



CRIMINAL JUSTICE BRANCH, MINISTRY OF JUSTICE
CROWN COUNSEL POLICY MANUAL

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SUBJECT: Vulnerable Victims and Witnesses - Adult		CROSS-REFERENCE: CHA 1 DIR 1

Principle

The Criminal Justice Branch recognizes that serious cases with adult vulnerable victims and witnesses often present unique and complex issues and that such cases should be identified, and the issues which arise addressed, at the earliest stages of the prosecution. This is necessary to ensure that in such cases, all victims and witnesses, regardless of vulnerabilities, have an equal opportunity to participate in the criminal justice process.

For the purpose of this policy, serious cases are those such as the “serious personal injury” offences set out in section 752 of the *Criminal Code*, and similar significant matters involving risk or harm whether physical, sexual, psychological, or exploitive in nature.

In this policy, individuals are considered adult vulnerable victims and witnesses, where:

- taking into account their unique personal characteristics or circumstances; and,
- the significance of their role in the matter,

there is a reasonable likelihood that the individual’s effective participation in the justice system will be significantly diminished, or eliminated, if accommodations or supports are not made available.

Relevant personal characteristics or circumstances of victims and witnesses impacting their effective participation *may* include, depending on the nature of the offence, one or more of the following factors:

- Advanced age
- Sexual orientation or gender identity
- Power of offender over victim/witness
- Mental health/disability
- Physical health/disability
- Substance dependency
- Ethnic, religious, or cultural perspectives

- Precarious legal status (e.g. immigration difficulties, outstanding court orders)
- Significant barrier(s) in communicating
- Significant safety concerns
- Social isolation, extreme poverty or homelessness
- Significant history of abuse

It is also recognized that an Aboriginal victim or witness may be uniquely vulnerable due to the historical treatment and cultural differences of Aboriginal peoples or by current circumstances related to the Aboriginal heritage of the victim or witness.

In addition to the above, individuals engaged in prostitution may be particularly vulnerable due to a climate of violence, exploitation and degradation.

Process

In serious cases, to assist vulnerable victims and witnesses to effectively participate in the criminal justice process, Crown Counsel should:

- Make reasonable efforts to proactively establish and maintain communication with vulnerable victims and witnesses from the earliest stages of the prosecution, through to its conclusion, and to provide them with timely information about the status of the prosecution;
- Where practicable, work with the police, sheriffs, probation officers or victim services throughout the prosecution process to inform vulnerable victims and witnesses of any supports available within the criminal justice system;
- Ensure that any appropriate applications are made to the Court for publication bans, testimonial accommodations or protective orders; and
- Where appropriate, take all reasonable steps to expedite the process, including initiating early resolution discussions or making requests for an early trial date.

Administrative Crown Counsel should ensure that the procedures are in place to:

- identify and assign such cases early;
- wherever practicable, assign Crown Counsel who have received relevant specialized training;
- ensure every effort is made to have these files handled by the same Crown Counsel from beginning to end (facilitate Crown file ownership); and
- provide sufficient trial preparation time to account for the additional complexity of these files.

Early Considerations

Crown Counsel should consider applying, at the first instance, for an order under sections 486.4 or 486.5 of the *Criminal Code*, directing that the identity of a victim or a witness and any information that could disclose the identity of the victim or witness shall not be published in any document or broadcast in any way.

In rare cases, where appropriate, Crown Counsel may also consider applying for an order under section 486.31 of the *Criminal Code*, directing that any information that could identify a witness not be disclosed in the course of the proceedings or an order under 486.7 of the *Criminal Code*, to protect the security of a witness. Prior to making such an application, Crown Counsel should consult with their Regional Crown Counsel, Director or their respective deputy.

Where a vulnerable victim or witness may have difficulty communicating evidence because of a mental or physical disability, Crown Counsel should attempt to determine in the early stages of the prosecution whether presentation of evidence by videotape is appropriate, as provided by section 715.2 of the *Criminal Code* and, if necessary, request the police to obtain a video statement. Under this section, a recorded videotaped statement of a vulnerable victim or witness may be admitted in evidence where the victim or witness testifies and adopts the contents of the video recording.

Where a procedural or investigative barrier arises which may adversely affect the prosecution, Crown Counsel should work with the police and victim services and, if necessary, senior police management and Administrative Crown Counsel to address such barriers in a timely manner. This may include barriers based on:

- a reluctant or hostile vulnerable victim or witness
- difficulty locating or staying in communication with a vulnerable victim or witness
- ability to obtain transportation to the courthouse or Crown Counsel office
- arranging for translation of file materials
- delay in obtaining the required evidence.

Where Crown Counsel determines that a vulnerable victim or witness has social support or health issues that may adversely affect their ability to participate in the court process, Crown Counsel should ask the police and victim services to determine whether there are social supports or services that may address the issue.

In cases where there is a significant danger of harm, either psychological or physical, to a vulnerable victim or witness, and it is reasonable to believe that they would be adversely affected if required to participate in multiple judicial proceedings, Crown Counsel should consider the applicability of the Direct Indictment (DIR 1) policy.

Charge Assessment

Charge assessment decisions should be made in a timely manner, mindful that delay may particularly increase the emotional stress of vulnerable victims or witnesses and may weaken their resolve or ability to effectively participate in the criminal justice process.

Crown Counsel should also take into account that, in assessing the public interest, evidence that the victim is a vulnerable person is a factor in favour of prosecution under the Charge Assessment Guidelines policy (CHA 1).

Where there is a decision not to charge the accused, Crown Counsel should consider whether it is appropriate to seek a recognizance under sections 810, 810.1 or 810.2 of the *Criminal Code*, which can include supervision and counselling conditions administered by the Corrections Branch.

Bail

A warrant should be sought whenever it is necessary to protect a vulnerable victim or witness by seeking a detention order or conditions of release. Where it is likely an accused will be released, Crown Counsel should consider which terms would assist the vulnerable victim / witness with safety planning, and may consult police, victims services, or corrections / probation personnel in formulating such terms. Where the accused is detained, Crown Counsel should consider seeking a “no contact” order regarding the victim, witness or other appropriate person pursuant to section 515(12) or 516(2) of the *Criminal Code*.

Reluctant Witnesses

Crown Counsel should recognize that vulnerable victims and witnesses may be reluctant to participate in the criminal justice process. They may minimize or seek to withdraw their evidence. A variety of factors may affect their willingness to co-operate. Crown Counsel should attempt to ascertain the reasons for their reluctance to testify and develop strategies to address the issues. Crown Counsel should keep in mind that vulnerable victims and witnesses may be particularly subject to pressure, intimidation, and interference. If a witness has been subjected to threats or interference, Crown Counsel should refer the matter to the police for investigation.

In light of the above, Crown Counsel should consider whether it is both necessary and appropriate that the vulnerable victims or witnesses be personally served with a subpoena to testify. However, in such cases, prior to applying for a material witness warrant, Crown Counsel should consult with Administrative Crown Counsel. In addition, Crown Counsel should consider whether the evidentiary and public interest tests (CHA 1) can be met with other available evidence without the witness’ testimony.

Preparation for Hearing

Where practicable, Crown Counsel should inform the witness about the accommodations that may be available under sections 486 to 486.31 and 486.7 of the *Criminal Code*. Where appropriate, Crown Counsel should make an application for an order, taking into account all relevant factors, including whether the witness requests any of the accommodations.

In specific circumstances, the court can make an order:

- for the exclusion of the public or the witness be out of public view (section 486(1))
- for a support person (section 486.1)
- for the witness to give testimony from a different room or behind a screen or other device (section 486.2)

- for cross examination by appointed counsel (where the accused is unrepresented) (section 486.3)
- for the non-disclosure of a witness' identity (section 486.31)
- that the court determines is necessary to protect the security of a witness and is otherwise in the interest of the proper administration of justice (s. 486.7)

Sections 13 and 19 of the *Canadian Victims Bill of Rights* provides that every victim has the right to request testimonial aids when appearing as a witness in proceedings relating to the offence, through the mechanisms provided by law.

Corroborative Evidence

Crown Counsel should make reasonable efforts to ensure all necessary corroborative evidence is presented at trial.

Sentencing

Victims should be given the opportunity to provide victim impact information.

Under section 4 of the *Victims of Crime Act*, Crown Counsel must ensure that every victim is given a reasonable opportunity to have admissible evidence concerning the impact of the offence, as perceived by the victim, presented to the court before sentence is imposed. In addition, sections 15 and 19 of the *Canadian Victims Bill of Rights* provide that every victim has the right to present a victim impact statement to the appropriate authorities in the criminal justice system and to have it considered, through the mechanisms provided by law.

Any aggravating factors, including those enumerated in section 718.2 of the *Criminal Code*, should be brought to the attention of the court.

Where probation or a conditional sentence order is appropriate, Crown Counsel should seek conditions that will protect the vulnerable victim and witnesses. These may include a “no contact” and reporting requirements, as well as successful completion of an appropriate treatment program.

Where a custodial sentence is appropriate, Crown Counsel should consider seeking a non-communication order prohibiting the offender from communicating with a vulnerable victim or witness during the custodial period of the sentence under section 743.21.

Crown Counsel should consider whether a restitution order is appropriate under section 738 or 739 of the *Criminal Code* and take reasonable steps to provide victims with an opportunity to indicate whether they are seeking restitution for their losses and damages.