Policy:		
Victims of Crime		
Policy Code:	Effective Date:	Cross-references:
VIC 1	December 18, 2023	ALT 1 CHI 1 INF 1 IPV 1 RES 1 SEX 1 VUL 1 YOU 1.4

Providing information and assistance to victims of crime is an important function of justice system personnel. Crown Counsel and professional staff should ensure that victims are made aware of available community, police-based, and Indigenous victim assistance programs. If requested, Crown Counsel should make victims aware of available testimonial accommodations and information about their case (*Victims of Crime Act* (VOCA) and the federal *Canadian Victims Bill of Rights*).

This policy provides guidance to Crown Counsel regarding their obligation to provide information to victims. Crown Counsel should also consider the guidance relating to victims in other BC Prosecution Service (BCPS) policies, including

- *Child Victims and Witnesses* (CHI 1)
- *Intimate Partner Violence* (IPV 1)
- *Resolution Discussions* (RES 1)
- *Sexual Offences – Adult Victims* (SEX 1)
- *Vulnerable Victims and Witnesses* (VUL 1)

Providing information to victims and victim service programs

Victim is defined in *Criminal Code* section 2, and section 2.2 identifies when another person may act on a victim's behalf.

VOCA requires that police provide a victim general information concerning the structure and operations of the justice system, victim services, the *Freedom of Information and*

Protection of Privacy Act, the *Criminal Injury Compensation Act*, and VOCA. If Crown Counsel learns that a victim has not received this information from police, Crown Counsel or professional staff should provide them the information.

If requested by the victim, subject to the *Youth Criminal Justice Act*, and insofar as it will not prejudice an investigation or prosecution, Crown Counsel should advise the victim of:

- the disposition of any charges against the accused
- any upcoming court appearances that are likely to affect the final disposition, sentence, or release status of the accused
- the outcome of each appearance likely to affect the final disposition, sentence, or release status of the accused

For most serious offences, the court is required to ask Crown Counsel if the victim has been informed of a plea arrangement (section 606(4.1) and (4.2)).

If the accused is released and there are victim safety concerns, Crown Counsel should take reasonable steps to ensure that the victim is notified of the conditions of release, and of any future changes to those conditions.

Crown Counsel may provide information about the victim (e.g., contact information, victim's statement) to a victim services program if the victim has provided written consent. Crown Counsel may provide information about the charge and the status of the prosecution to the victim and the victim services program, as guided by the *Information Requests from Third Parties* (INF 1) policy. Crown Counsel should consider whether there are any restrictions under the *Youth Criminal Justice Act*, a court order of non-publication made at a bail hearing (section 517), preliminary inquiry (section 539), or jury trial (section 648), or any *in camera* proceedings.

Testimonial Accommodations

Crown Counsel should make an application for a testimonial accommodation order whenever appropriate, taking into account all relevant factors, including whether the witness requests an accommodation (sections 486, 486.1, 486.2, and 486.3). Crown Counsel should make victims aware of available testimonial accommodations and their right to make an application for an accommodation.

In rare cases, Crown Counsel may consider applying for an anonymity order under section 486.31 directing that any information that could identify a victim or witness not be disclosed in the proceedings, or an order under section 486.7 to protect the security of a

victim or witness. Prior to making either of those applications, Crown Counsel should consult with a Regional Crown Counsel, Director, or their respective deputy.

Publication Bans

Crown Counsel should consider applying, at the first instance, for an order under section 486.4 or 486.5 banning publication of information that could identify the victim or a witness. Crown Counsel should take reasonable steps to consult the victim or witness to determine whether the victim or witness wishes to be the subject of a ban.

If Crown Counsel makes the application and an order is made they should inform the victim or witness who is the subject of the order about the existence of the order, determine whether they wish to be the subject of the order, and inform them of their right to revoke or vary the order (section 486.5(8.2)). If the victim indicates a desire to vary or revoke the publication ban order, Crown Counsel should encourage them to obtain independent legal advice. Crown Counsel should consent to an application to vary or revoke the ban, unless it would be contrary to the proper administration of justice, including if it could affect any order protecting the identity of another victim or witness. Crown Counsel should consult with their Administrative Crown Counsel before opposing the application.

Victim Impact Statements

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 (*Criminal Code* section 722; VOCA, section 4; CVBR, section 15). Crown Counsel should review the victim impact statement to ensure that it does not contain inadmissible material.[1]

If the victim has not prepared a victim impact statement by the sentencing hearing, but wishes to do so, Crown Counsel should advise the victim that the victim may make an application to adjourn the proceedings to prepare a victim impact statement. Crown Counsel may make the adjournment application if it is appropriate to do so (section 722(3)).

Crown Counsel should ask the victim how they wish to provide their victim impact statement to the court and, when feasible, do so in advance of the sentencing hearing. Victims are presumptively permitted to provide their victim impact statement:

- by filing it in writing

1 *R v Bremner*, 2000 BCCA 345 at paras 22-23, 28

- by reading it at the sentencing hearing, including with testimonial accommodations
- in any other manner that the court considers appropriate

Restitution

Crown Counsel should ensure the victim receives information regarding their right to request the court make a restitution order against the offender for their losses and damages (CVBR section 16; *Criminal Code*, section 737.1(2)).

Community Impact Statements

A community impact statement is admissible at a sentencing hearing if it is prepared in accordance with the procedures established by a program designated for that purpose (section 722.2(1)). The Ministry of Public Safety and Solicitor General is responsible for community impact statements.

Appeals

If the BCPS decides to appeal a decision, or if the BCPS receives a notice of appeal, Crown Counsel should contact the victim to determine the extent of the victim's interest in receiving information or attending proceedings. If the victim requests information about the proceedings, Crown Counsel should notify the victim:

- of the date of any application for bail pending appeal to enable the victim to provide any comments relating to bail
- of the outcome of any bail application, and if appropriate, provide a copy of the order
- of the date of the appeal and of any appearance that is likely to result in a final disposition of the appeal or a change in the appellant's bail status, driving privileges, or obligation to adhere to the terms of a probation order
- if a new trial is ordered, of the contact information of the Crown Counsel office which will have conduct of the new trial

Indigenous Persons

Numerous government commissions and reports, as well as the judgments of the Supreme Court of Canada, have recognized that discrimination experienced by Indigenous persons, whether as a result of overtly racist attitudes or culturally-inappropriate practices, extends to all parts of the criminal justice system.

The history of colonialism, displacement, and residential schools in Canada has translated into lower educational attainment, lower incomes, higher unemployment, higher rates of substance abuse and suicide, and higher levels of incarceration for Indigenous persons.[2] The rates of victimization of Indigenous persons, especially for Indigenous women and girls, are also significantly higher than those for non-Indigenous persons.[3]

The continuing consequences of colonialism for Indigenous persons in Canada "must be remedied by accounting for the unique systemic and background factors affecting Indigenous peoples, as well as their fundamentally different cultural values and world views."[4]

As stated by the Supreme Court of Canada:

> "*There is no denying that Indigenous people — and in particular Indigenous women, girls, and sex workers — have endured serious injustices, including high rates of sexual violence against women. … [O]ur criminal justice system and all participants within it should take reasonable steps to address systemic biases, prejudices, and stereotypes against Indigenous persons — and in particular Indigenous women and sex workers — head-on.*"[5]

Crown Counsel should recognize that there is a strong public interest in favour of prosecution in cases involving Indigenous women or girls as victims. However, in appropriate cases, alternatives to prosecutions may be considered in accordance with the *Alternatives to Prosecutions – Adults* (ALT 1) and *Youth Criminal Justice Act – Extrajudicial Measures* (YOU 1.4) policies, particularly when traditional or culturally-based Indigenous programs are available.

Crown Counsel should canvass whether there are any available cultural supports for an Indigenous victim, recognizing their unique traditions, laws, and protocols.

Indigenous victims may be particularly vulnerable due to the impacts of colonialism or geographic isolation and may benefit from culturally-appropriate victim services.

In trials involving an Indigenous victim, Crown Counsel should consider requesting that judges provide an express instruction aimed at countering prejudice against Indigenous persons.[6] Crown Counsel should also ensure that their sentencing positions reflect the gravity of the problem of violence against Indigenous persons in our society and, as appropriate, make submissions to the court during the sentencing hearing about the applicability of sections 718.04 and 718.201.

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2 *R v Ipeelee*, 2012 SCC 13
3 *Victimization of Aboriginal People in Canada, 2014*, Statistics Canada, 2016
4 *Ewert v Canada*, 2018 SCC 30 at paras 57-58; *R v Barton*, 2019 SCC 33 at paras 198-200, also *BC First Nations Justice Strategy*, February 2020
5 *R v Barton*, 2019 SCC 33 at paras 198 and 200
6 *R v Barton*, 2019 SCC 33 at paras 200-204