in it. Victims may want to know the status of an investigation and how the police are handling the matter. Has a suspect been apprehended? Have criminal charges been laid? Will the matter go to court? What is the role of a victim in the process? Will it be necessary to testify in court?

All provinces and territories provide victim services and assistance. The police have information about available community services. This booklet is intended to complement these services by guiding victims and witnesses through the criminal justice system and helping them understand their role in it.

Introduction

Both the federal government and provincial governments have powers related to criminal law. The federal government is responsible for making criminal laws that apply across the country and setting the procedure for criminal courts. This ensures fair and consistent treatment of criminal matters across the country. The provinces and territories are primarily responsible for enforcing the law, prosecuting offences, administering justice in general within their own jurisdictions and providing services and assistance to victims of crime.

Most of our criminal law is found in the Criminal Code. The Criminal Code lists criminal offences and also sets out the procedures for a criminal case, from the laying of the charge to sentencing and appeals. Legislation concerning victims of crime can also be found in other federal, provincial and territorial statutes. Both federal laws and provincial and territorial laws address the concerns of victims of crime such as:

- entitlement to information,
- services and assistance, and
- a victim's role in criminal proceedings.

For example, the federal Minister of Justice is responsible for enacting laws, notably the *Criminal Code*, including provisions intended to help victims of crime participate in the criminal justice system. The Solicitor General of Canada is responsible for administering the *Corrections and Conditional Release Act* (CCRA). This Act includes provisions that specify what information

crime victims can have access to about federally incarcerated offenders. And at the provincial and territorial level, there are various laws governing matters such as victim services and compensation to crime victims.

Investigating Crime and Laying Criminal Charges

The police, the Crown prosecutors (sometimes called Crown attorneys) and the courts play complementary roles in the enforcement of criminal law in Canada. Provincial and territorial governments across the country are responsible for policing in their respective jurisdictions. In addition to municipal police forces, some provinces have a provincial police force. Other provinces hire the Royal Canadian Mounted Police (RCMP).

Police duties include investigating crimes, arresting suspects and charging people with criminal offences. When deciding to charge a person, the police must be satisfied that there are reasonable grounds for believing that the person committed an offence. Where there are reasonable grounds, the police can begin to proceed with criminal charges against the individual.

When the police charge a person they formally accuse that person of committing the offence named in the charge. The charge is called an *information*. A person charged with an offence gets a copy of the information.

Arrest and Release

An arrest is when the police take a person into their custody for the purpose of charging them with a criminal offence. Not every person charged with a criminal offence will be arrested. The police may give a person an *appearance notice* at the scene of the crime, or sometime later they may give the person a *summons* requiring them to appear in court. An accused person who fails to appear in court can be charged with another separate offence. Whether or not the person is arrested, an officer swears an information at the police station charging the person with a crime.

Sometimes accused persons will be kept in jail until they can appear in court. This might occur if, for example, they might not otherwise appear back in court or if they are likely to commit other crimes before their court date, destroy evidence or threaten witnesses.

Bail Hearings

If an accused person is taken into custody and held for court, the Crown prosecutor can oppose that person's release and request a *bail hearing*. A bailhearing is a court hearing where a judge decides whether to release the accused person before the case is dealt with in court.

At the bail hearing, the Crown prosecutor and the defence lawyer summarize the evidence against the accused. The judge will consider such matters as whether the accused person has a criminal record or charges pending, the seriousness of the charge, and whether it involves any violence.

The judge must consider any evidence submitted about the need to ensure the safety or security of any victim or witness to the offence. Generally, the accused will be released unless the judge feels that custody is necessary to ensure that the accused person shows up in court and that the public, including victims and witnesses, is kept safe.

If the judge decides to release the accused person, there may be conditions attached. These might include requiring the accused to report in to authorities; remain in the jurisdiction; not communicate in any way with any victim or witness; and abide by other conditions considered necessary for the safety and security of victims or witnesses. If the alleged offence involved violence, a weapon or criminal harassment, the judge *must* also add a condition prohibiting the accused from possessing any weapons.

If the accused is not released from custody, the judge may still make a *non-communication order* that directs the accused not to communicate, directly or indirectly, with victims, witnesses or any other person identified in the order. A non-communication order covers all types of communications, including letters or phone calls from or on behalf of the offender.

Victims can get information about release conditions imposed on an accused person and may request a copy of the bail order.

Protecting Victims of Crime

Court Proceedings

Court proceedings are generally open to the public. However, the *Criminal Code* gives the judge power to exclude any or all members of the public from all or part of the proceedings when it is in the "interest of public morals, the maintenance of order or the proper administration of justice." The general

public will be excluded from the court only if the judge feels that it is absolutely necessary. The *Criminal Code* does specify some situations where the court may order that the public be excluded to protect the privacy of victims in certain cases, such as those involving sexual offences.

Publication Bans

Even if the public is not excluded from the court, a publication ban can prohibit the public and media from broadcasting the identity of victims and witnesses in all court proceedings, including preliminary inquiries. Publication bans are intended to protect the privacy of victims and witnesses and enable them to participate more fully in the criminal justice system.

Publication bans must be ordered for sexual offence cases to protect the identity of a victim or of a witness who is less than 18 years of age if a victim, witness or Crown prosecutor requests the order. A court may also order a publication ban in other cases after considering several factors, including:

- the right of the accused person to a fair and public hearing;
- whether there is a real and substantial risk that the victim or witness would suffer significant harm if their identity were disclosed;
- the availability of effective alternatives to protect the identity of the victim or witness; and
- the impact of the proposed order on freedom of expression.

A victim or witness must request the publication ban in writing and indicate why this type of protection is required. The court must be satisfied that there is sufficient evidence to support the publication ban. The accused person and any other person that may be affected by the publication ban must be notified of the application, and the judge may hold a hearing to determine whether the ban is necessary for the proper administration of justice.

Protecting Child Witnesses

Judges have a general power to exclude the public from criminal proceedings in very limited but appropriate circumstances. The *Criminal Code* specifically states that such circumstances include safeguarding the interests of witnesses under the age of 18 in sexual offence cases and offences where violence is alleged to have been used, threatened or attempted.

In these cases, the *Criminal Code* also allows witnesses under the age of 18, or those who may have difficulty communicating because of a mental or physical disability, to testify from outside of the courtroom or behind a screen or other device that separates the witness from the accused. Witnesses in these cases who are under the age of 14 or those who have a mental or physical disability

can ask the court to allow a support person, chosen by the witness, to be present and close to the witness when testifying. The judge may order the support person and the witness not to communicate with each other during the witness's testimony.

On occasion, accused persons may choose to represent themselves rather than using a lawyer. When such a case involves a sexual offence or an offence where violence is alleged, the accused cannot personally cross-examine a witness under the age of 18, unless the judge is satisfied that it is necessary. In all other instances, the judge must appoint legal counsel to conduct the cross-examination.

Criminal Harassment, Intimidation, and Threats

It is a criminal offence for anyone to make you reasonably afraid for your safety or the safety of someone you know by:

- repeatedly following you (or someone you know);
- repeatedly visiting, calling or writing;
- watching your home or workplace; or
- threatening you or someone in your family.

It is also a criminal offence for anyone to try to force you to do something or prevent you from doing something by:

- using violence against you, your family or property;
- threatening you or your family with violence or damage to your property;
- following you;
- taking your things; or
- watching your home or place of work.

As well, it is a criminal offence for anyone to threaten to hurt you, damage your property or harm your animals. If someone has been uttering threats, harassing or intimidating you, call the police.

Peace Bonds

If you have a reasonable fear that someone is going to harm you, your children or your property, you can ask the court for a *peace bond*. A peace bond is a court order that requires another person to "keep the peace" for a certain amount of time and obey any other conditions ordered. A peace bond does not cost anything, and you do not need a lawyer to get one.

Depending on where you live, the police or Crown prosecutor can help you through this process. The person you fear will be given a summons to appear in court at a certain time and place. You may be required to attend as well — be

sure to check with the police. A Crown prosecutor will explain the situation to the judge. If the court is satisfied that you have reasonable grounds to fear for your own safety or the safety of your children or property, the judge will ask the person you fear to enter into a peace bond.

If the person you fear agrees to the peace bond, the judge will grant it right away. If the person you fear will not voluntarily agree to enter into a peace bond, the judge will order a hearing, which you must attend. The judge will hear testimony from both sides, to decide whether to order the peace bond. The Crown prosecutor can tell you about support services that are available to assist victims through this process.

A peace bond is not a criminal conviction. As long as the conditions of the peace bond are met, the person will not be charged with a criminal offence. If the conditions are broken, the person can be charged with a criminal offence. If convicted, they can be fined and/or jailed and will then have a criminal record.

A Word about Young Offenders

When young people 12 through 17 years of age commit a criminal offence, they are dealt with under the *Young Offenders Act* (YOA). A special youth court deals with young offender cases. There are restrictions on the publication of a young person's identity and special provisions for dealing with a young person's criminal record. The maximum penalty for most offences tried in youth court is two years, but it is up to 10 years for first degree murder.

Youth court is open to the public. If there is no publication ban, the media may report on the proceedings, but they cannot identify the young person charged or any other young person involved, such as a witness or victim. Adult victims and witnesses can make a written request for a publication ban to protect their privacy, as discussed previously under *Publication Bans*. Adult victims or witnesses must indicate why this type of protection is required, except in cases involving sexual offences, where a publication ban must be ordered where the victim or a witness who is less than 18 years of age so requests.

In certain circumstances, a young person who commits a violent crime may be tried in adult court and would be subject to the sentences available for adult offenders. A young person must have been at least 14 years old when the offence was committed to be considered for transfer. A young person 16 or 17 years old who is charged with murder, attempted murder, manslaughter or aggravated sexual assault will be tried in adult court unless a youth court judge orders otherwise.

On February 19, 2002, Parliament passed a new *Youth Criminal Justice Act* (YCJA) that significantly alters the existing law, including new sentencing options and meaningful consequences for violent or repeat offenders. The new Act recognizes the concerns of victims in its principles and encourages victims' roles in formal and informal community-based measures. The new Act also gives victims the right to access youth records and information on extrajudicial measures. The law should come into force in April 2003 to allow time for provinces and territories to develop programs to support implementation.

Going to Court

The Crown Prosecutor

Crown prosecutors are government lawyers who *prosecute* criminal cases. To prosecute means to lay a charge in a criminal matter and to prepare and conduct legal proceedings against a person charged with a crime. In Canadian law, crimes are dealt with as wrongs against society as a whole, not simply as private matters between two people, even though individuals often suffer injury or damage. A Crown prosecutor is therefore not the victim's lawyer, but is acting on behalf of all members of the public.

The Crown prosecutor prepares the case by researching the law, gathering and reviewing evidence, exhibits, and paperwork for court and interviewing witnesses. The Crown prosecutor decides whether to lay a criminal charge in some jurisdictions, and whether there is enough evidence to justify taking the case to trial. The Crown prosecutor's role is to prove, beyond a reasonable doubt, that the offence was committed by the accused. (The notion of reasonable doubt is discussed in more detail under *Proof of Offences*.)

The Defence Lawyer

A lawyer who represents a person charged with a criminal offence is known as a defence lawyer. It is the defence lawyer's job to ensure that the rights of the accused are protected throughout the criminal process. An accused person has a right to full disclosure of the case against them, including evidence that will be produced in court and statements of witnesses and victims. The defence lawyer may negotiate to have the charges withdrawn or to allow the accused to plead to a lesser charge. They may also explore the possibility of alternative measures for their client.

At trial, a defence lawyer must question the evidence put forward by the prosecution, examine the importance or relevance of that evidence, and explore other possible interpretations. The defence lawyer must do so within the limits of the law and according to ethical standards.

Witnesses

Witnesses and victims have a vital role to play in the administration of justice. Their testimony is a very important part of the Crown's case against the accused. To ensure that all the facts in a case will be presented to the court, witnesses and victims may receive a *subpoena* to testify in court. A subpoena is an order of the court requiring a person to appear in court and give evidence. Witnesses and victims should read the subpoena carefully.

Witnesses must take an oath or solemnly affirm to tell the truth. A witness under the age of 14, or a witness whose mental capacity is challenged, may give evidence if they understand the nature of an oath or solemn affirmation and can communicate the evidence. If they do not understand the nature of the oath or the solemn affirmation, but can communicate the evidence, they may give evidence on promising to tell the truth.

Witnesses and victims may have fears and concerns about testifying in court. They may be worried about giving personal information. They may be unsure about understanding and answering questions well. They may be worried about not remembering important dates, times or other details. These concerns are normal. The Crown prosecutor and provincial victim/witness services can provide witnesses and victims with information about what to expect in court and options that may make testifying easier.

It is important for witnesses and victims to get the assistance they need to enable them to appear and testify in court as required. Anyone, including a witness or victim, who ignores a subpoena can be arrested and brought before a judge. A witness or victim who refuses to testify could be held in contempt of court and face a fine, or jail, or both. Witnesses and victims should ask the Crown prosecutor or victim services personnel to help them prepare to testify in court.

Levels of Court

Although the criminal court system is basically the same across the country, different provinces have different names for the different levels of court. Generally, provincial court systems are divided into provincial courts and superior courts. Provincial courts may include special youth courts. All criminal cases begin in provincial court and most are dealt with there. More serious matters may be heard in a superior court. Superior courts include a trial court or division, as well as an appeal court or division. Criminal matters that will be dealt with at the superior court level must first have a preliminary inquiry in provincial court to ensure there is sufficient evidence to proceed to trial. (Preliminary inquiries are discussed later in this booklet.)

Categories of Criminal Offences

The main categories of criminal offences in Canada are *summary conviction offences* and *indictable offences*. Generally speaking summary offences are less serious and indictable offences are more serious. Many offences can be prosecuted as either a summary offence or an indictable offence — the Crown prosecutor makes this choice. These offences are called *dual offences* or *hybrid offences*. Usually, Crown prosecutors prosecute the less serious of these as summary conviction offences, but they may choose to treat them as more serious indictable offences when, for example, the accused person has a criminal record or where the circumstances make the crime more serious. Court procedures and possible sentences vary according to the category of the criminal offence.

"Summary" means in a quick and simple manner. A judge hears summary conviction cases in provincial court. There is no choice of court, and the accused does not have a right to a jury trial. Usually, a person charged with a summary conviction offence is not arrested, but given a notice to appear in court on a certain date at a certain time. The person must be charged within six months of the offence. After this time a person cannot be charged with a summary conviction offence.

A person charged with a summary conviction offence does not have to appear in court personally. A lawyer or an agent may appear in court on that person's behalf, unless the judge asks the person charged to appear in person. An agent may be a friend or relative or a person hired to appear in court. The maximum punishment is a fine of $2,000 and/or a jail term of up to six months, except for a few specified offences, for example sexual assault where the maximum jail sentence is 18 months.

Very few offences in the *Criminal Code* are only summary conviction offences, although many dual offences end up being prosecuted as summary conviction offences.

Indictable offences are more serious crimes than summary conviction offences. There is more than one procedure for indictable offences. The procedure that applies depends on the seriousness of the offence.

Some indictable offences must be tried by a provincial court judge. No jury trial is available for these offences. A number of very serious indictable offences, such as murder, must be tried by a judge and jury, unless both the Attorney General and the accused person agree to a trial without a jury. For all other indictable offences, the *Criminal Code* gives the accused person a choice, called an *election*. In these cases the accused person can choose to be tried by a provincial court judge, by a superior court judge, or a superior court judge and jury.

A person charged with an indictable offence must personally show up in court. He or she may represent him or herself or be represented by a lawyer. There is no limitation period for indictable offences. This means that the police can charge a person years after the offence occurred.

Proof of Offences

A person charged with a criminal offence is presumed innocent until they plead guilty or are proven guilty in court. The Crown prosecutor must prove that an accused person is guilty. An accused person does not have to show that they are innocent. An accused person is entitled to know the case against them.

If there is a trial, the Crown prosecutor must have evidence to present in court. Evidence is something that tends to prove the elements of the offence. Witnesses give evidence personally by testifying in court. Often there is also physical evidence — that is, an object that the Crown prosecutor shows in court and enters as an exhibit.

At any criminal trial, the Crown prosecutor must prove beyond a *reasonable doubt* that the accused person committed a criminal offence. The judge or the members of the jury cannot find the person guilty if they have a reasonable doubt about the accused person's guilt. Reasonable doubt exists if, after considering all the evidence, they are not completely sure whether the accused person committed the offence. To convict, the judge or jury must believe that the only sensible explanation, considering all the evidence, is that the accused person committed the crime.

Victims of crime may be the only witnesses to the crime, and are always critical witnesses. Their evidence may be crucial in proving the case against the accused. Victims may have concerns about giving evidence in court, and should discuss these concerns with the Crown prosecutor. A witness in any proceeding who does not understand or speak the language in which the proceedings are conducted or who is deaf has the right to the assistance of an interpreter.

Provincial victim/witness services can also provide assistance to witnesses who may have difficulty participating in the court process because of language difficulties, or physical, mental or age-related disabilities.

Answering the Charge

In court, the accused person, sometimes called the *defendant*, is told what offence he or she is accused of and enters a plea of either guilty or not guilty if the matter is to be heard in provincial court. An accused person who has an election, and who chooses to have a preliminary inquiry and be tried by a judge alone or a judge and jury, does not make a plea until after the preliminary inquiry.

If the accused pleads guilty, a trial is not necessary and the judge will sentence the defendant either immediately or at a later date. (Sentencing is discussed more fully later in this booklet.)

If the accused person pleads not guilty, the judge will set a trial date and, where applicable, set a date for a preliminary inquiry.

Going to Trial

Preliminary Inquiry

A preliminary inquiry is a hearing to determine whether there is enough evidence to justify sending the case to trial.

At the preliminary inquiry, the Crown prosecutor presents critical elements of the evidence against the accused. Witnesses may be called, and victims may have to give evidence at this time.

If the judge finds that there is not enough evidence to send the case to trial, he or she will dismiss the charge. If the judge finds that there is enough evidence to justify a trial, the judge commits the accused person to trial and, if the accused pleads not guilty, sets a trial date.

Trial

At trial, the Crown prosecutor and the defence lawyer call witnesses and present evidence and arguments to support their case. The Crown prosecutor goes first; the defence follows. Even if there has been a preliminary inquiry, witnesses still need to testify at trial and may be cross-examined on their testimony. Cross-examination is a way to test the truth of something a witness has testified about.

An accused person has a right to remain silent and does not have to give evidence at trial. If an accused person chooses to give evidence, they may be cross-examined and must answer questions.

After all witnesses have been called, both the Crown prosecutor and the defence lawyer present their closing arguments. If the Crown prosecutor is able to prove the case against the accused person beyond a reasonable doubt, the result will be a finding of guilty. If not, the accused person will be acquitted, or found not guilty.

Sentencing

If an accused person is found not guilty, they are acquitted of the charge and are free to go. If an accused person pleads guilty or is found guilty at trial, the judge must choose from a range of sentences set by law and determine an appropriate sentence.

Under the Criminal Code, the purpose of the sentence is to contribute to respect for the law and the maintenance of a just, peaceful and safe society. A sentence for a criminal offence should accomplish one or more of the following objectives:

- denounce the criminal conduct
- deter the offender and others
- separate offenders from society when necessary
- assist in rehabilitating the offender
- provide reparation to the victim and the community
- give a sense of responsibility to the offender

Victim Impact Statements

A victim impact statement is a written statement that describes the harm or loss suffered by the victim and the effect of the crime on the victim. The *Criminal Code* requires the court to consider a victim impact statement, if there is one, at the time of sentencing an offender. A person who has suffered harm or physical or emotional loss as a result of the offence can prepare a victim impact statement, as can survivors of a deceased victim. Provincial victims' assistance programs, court-based victim/witness programs and community agencies can help victims prepare a statement.

The forms and procedures for victim impact statements are determined by each province and territory, and vary slightly across the country. Generally, the police will give the victim a form to complete or will refer the victim to a victim services agency that will provide information about victim impact statements in that area.

Offenders will be provided with a copy of the statement, and the Crown prosecutor and the defence lawyer may question the victim about it. The Crown prosecutor and victim services personnel can provide assistance and information to victims throughout this process.

Range of Sentences

Generally both the Crown and defence lawyers recommend a sentence to the judge. The judge may also ask a probation officer to prepare a pre-sentence report before passing sentence. The report can provide information that may help the judge determine an appropriate sentence.

In some communities the judge conducts a sentencing circle. The sentencing circle draws members of the community together to discuss possible sentences that may help to make the defendant accountable to the community.

The judge will consider the circumstances surrounding the crime, the defendant's criminal record (if any) and personal history, and the impact of the crime on the victim. The sentence should be proportionate to the offender's degree of responsibility. It should also be based on sentences for similar crimes and circumstances across the country.

The *Criminal Code* specifies aggravating factors a judge must consider in determining an appropriate sentence. If the offender abused or took advantage of a position of trust or authority in committing the crime, for instance, the sentence should be harsher. If the crime involved racial hatred or bias, the sentence may also be harsher.

The *Criminal Code* sets out the maximum sentence that the judge can give for each offence, and for some offences the minimum as well. Sentences for indictable offences range from short sentences to life imprisonment. The maximum sentence is for the worst offender who has committed the worst type of crime.

Sentences can vary widely. There are many types of sentences or combinations of penalties that a judge can choose from, such as the following:

- **Absolute or Conditional Discharge**
  The judge can "discharge" the accused of an offence, even after a finding of guilty, and no conviction will be registered. A discharge is available only if the offence carries no minimum penalty and has a maximum penalty of less than 14 years' imprisonment, is in the best interests of the offender, and is not contrary to the public interest. A judge has the option of imposing a conditional discharge, with specific conditions to address the accused's conduct, or an absolute discharge, without any conditions at all. A conditional discharge requires the accused to enter into a probation order for a specified period of time. The Crown prosecutor may apply to have the discharge revoked if the offender does not comply with the conditions.

- **Suspended Sentence and Probation**
  The judge may choose to put off or suspend passing a sentence and release the offender on probation for a specified period of time. The judge may also attach another disposition, such as a fine, conditional discharge or imprisonment, to the probation order. A person on probation, with a suspended sentence remains out of custody but is under supervision from a probation officer and must follow any conditions included in the probation order. The judge is given wide discretion as to what the offender can or cannot do under a probation order. For example, the order will contain terms to follow, such as reporting to a probation officer, performing community service, or providing "restitution" to the victim. If the offender does not keep

the terms of the order, they can be charged with breaching probation and may face being sentenced for the original offence as well. A probation order may last up to three years. Suspended sentences are available for many criminal offences if no minimum punishment is required by law.

• Fine
A fine is a set amount of money that the offender pays to the court as penalty for committing a criminal offence. A fine may be combined with another penalty, such as imprisonment or probation. Failing to pay the fine may lead to a civil judgment against the accused or a jail term. The judge cannot impose a fine, though, unless he or she is satisfied that the accused will be able to pay it.

• Conditional Sentence
Where a person is convicted of an offence and the court imposes a sentence of less than two years' imprisonment, the court may order that the sentence be served in the community, with certain conditions, instead of jail. Along with supervision, these conditions govern the offender in the community. The court must be confident that serving the sentence in the community will not endanger the safety of the public. The offender must live at a specific location, usually their own home, under a detailed order. The terms of conditional orders tend to be lengthy and restrictive. However, if the conditions are not met, the offender may face harsher consequences and could serve the rest of their sentence in jail.

• Imprisonment
Imprisonment is the most serious sentence under our law because it deprives a person of freedom. A judge may sentence a person convicted of a serious offence, or who is a repeat offender, to jail. An offender who is sentenced to less than two years serves the sentence in a provincial correctional institution; this may be combined with probation. An offender sentenced to two years or more usually serves the sentence in a federal penitentiary.

• Intermittent Sentence
Where the court imposes a sentence of 90 days or less, the court may order that the sentence be served intermittently, that is, in blocks of time, such as on weekends, which permits the offender to be released into the community for a specific purpose such as going to work or school or caring for a child or for health concerns. An intermittent sentence must be accompanied by a probation order, which governs the offender's conduct while he or she is not in jail. The probation order will contain terms for the accused to follow, such as reporting to a probation officer, performing community service or abstaining from drugs or alcohol. If the offender breaches probation, they can be charged and may face being imprisoned full-time.

• Indeterminate Sentence for Dangerous Offenders

Following a special application and hearing, a person who commits a violent offence may be declared to be a dangerous offender and sentenced to an *indeterminate* period of detention. Indeterminate means that the judge does not specify when the offender's sentence will end. A person declared a dangerous offender is kept in jail with no fixed date for release. The National Parole Board reviews the case after seven years and every two years after that.

• Restitution Order

Restitution orders are orders requiring an offender to pay money directly to a victim to help cover the victim's losses or damage to property caused by the crime. Restitution is intended to make up at least partially for harm done to a victim or community, and to promote a sense of responsibility in offenders and an acknowledgment of the harm done to victims and the community.

• Victim Surcharge

Upon conviction, a *victim surcharge* is added to any sentence. This surcharge is paid into provincial and territorial assistance funds to develop and provide programs, services and assistance to victims of crime. The amount of the victim surcharge is 15% of any fine that is imposed on an offender or, if no fine is imposed, $50 where the offence committed was a summary conviction offence or $100 for an indictable offence.

This amount may be increased in appropriate circumstances if the judge is satisfied that the offender has the ability to pay the increased amount. The judge also has the discretion to waive the surcharge if the offender satisfies the court that paying it would cause undue hardship to the offender or his or her family.

Mentally Disordered Accused

Mental capacity is an important issue in the criminal trial process. An accused person must be able to understand the purpose and consequences of the criminal proceedings and be able to instruct counsel. If there is doubt about the accused person's ability to do so, the issue of fitness to stand trial is raised. In other cases, the accused may be fit to stand trial, but may ask the court to find that they are not criminally responsible on account of a mental disorder.

When these issues arise, the court will order a psychiatric assessment of the accused. A separate hearing will be held to determine whether the accused is fit to stand trial or whether the accused was suffering from a mental disorder at the time of the offence so they could not be criminally responsible.

If the accused is declared unfit to stand trial the matter will not proceed to trial at that time. In most cases the court may order that the accused be placed in a psychiatric institution or released under supervision in the community. Placement in a treatment program or institution can last for an indefinite period of time, but the individual will be reviewed annually and the Crown must bring the case to the attention of the court every two years. If the individual becomes fit to stand trial, they may be put on trial at that time.

If the accused was unable, because of a mental disorder, to understand the nature and consequences of their actions or that their actions were wrong, they will not be held criminally responsible for the offence. This special verdict acknowledges that the accused committed the offence, but finds the accused suffered from a mental disorder that made them incapable of appreciating the nature and quality of their actions or that their actions were wrong.

When a verdict of not criminally responsible on account of mental disorder or unfit to stand trial is made, the court or a review board may hold a disposition hearing. The court or the review board must take into account the need to protect the public from dangerous persons, the mental condition of the accused and their needs, and the reintegration of the accused into society.

If the court or review board finds that the accused is not a significant threat to the safety of the public, the accused may receive an absolute discharge. Otherwise, the court or review board can discharge the accused subject to appropriate conditions or direct that the accused be detained in custody in a hospital, subject to appropriate conditions. Victims may submit a written statement describing the harm or loss suffered as a result of the offence. This information may be considered in determining appropriate conditions.

The law presumes that everyone is fit to stand trial, and every person is presumed not to suffer from a mental disorder that would exempt them from criminal responsibility. This means that either the defence or prosecution must raise the issue and prove that the accused is unfit to stand trial or not criminally responsible.

Appeals

Appeal courts exist to make sure that courts do not make mistakes applying the law. Most decisions at one level of court can be appealed to a higher court. In some cases the accused person or the Crown prosecutor must have a judge's permission to appeal. This is called *leave to appeal*.

Crown prosecutors may appeal an acquittal or, in the case of a conviction, ask an appeal court to increase the offender's sentence. An offender may appeal a conviction or ask an appeal court to decrease their sentence. Appeal rights and the procedure on appeal vary depending on how the offence was tried.

The Crown prosecutor's right to appeal a conviction is limited to "questions of law," such as the admissibility of evidence or the interpretation of the *Criminal Code*. In most appeals, the appeal court does not listen to the evidence again. Witnesses are rarely required to testify again. The appeal court studies a transcript from the trial and listens to arguments from both Crown and defence lawyers. Appeal courts have the power to decide whether the lower court correctly interpreted the law or handed down a fair sentence.

Most summary conviction appeals go to the next level of court, known by different names in different provinces and territories. Appeals of indictable offences go to a court of appeal. The Supreme Court of Canada hears appeals from provincial appeal courts when "leave" is granted or when the *Criminal Code* gives a right of appeal.

After Sentencing

Corrections

The *Correction and Conditional Release Act* (CCRA) sets out in law the principle that the protection of the public is the most important consideration in all discretionary decisions relating to the conditional release of offenders from jail. The CCRA sets out the framework for the National Parole Board (NPB) and the Correctional Service of Canada (CSC).

The CSC is responsible for administering sentences of two years or more and supervising offenders under conditional release in the community. Provinces and territories are responsible for administering probationary sentences and sentences of less than two years. The provinces and territories also administer sentences under the *Young Offenders Act*.

Under the CCRA, victims have the right to information about offenders serving sentences of two years or more, including when the offender's sentence began and dates for any review considering conditional release. Victims will not automatically receive information about an offender, but can make a written request to obtain certain information or to receive information regularly. Victims can get information about an offender's name, the offence they were convicted for, the starting date and length of their sentence, and eligibility and review dates for different forms of conditional release. Additional information may be made available on request after the NPB or CSC balances the victim's interest against the offender's right to privacy. Additional information may

include whether the offender is still in custody, the location where the offender is incarcerated, release dates, conditions imposed on release, and the offender's destination on release.

Victims may also provide a victim impact statement and any other additional information to the NPB and CSC that will be considered if an offender applies for early release or in relation to what programs might help an offender's rehabilitation. Offenders may be ordered not to contact victims or their families.

Victims wishing to obtain information about an offender may write to the regional offices of the NPB or CSC, listed under the *For More Information* section at the end of this booklet. They may also use the *Information Request for Victims* form, available from the NPB Web site, also listed under the *For More Information* section of this booklet.

Parole

Parole allows some offenders to serve a portion of their sentence under supervision in the community. Parole is based on the belief that the best way to protect society is to help offenders gradually re-integrate into the community as law-abiding citizens under supervision and with conditions. Parole is not automatic — parole board members must decide whether to release an offender.

The NPB deals with offenders whether their sentence is for less than two years or for two years or more. However, in Quebec, Ontario and British Columbia, provincial parole boards deal with offenders serving sentences of less than two years. An offender serving a sentence of less than two years must apply for parole. An offender serving a sentence of two years or longer does not need to apply. Their cases will be reviewed when their parole eligibility date comes up.

In most cases parole boards hold hearings with the offender to consider whether leaving prison on parole will help them to rehabilitate. However, the law requires the NPB to direct the release of offenders serving their first federal penitentiary term for a non-violent offence without holding a hearing if it considers it unlikely that the person will commit a violent offence before the end of their sentence.

If parole is granted, the offender is released from jail and must comply with certain conditions and report to a parole officer regularly until their entire sentence is served. Parole is not final — it can be revoked if the offender fails to comply with the conditions imposed on release or if the level of risk they pose becomes unacceptable.

Victims can provide information to the NPB that may help them evaluate the risk posed by the offender, including a description of the harm or loss that they have suffered as a result of the offence. The victim may choose to forward a

copy of their victim impact statement or any new or additional information they consider relevant for the NPB and CSC to consider.

Both the NPB and the CSC are required by law to share information that will be used in making a decision with the offender, including information provided by a victim. Personal information related to the victim, such as address or phone number, will be kept confidential.

Since 1992, victims have been attending NPB hearings as observers. It has recently become possible for victims to read a written statement, in person or via audiotape or videotape, at a NPB hearing. Applications to be an observer and/or to read a statement should be submitted to the NPB as far in advance of a hearing as possible.

Statutory Release

It is important to distinguish between parole and statutory release. While parole is a discretionary type of conditional release where NPB members assess the risk an offender poses to the community, most federal inmates are entitled under the law (by statute) to serve the last one-third of their sentence out of jail if full parole has not already been granted. Offenders serving a life or indeterminate sentence may only be released on parole.

The CSC does, however, have the authority to refer statutory release cases to the NPB if, in their opinion, there are reasonable grounds to believe that the offender is likely to commit an offence causing death or serious harm to another person, a sexual offence involving a child, or a serious drug offence before the end of their sentence. These offenders may be kept in prison until the end of their sentence.

Statutory release can be revoked and the offender returned to jail if they fail to comply with conditions imposed on their release.

Life Sentences and Section 745.6 of the *Criminal Code*

In Canada, murder is either first or second degree. Persons convicted of either one must be sentenced to imprisonment for life. Generally, persons convicted of first-degree murder are not eligible for parole until they have served at least 25 years of their sentence. Persons convicted of second degree murder are not eligible for parole until they have served between 10 and 25 years, as determined by the courts. It is important to note that convicted persons who were under 18 at the time of the offence have different periods of ineligibility.

When Parliament abolished capital punishment and introduced mandatory life sentences for murder, it was felt that if rehabilitation was to be successful, persons sentenced to life imprisonment needed some hope of being released

during their lifetime. As a result, section 745.6 of the *Criminal Code*, the so-called faint-hope clause, was introduced. It makes it possible for convicted murderers to apply for a reduction in the number of years they must serve in prison before being able to apply for parole. This application can be made after they have served 15 years of their sentence. All applications are screened so that only those having a reasonable prospect of success will actually receive a hearing. Further, persons who have committed more than one murder after January 1997 are ineligible for a section 745.6 hearing — they do not have any right to apply for a hearing to reduce the time they must serve before applying for parole.

If a hearing is ordered, a judge will select a jury from the community to determine whether to reduce the time the applicant must serve before being eligible for parole. The jury will consider such things as the applicant's character, the applicant's conduct while serving the sentence, the nature of the offence, any information provided by a victim, such as a surviving family member, and any other relevant information.

The jury may consider any information provided by a victim at the time the offender was originally sentenced for the offence and any additional information provided at the time of the section 745.6 hearing. Victims can provide this information orally or in writing, or in any other manner that the judge considers appropriate.

A unanimous decision is required in order to reduce an offender's parole ineligibility period. If the jury cannot reach a unanimous decision, the application must be denied. If the application is denied, the jury decides when the applicant may apply again. The applicant must wait at least two years and possibly longer if the jury feels a longer period is more appropriate.

If an offender's application is successful, they must still apply for parole to the NPB. A successful section 745.6 application does not mean that parole will be granted, only that the offender may apply for parole at an earlier date set by the jury. In deciding whether to release an offender, the parole board must consider whether the release would present an undue risk to society and whether the release would assist in rehabilitating the offender. Parole provides a means to release an offender back into the community in a controlled fashion where the offender can be supervised and receive guidance and support through counselling, training and job placement.

While a life sentence does not necessarily mean life imprisonment, it does mean that the sentence continues for the rest of the person's life. If the person is released on parole, the parole period never ends during that person's life. The offender must still follow the terms and conditions of release imposed by the parole board and can be sent back to prison if those conditions are broken.

The *Canadian Statement of Basic Principles of Justice For Victims of Crime*

In 1988, the federal, provincial and territorial Ministers of Justice endorsed the *Canadian Statement of Basic Principles of Justice for Victims of Crime*. This document details principles to guide legislators and service providers in promoting access to justice, fair treatment, and provision of assistance for victims of crime. The principles recognize that justice for victims of crime is a shared responsibility. The statement provides:

In recognition of the United Nations Declaration of Basic Principles of Justice for Victims of Crime, Federal and Provincial Ministers Responsible for Criminal Justice agree that the following principles should guide Canadian society in promoting access to justice, fair treatment and provision of assistance for victims of crime:

- Victims should be treated with courtesy, compassion and with respect for their dignity and privacy and should suffer the minimum of necessary inconvenience from their involvement with the criminal justice system.
- Victims should receive, through formal and informal procedures, prompt and fair redress for the harm that they have suffered.
- Information regarding remedies and the mechanisms to obtain them should be made available to victims.
- Information should be made available to victims about their participation in criminal proceedings and the scheduling, progress and ultimate disposition of the proceedings.
- Where appropriate, the views and concerns of victims should be ascertained and assistance provided throughout the criminal process.
- Where the personal interests of the victim are affected, the views or concerns of the victim should be brought to the attention of the court, where appropriate and consistent with criminal law and procedure.
- Measures should be taken when necessary to ensure the safety of victims and their families and to protect them from intimidation and retaliation.
- Enhanced training should be made available to sensitize criminal justice personnel to the needs and concerns of victims and guidelines developed, where appropriate, for this purpose.
- Victims should be informed of the availability of health and social services and other relevant assistance so that they might continue to receive the necessary medical, psychological and social assistance through existing programs and services.
- Victims should report the crime and cooperate with the law enforcement authorities.

For More Information

Provincial and Territorial Victim Services

The federal and the provincial governments fund programs for victims of crime. Some help the victim learn about and take part in the trial process. Other programs may include victim-offender mediation, crisis-intervention services, training and education for justice workers and the general public on victims' issues, facilities for victims and witnesses such as private waiting rooms in court houses, and financial compensation to victims.

For more information about victim services in your area, contact your local police force, check the government blue pages for "victim services" or visit the Victims of Crime section on the Department of Justice Web site at canada.justice.gc.ca. The Web site also offers background information and links to legislation and initiatives for crime victims, as well as a Frequently Asked Questions (FAQ) section.

Correctional Service of Canada

The Correctional Service of Canada (CSC) is the federal government agency responsible for administering sentences of a term of two years or more. CSC manages institutions of various security levels and supervises offenders under conditional release in the community. CSC programs and services are delivered through five regions. For more information contact the headquarters in your region or visit their Web site at www.csc-scc.gc.ca.

Atlantic Region
1045 Main Street
2nd Floor
Moncton, NB E1C 1H1
Phone: (506) 851-6313
Fax: (506) 851-2418

Ontario Region
440 King Street West
P.O. Box 1174
Kingston, ON K7L 4Y8
Phone: (613) 545-8211
Fax: (613) 545-8684

Pacific Region
32560 Simon Avenue
P.O. Box 4500
Floor 2
Abbotsford, BC V2T 5L7
Phone: (604) 870-2501
Fax: (604) 870-2430

Prairie Region
2313 Hanselman Place
P.O. Box 9223
Saskatoon, SK S7K 3X5
Phone: (306) 975-4850
Fax: (306) 975-4435

Quebec Region
3 Place Laval
Floor 2
Chomedey, City of Laval, QC H7N 1A2
Phone: (450) 967-3333
Fax: (450) 967-3326

The National Parole Board

The National Parole Board (NPB) has exclusive authority to grant, deny, cancel, terminate or revoke day parole and full parole for federal offenders. The Board also makes conditional release decisions for offenders in provinces that do not have their own parole boards. (British Columbia, Ontario and Quebec have their own parole boards with authority to grant releases to offenders serving less than two years in prison.)

The NPB's national office is located in Ottawa, and there are five regional offices: Atlantic Region (Moncton, NB), Quebec Region (Montreal, QC), Ontario Region (Kingston, ON), Prairie Regions (Saskatoon, SK) and Pacific Region (Abbotsford, BC). For more information, contact your regional office or visit their Web site at www.npb-cnlc.gc.ca.

Atlantic Region
National Parole Board
1045 Main Street
1st Floor, Unit 101
Moncton, NB E1C 1H1
Phone: 1-800-265-8644 or 8744
1-888-396-9188
Fax: (506) 851-6926

Ontario Region
National Parole Board
516 O'Connor Drive
Kingston, ON K7P 1N3
Phone: 1-800-518-8817
Fax: (613) 634-3861

Pacific Region
National Parole Board
32315 South Fraser Way, Suite 305
Abbotsford, BC V2T 1W6
Phone: 1-888-999-8828
Fax: (604) 870-2498

Prairies Region
National Parole Board
101 – 22nd Street East, 6th floor
Saskatoon, SK S7K 0E1
Phone: 1-888-616-5277
Fax: (306) 975-5892

Quebec Region
National Parole Board
Guy-Favreau Complex
200 René-Lévesque Blvd West
10th floor, Suite 1001, West Tower
Montreal, QC H2Z 1X4
Phone: 1-877-333-4473
Fax: (514) 283-5484

Glossary of Legal Terms

accused person: a person charged with a criminal offence

acquittal: a finding of not guilty

alternative measures: a process that allows an accused person to take responsibility for his or her actions without having to go to criminal court

appeal: to ask a higher court to change a lower court's decision

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

arrest: where the police take a person into their custody for the purpose of charging them with a criminal offence

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

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

complainant: the victim of an alleged offence

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

contempt of court: to willfully disobey a court order or interfere with the administration of justice

conviction: when a person is found guilty of an offence and receives a sentence other than a discharge

Crown Prosecutor: a government lawyer who conducts criminal cases, sometimes called a Crown Attorney

defence: a denial or answer to a charge against an accused person

defence lawyer: a lawyer who represents an accused person

defendant: an accused person in a criminal case

dual offences: offences that may be prosecuted either summarily or by indictment, at the discretion of the prosecutor; also referred to as "elective" or "hybrid" offences

election: an accused person's choice of trial — that is, by a provincial court judge, by a superior court judge alone or by a superior court judge and a jury

hearing: a proceeding where witnesses are heard and evidence is presented

indictable offence — a more serious offence. The maximum penalties for indictable offences are greater than those for a summary offence. The court procedures are also different.

information: a written accusation against a person charged with a criminal offence

leave to appeal: permission or authorization to appeal

parole: a discretionary type of conditional release that allows an offender to serve some of their sentence out of prison under supervision

preliminary hearing: a hearing by a judge to determine whether there is sufficient evidence to hold an accused person for trial

probation: a sentence that allows an offender to be released into the community under the supervision of a probation officer

promise to appear: a legal document signed by the accused person in which the person promises to appear in court on a named date

prosecute: to lay a charge in a criminal matter and to prepare and conduct legal proceedings against a person accused of a crime

restitution: an order requiring an offender to repay a victim as part of their sentence

sentence: a formal judgment imposing a punishment upon conviction for a criminal offence

subpoena: a court order requiring a witness to appear in court to give testimony

summary conviction offence — an offence where the usual maximum penalty is $2,000 fine or six months in prison, or both.

summons: a legal document ordering an accused person to appear in court

warrant: a court order authorizing the police to arrest a person or to search a place

young offender: a young person at least 12 years of age but under 18 that is charged and convicted of a criminal offence

youth court: the court that deals with criminal charges against young offenders

Notes

A Crime Victim's Guide to the Criminal Justice System
Evaluation Survey

Please fill in the following survey. Your answers will help the Policy Centre for Victim Issues to improve our publications. Your response will be kept in confidence and your name need not be provided. **Please print your answers.**

Why are you using this guide?

- ○ I want to find out more about court procedures.
- ○ I am preparing for an appearance in court.
- ○ I am helping someone else to prepare for an appearance in court.
- ○ I use the Guide in my work.
- ○ Other (please specify): _____

If you indicated that you use the Guide in your work please indicate your profession:

- ○ I work in victim services.
- ○ I am a lawyer.
- ○ I am a police officer.
- ○ I am a social worker.
- ○ Other (please specify): _____

Please indicate how you received this Guide:

- ○ From the federal government.
- ○ From the provincial government.
- ○ From victim services.
- ○ From police services.
- ○ From a lawyer.
- ○ From the courthouse.
- ○ From a community program.
- ○ At a community day/fair/exhibition.
- ○ At a conference.
- ○ From the Internet.
- ○ Other (please specify): _____

Please rate the usefulness of the following sections of the Guide where "1" is very useful and "5" is not very useful.

Preface/Introduction	○ 1	○ 2	○ 3	○ 4	○ 5
Investigating Crime and Laying Criminal Charges	○ 1	○ 2	○ 3	○ 4	○ 5
Arrest and Release	○ 1	○ 2	○ 3	○ 4	○ 5
Protecting Victims of Crime	○ 1	○ 2	○ 3	○ 4	○ 5
A Word about Young Offenders	○ 1	○ 2	○ 3	○ 4	○ 5
Going to Court	○ 1	○ 2	○ 3	○ 4	○ 5
Going to Trial	○ 1	○ 2	○ 3	○ 4	○ 5
Mentally Disordered Accused	○ 1	○ 2	○ 3	○ 4	○ 5
Appeals	○ 1	○ 2	○ 3	○ 4	○ 5
Post Sentence	○ 1	○ 2	○ 3	○ 4	○ 5
Life Sentences and Section 745.6 of the *Criminal Code*	○ 1	○ 2	○ 3	○ 4	○ 5
The *Canadian Statement of Basic Principles of Justice for Victims of Crime*	○ 1	○ 2	○ 3	○ 4	○ 5
For More Information	○ 1	○ 2	○ 3	○ 4	○ 5
Glossary of Legal Terms	○ 1	○ 2	○ 3	○ 4	○ 5

How easy was the Guide to understand?
Please use the scale where "1" is very easy to understand and "5" is very difficult to understand.

○ 1 ○ 2 ○ 3 ○ 4 ○ 5

Did you receive any help in understanding the guide: ○ YES ○ NO

If your answer was "yes," who helped you?

○ A victim services worker.
○ A police officer.
○ A lawyer.
○ Courthouse personnel.
○ A social worker.
○ A friend/relative/neighbour.
○ Other (please specify): _____

How satisfied are you with the Guide?
Please use the scale from "1" to "5" where "1" is very satisfied and "5" is not at all satisfied.

○ 1 ○ 2 ○ 3 ○ 4 ○ 5

How could this Guide be improved?

_____

_____

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_____

_____

Have you seen other publications or the Web site created by the federal Department of Justice, Policy Centre for Victim Issues? ○ YES ○ NO

If yes, which did you see?

○ The Canadian Statement of Basic Principles of Justice for Victims of Crime
○ Policy Centre for Victim Issues Bookmark
○ Fact Sheet (Name of fact sheet): _____
○ Victims Matter Pamphlet
○ Web site

Do you have any other comments?

_____

_____

_____

_____

_____

_____

Thank you for taking the time to complete this survey. Please return it to:

The Policy Centre for Victim Issues
Place deVille, Suite 870, 8th Floor
Ottawa, ON K1A 0H8