

**PROSECUTIONS POLICY MANUAL**

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RATIONALE

**POLICY STATEMENT:**

Public prosecutions commenced at the instance of the Province of Manitoba are normally conducted by the Province's Crown Attorneys. This cadre of Crown Attorneys is amongst the most experienced and talented group of criminal litigators in Manitoba, and the Department of Justice is fortunate to have their services.

There are, however, some cases that, if prosecuted by the Province's Crown Attorneys, might give rise to inappropriate public perceptions and raise issues of public confidence. Most commonly, these cases involve situations where those who are involved in the administration of criminal justice in Manitoba are themselves directly involved in the case. For instance, where, following a police investigation, it is proposed that criminal charges be laid against a prosecutor or a judge, there exists the need to assure the public that decisions will be made on a principled basis, free from any sort of bias.

The purpose of this policy is to ensure confidence in the justice process by providing for the appointment of independent counsel in those situations where a reasonable person would perceive that an accused person may receive differential treatment because of his/her relationship with Manitoba Justice. The likelihood of such a perception is determined, in large part, by the closeness of the relationship between the accused and the Department. The nature of the alleged offence may also be a secondary factor. The following categories describe the circumstances in which independent counsel should be appointed, as well as the method by which that decision should be made.

**1. Direct Connection to the Justice System.** Whenever a criminal charge is laid against a person who is directly connected to the justice system, there may be a reasonable perception that the accused could receive some kind of differential treatment if prosecuted by a staff Crown Attorney. In all such cases, the prosecution must be conducted by independent counsel.

Persons who come within this category include judges, Crown Attorneys, police officers, lawyers involved in criminal defence work (or those having regular business with the Department), as well as employees of the Department of Justice who have direct involvement in either the court process (e.g. court clerks) or Prosecutions (e.g. support staff within Prosecutions). Members of the Legislative Assembly, and their immediate staff and family are also in this category.

For greater certainty, independent counsel must be appointed where the Department has been asked by the Commissioner of the Law Enforcement Review Agency to consider whether criminal charges should be laid following an investigation under *The Law Enforcement Review Act* respecting the conduct of a police officer.

The Assistant Deputy Attorney General has delegated the authority to appoint independent counsel to the Director of Regional Prosecutions and Education. Therefore, when a case in this category arises, the Crown Attorney is expected to refer it, as soon as possible, to the Director of Regional Prosecutions and Education for the appointment of independent counsel.

**2. General Connection to the Justice System.** This category includes employees of Manitoba Justice who are not directly involved in the court process and, in addition, close relatives of a person with a direct connection to the justice system (provided the Crown is aware of this relationship). In these cases, independent counsel will often be appointed. However, in order to require the appointment of independent counsel, the connection of the accused to the justice system must be more than trivial. In making this judgment, consideration should also be given to the seriousness and notoriety of the alleged offence.

In cases where the accused has a general connection to the justice system, the Crown Attorney is expected to refer the case as soon as possible to the Director of Regional Prosecutions and Education along with a recommendation as to whether independent counsel should be appointed. The Director of Regional Prosecutions and Education will determine whether the circumstances warrant prosecution by a staff Crown Attorney or outside independent counsel.

**3. No Obvious Connection to the Justice System.** In the vast majority of cases, there will be no connection between the accused and the justice system. These cases should generally be prosecuted by staff Crown Attorneys. However, there may be unusual circumstances where facts come to light that suggest that independent counsel is appropriate. Crown Attorneys must be alert to situations where a reasonable person may perceive that the accused could receive differential treatment because of a connection between the accused and the justice system.

If the Crown Attorney, after consultation with his/her Supervising Senior Crown, believes that an accused has a connection to the justice system that might give rise to a perception of bias, the case should be referred to the Director of Regional Prosecutions and Education for a decision as to whether independent counsel should be appointed.

#### **Other Considerations**

This Policy applies to individuals who have been charged with criminal offences. However, it may be appropriate to appoint independent counsel in cases involving provincial statute offences given the closeness of the accused's relationship to the Department and given the nature or severity of the offence. Crown Attorneys who, after consultation with their Senior Supervising Crown, are concerned about the need to appoint independent counsel in a non-criminal case should refer the matter to the Director

of Regional Prosecutions and Education for a decision as to whether independent counsel will be appointed.

It may also be appropriate to apply this Policy, where the individual is not charged with an offence but is the victim of a crime or will be called as a material witness. If the case is one in which a reasonable person would have concern about differential treatment or where the Crown Attorney is concerned that his/her decisions about the case may be influenced because of the identity of a witness or victim, the Crown Attorney should refer the case to the Director of Regional Prosecutions and Education for a decision regarding the appointment of independent counsel.

Where charges to which this Policy applies have already been laid, or an opinion is sought on whether charges are appropriate, counsel should refer the matter as soon as possible to the Director of Regional Prosecutions and Education for the appointment of independent counsel. Immediate steps are necessary to ensure that even preliminary issues such as release on bail, adjournment of the charges and disclosure to the defense are decided by the independent counsel.

#### **Nature of Appointments**

There are an infinite variety of circumstances in which it may become necessary to appoint independent counsel. In view of this, there are a number of alternative approaches that may be adopted to ensure an independent decision-making process. In ascending levels of independence from government, they are:

a) *Appointment of a Crown Attorney from within Manitoba but from another Crown Office*

In some situations, the necessary degree of independence may be achieved through this type of appointment.

b) *Appointment of a Private Practitioner from Manitoba*

Where a former Crown Attorney who has since left the Department is being considered for appointment as independent counsel, care must be taken to ensure that sufficient time has elapsed to gain a "distance" from the Department. Care must also be taken to ensure that the person selected has not had any previous dealings with the alleged offender.

c) *Appointment of a Crown Attorney from Another Province*

Informal protocols exist between this Department and many other provinces and territories to facilitate the appointment of a Crown Attorney from outside of Manitoba. This approach was judicially approved by the Alberta Court of Appeal in *Kostuch v. AG Alberta* (1995), 101 C.C.C. (3d) 321 Alta. C.A., at p. 333 (in which a Manitoba Crown Attorney was appointed to prosecute in Alberta to avoid a perceived conflict of interest in that province).

d) *Appointment of a Private Practitioner from Another Province*

This option gives maximum independence from the Department. It is also the most expensive option, given the need to travel to and from Manitoba to interview witnesses and conduct proceedings. This option should only be pursued in exceptional cases, and after conferring with the Deputy Attorney General.

Depending on the issues that arise in a particular case, it may be necessary to appoint independent counsel for only one aspect of the case (e.g. the examination or cross-examination of a specific witness).

#### **APPENDIX TO THE POLICY**

Upon determining that independent counsel should be appointed, the Director of Regional Prosecutions and Education will proceed to make the appointment. While individual Crown Attorneys may have relatively little involvement at this stage, it is important that the process should be as transparent as possible and it is useful for Crown Attorneys to be aware of the process.

#### **The Process of Appointment**

The principal criteria for the selection of an independent counsel are:

- independence from government and the individuals involved in the specific case;
- excellence in the practice of law;
- a track record for integrity; and
- significant previous experience in either the prosecution or defense of criminal charges in the court system.

In some cases, the Director of Regional Prosecutions and Education will consult with the Assistant Deputy Attorney General and/or the Deputy Attorney General before making a final decision. *Ad hoc* appointments will usually be appropriate as individual cases arise. In matters arising under *The Law Enforcement Review Act*, a standing appointment of the independent counsel will be made to facilitate referrals from the Commissioner of the Law Enforcement Review Agency directly to the independent counsel.

#### **Terms and Conditions of Appointment**

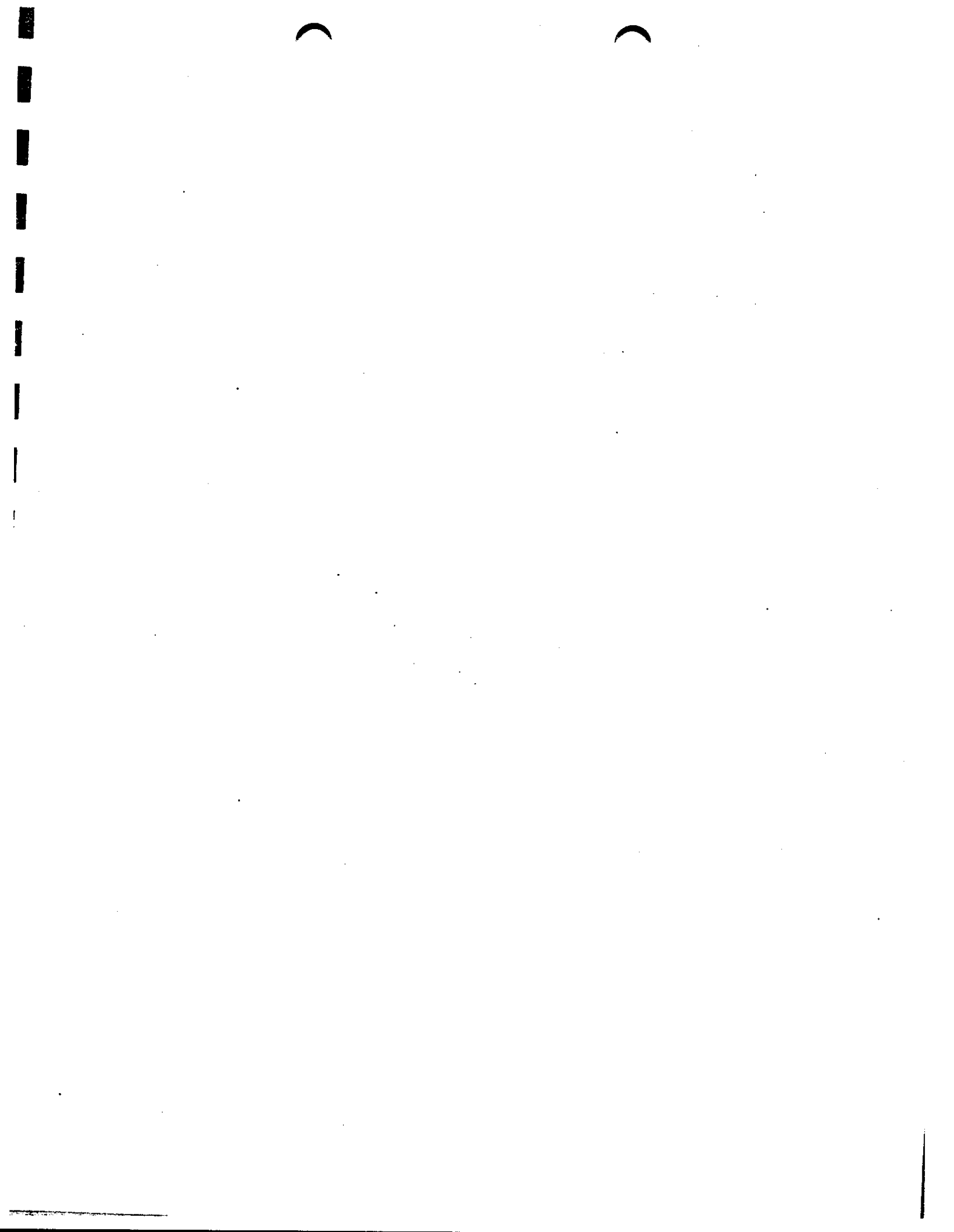
Where a lawyer from outside the Department is retained to act as an independent counsel, the terms of reference under which the independent counsel is retained should be reduced to writing and made publicly available upon request in order to ensure a transparent process and public accountability. A copy of this Policy Statement must also be provided to the independent counsel once retained, and be made available to the public on request.

Absent exceptional circumstances, the following should generally form a part of the terms of reference:

- a) The retainer agreement, including the terms of reference and any subsequent amendments, are publicly available on request;
- b) Where a legal opinion is sought, the precise question(s) for which the advice is being sought, and the person to whom it should be provided;

- c) The advice and decisions in the case are final and binding on the Department of Justice for the Province of Manitoba, subject only to receiving direction from the Attorney General or the Deputy Attorney General, which direction, if given, will forthwith be made public;
- d) The independent counsel has full access to all employees within, and all documents and information held by the Department of Justice for the Province of Manitoba;
- e) The independent counsel is to be guided by the prosecution policies issued on behalf of the Attorney General of Manitoba, which apply to all provincial prosecutions throughout the province. This includes, for instance, the charge approval standard (see: Crown Policy on Laying and Staying of Charges), disclosure policies as well as directives from the Attorney General on the position to be taken in cases of gang-related crime, violent crime, child victims, etc.
- f) In many cases, it will be appropriate to include in the terms of reference a statement to the effect that advice is also being sought on the extent to which information concerning the case, including the opinion sought, should be made available to the public. This will be especially important where the case has attracted considerable public attention and scrutiny.







**Manitoba  
Department of Justice  
Prosecutions**

**Guideline No. 2:VIC:1**

**Policy Directive**

**Subject: Victims  
Date: July, 2005**

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**POLICY STATEMENT:**

At all stages of criminal and quasi-criminal proceedings, Crown Attorneys should be mindful of and sensitive to the needs and wishes of victims.

In implementing this policy, the following guidelines apply:

**Offering Support to Victims**

When a matter is set for preliminary hearing or trial, the Crown Attorney should speak to the victim (and other witnesses) in order to prepare them for the court hearing. This will include a review of the testimony expected of the victim (or witness). The nature of the case will determine the extent of preparation required.

Throughout Manitoba, child witnesses should be referred to the Crime Victim Services, Child Victim Services Program. To the extent possible, the Crown Attorney must make efforts to meet with the child (and his/her guardian) in advance of the court date in all cases involving child victims.

Whenever possible, victims of sexual offences should be afforded the opportunity to meet with the Crown Attorney in advance of the preliminary hearing/trial to prepare for the case.

Victims of domestic violence should be referred to the Crime Victim Services, Domestic Violence Program, where available and should be offered information about protective orders available through the courts.

In cases involving fatalities, Prosecutions recognizes the emotional trauma of such cases for relatives of the victim. The Crown Attorney should make him/herself available to meet with the family and deal with family members in a manner appropriate to the circumstances. This is best done working with the assigned Crime Victim Services Worker.

In some situations, victims of crime require that efforts be undertaken to ensure their privacy and safety. The Crown Attorney should seek an order under s. 486(3) of the Code in all cases involving sexual offences, unless the victim specifically requests

otherwise. In cases where the safety of the victim or victim's family is at issue, the Crown Attorney should advise the victim to contact the appropriate police authorities, or do so on their behalf. In extreme cases, the victim (or witness) may have to be referred to the Witness Protection Program. The appropriate Director should be contacted in such instances.

Sometimes, the victim's need for support goes beyond what a Crown Attorney is able to provide. In such cases, the Crown Attorney should provide a level of support consistent with the directions provided above and the seriousness of the charge. In order for the victim to receive the additional support requested, the victim should be referred to a Crime Victim Services Worker and, if possible, to other agencies (e.g. Child & Family Services, Mental Health).

### **Consultation with Victims**

Under s. 14 of *The Victims' Bill of Rights* (VBR), victims are entitled to consult with the Crown Attorney on certain decisions relating to the prosecution of the case. "Consultation" does not mean that the victim is entitled to direct the prosecution or make the final decision with respect to how the case is handled. *The Victims' Bill of Rights* does not impose restraints on the Crown Attorney's ability to perform his or her function as an officer of the court. However, the VBR does recognize that victims of crime have a legitimate interest in seeing that their concerns are acknowledged by the Crown. Crown Attorneys are required to listen to and to seriously consider any information the victim has to offer.

The VBR applies to cases involving the following offences:

- (i) parent or guardian procuring sexual activity, s.170
- (ii) corrupting children, s.172(1)
- (iii) computer luring of children, s.172.1
- (iv) living off avails of a prostitute under 18, s.212(2) or (2.1)
- (v) procuring a prostitute under 18, s.212(4)
- (vi) criminal negligence causing death, s. 220
- (vii) murder, s. 229 to 231
- (viii) manslaughter, s. 236
- (ix) infanticide, s. 233
- (x) attempted murder, s.239
- (xi) discharging a firearm with intent, s. 244,
- (xii) dangerous driving causing death, s. 249(4)
- (xiii) impaired driving causing death, s. 255(3)
- (xiv) criminal harassment, s. 264
- (xv) aggravated assault, s. 268
- (xvi) assault peace officer, s. 270(1)(a)
- (xvii) sexual assault with a weapon, s. 272(1)(a)
- (xviii) aggravated sexual assault, s. 273

- (xix) cases in which death results from an offence under s. 54 or 56 of *The Workplace Health and Safety Act* and
- (xx) offences under *The Highway Traffic Act* where a death results.

If the victim is registered, then consultation is required on decisions relating to:

- (i) a decision on whether to lay a charge;
- (ii) the use of alternative measures;
- (iii) the staying of a charge
- (iv) an application for release from custody;
- (v) any agreement relating to a disposition of the charge;
- (vi) if the accused is found guilty, any position taken by the Crown in respect of sentencing; and
- (vii) a decision on whether to appeal the verdict, or the position of the Crown respecting any appeal by the accused.

The Crime Victim Services Workers may be in a position to assist the Crown in carrying out this consultation function. If the Crown enters his/her position regarding the issue in PRISM, the CVS Worker can pass the Crown's position on to the victim. If the victim accepts the Crown's position, there will not be a need for further consultation between the Crown and the victim on that point and the Crown will have satisfied his/her obligation. However, if the Crown does not enter his/her position in PRISM or if the victim disagrees with the position taken by the Crown, it may be necessary for the Crown to speak to the victim directly to explain the position taken and to consider any input offered by the victim.

#### **Providing Information to Victims**

Section 13 VBR requires that registered victims must be advised of the following:

- (i) the charge laid against the accused;
- (ii) the name, address and telephone number of the Crime Victim Services Worker or Crown Attorney conducting the case;
- (iii) if the accused is in custody pending trial, how the victim may comment on:
  - a) whether the accused should be detained, or
  - b) if the accused is released, whether he or she should be subject to any conditions;
- (iv) the date, time and place of a proceeding that relates to the prosecution and is likely to affect the outcome, including a preliminary hearing, trial and sentencing hearing;
- (v) the right to file a Victim Impact Statement (see also policy on Victim Impact Statements 2:VIC:2);
- (iv) the possibility that a person who is found guilty could be ordered by the court to make restitution to the victim;

- (v) the date, time and place of any court application by the Crown Attorney to designate a convicted person as a dangerous offender under subsection 753(1) of the *Criminal Code*;
- (vi) the outcome of the prosecution; and
- (vii) any appeal of the result of the prosecution.

The Crime Victim Services Workers employed within the Criminal Justice Division are expected to provide this information to victims.

Besides the charges to which the VBR applies, there are other serious cases where the victim should be kept informed of important developments in the case. Essentially, the general philosophy of the VBR applies in many other cases. These will include cases where the charge is:

- (i) a sexual offence other than aggravated sexual assault or sexual assault with a weapon (both of those are covered by the VBR);
- (ii) child-abuse cases;
- (iii) home invasion cases;
- (iv) "sensitive cases" (see Sensitive Cases Policy 2:REP:1) where there is an identifiable victim;
- (v) faint hope applications under Part XXI .1 of the *Criminal Code*;
- (vi) a case where the Crown intends to make an application to have the offender declared a dangerous or long-term offender under Part XXIV of the *Criminal Code*.
- (vi) any other case that the Crown Attorney considers to be serious – e.g., a vicious assault or a serious domestic violence case;
- (vii) cases not falling in the above categories where the victim requests to be kept informed of developments.

In these cases, the Crown Attorney should attempt to advise the victim as to:

- (i) the outcome of the bail hearing and, if the accused is released, the conditions of release;
- (ii) changes in bail status or conditions of release (e.g. if bail is revoked because the accused is involved in additional offences);
- (iii) the date, time and place of the preliminary hearing and the trial;
- (iv) any decision regarding plea arrangements, including a decision to enter a stay of proceedings;
- (v) the outcome of the trial;
- (vi) the right to file a Victim Impact Statement (see policy on Victim Impact Statements 2:VIC:2);
- (vi) if the accused is found guilty, the date, time and place of the sentencing hearing; and
- (vii) the sentence imposed.

During the course of providing this information, the victim may express a position on some aspect of the prosecution (e.g. conditions the victim would like to see imposed as part of a probation order). While the Crown Attorney is not required or expected to solicit this input, it should be considered in those cases where it is offered. In many cases, this information is ultimately of assistance. A Crown Attorney who is aware of the ramifications of the crime on the victim is in a position to provide the court with the most complete information.

Since the VBR does not currently apply to these offences, it will be Crown Attorneys, rather than Crime Victim Services Workers, who must supply this information to victims.

#### **Victim Requests that Proceedings be Stayed**

There may be times when a victim expresses a wish that the charges be stayed. In conducting a prosecution, Crown Attorneys must always balance the need to adduce evidence from the victim with sensitivity to the victim's wishes. Generally, if the victim has important evidence to provide, a prosecution should be continued and the victim should be required to testify notwithstanding the victim's request that the charges be stayed. This is especially so if the offence is of some gravity or there is reason to believe that the victim's request has been motivated by intimidation or fear. Generally, the more serious the offence, the greater the need for the Crown Attorney to proceed.

However, there will be situations where the Crown Attorney should comply with the victim's request for a stay of proceedings. In extreme cases, where testifying would actually be harmful to the emotional well being of the victim, the victim should not be compelled to testify and it may be necessary to enter a stay of proceedings on the charge. Such a situation might occur in the case of a sexual offence against a child where psychological damage to the child would result if the child were forced to testify.

A more common situation is one where a recalcitrant victim has adopted a different version of events than that contained in his/her statement to the police and has requested that charges be "dropped". If no other evidence is available and the victim maintains the inconsistent version of events, it may be necessary to enter a stay of proceedings. The court's time should not be wasted by the Crown simply proving the prior inconsistent statement. This procedure leaves the Crown with a witness who is incapable of belief and whose evidence, including the prior statement, will not support a conviction.

There may be other cases (usually of a minor nature) where it would not be contrary to the public interest to comply with the victim's wishes and to stay charges. For example, where an accused with no record has written a bad cheque but has paid restitution and the victim requests that the charge be stayed.

Where the Crown is concerned that the victim may have a change of heart regarding the entering of a stay of proceedings, the Crown Attorney should consider having the victim provide a written request that the charge be stayed. Such a practice is recommended where the charge involved is serious, especially in the case of a sexual offence.

See also: Domestic Violence 2:DOM:1.

### **Victim Requests to Not Testify**

Requests by victims that they be excused from testifying arise in a variety of situations. The response of the Crown Attorney to such a request should be determined by the nature of the evidence to be provided by the victim. Where the victim's evidence concerns a matter that is central to the Crown's case, the issues raised are similar to those that arise when the victim requests that a stay of proceedings be entered. Therefore, Crown Attorneys should refer to the guidelines contained in the previous heading "Victim Requests that Proceedings be Stayed".

Where the evidence of the victim concerns a matter that is unlikely to be in dispute, the Crown Attorney should make efforts to obtain an agreement from defence counsel regarding the evidence in order to avoid having the victim testify. For example, the Crown should endeavour to have property owners excused from attending preliminary hearings and trials where their potential testimony relates only to the fact of ownership. There may also be cases where the charge is provable by other evidence. In such cases, it may be possible to excuse the witness without weakening the Crown's case.

### **Victims with Special Communication Needs**

Certain victims (and witnesses) may have difficulty understanding and/or being understood by officials in the criminal justice system. Special communication needs may arise because of age, level of literacy or fluency in English, mental disability or physical disability. Crown Attorneys should attempt to provide victims with special communication needs with as much assistance as is required. Extra time or explanations may have to be given to these witnesses in order to prepare them for court. When testifying in court, victims with special communication needs should be provided with whatever special assistance is necessary for the victim to be understood (e.g. special equipment, testifying behind a screen, etc.).

One of the more common special communication needs has to do with interpreters. In Winnipeg, support staff should be directed to call the Language Bank of Winnipeg (943-9158) to arrange for an interpreter. When the need for an interpreter is not discovered until the morning of court, the Victim/Witness Assistance program may be able to locate an interpreter on short notice. In rural areas, quality interpreters are much more difficult to locate and no formal interpretation services exist. Support staff sometimes maintain an informal list of interpreters.

On occasion, the need for sign language interpreters arises. In both Winnipeg and in rural areas, support staff should be directed to contact Independent Interpreter Referral Service (204-301 Nassau Street, phone: 475-6332) to make arrangements. In rural areas, these arrangements will likely include travel and hotel arrangements for the signing interpreters as well.

### **Victims With Other Special Needs**

A variety of resources are available (in Winnipeg, at least) to assist victims with special needs:

*Seniors with Special Needs:* In Winnipeg, the Senior's Directorate may be able to provide assistance. No comparable service exists in rural areas. However, the regional Crime Victim Services Worker could be consulted.

*Transportation Difficulties:* In Winnipeg, victims (and other witnesses) should be told to arrange for parking for the full day rather than using parking meters. If a receipt for parking is produced, the Victim Witness Assistance Program will reimburse the victim (witness) for parking costs. The Victim Witness Assistance Program can also assist with local bus fare and taxi fares if arrangements are made in advance. For victims (or witnesses) who have physical disabilities that make attendance at court difficult, Crown support staff should contact Vital Transit Services (633-2022). In rural areas, transportation arrangements can present serious difficulties. Support staff are often called upon to make all transportation, accommodation and meal arrangements for witnesses.

*Daycare:* In Winnipeg, the Victim/Witness Assistance Program can arrange for daycare, but it must be notified in advance and the victim (or witness) must attend the daycare with the child(ren) involved on at least one occasion before the child(ren) is/are left alone at the daycare on court day. Last minute daycare is not available. In rural areas, daycare is not available and victims (or witnesses) must make their own arrangements.

In other situations where a victim presents with some special need, Crown Attorneys could consult with the Crime Victim Services Worker.

### **Witness Expenses**

Victims and other witnesses may be entitled to recover travel and other expenses related to attending court. In Winnipeg, Crown Attorneys should direct the witness to the Victim/Witness Assistance Program. In rural areas, victims should be directed to Crown support staff who will perform this function.

### **Restitution**

Crown Counsel should seek an order of restitution on behalf of the victim where there is a realistic possibility that the accused is or will be able to pay. In appropriate cases, the victim should also be informed of the possibility of obtaining an order of compensation for loss or damage to property. Crown Counsel should inform the victim of the kind of supporting material (e.g., invoices) required for an application for restitution or compensation.



See also: Sentencing – Restitution 4:SEN:1.6

**Compensation for Injuries**

Crown Counsel should advise victims of the possibility of obtaining compensation for crime-related injuries under Part V of *The Victims' Rights Act*.

**Exhibits**

Victims often experience inconvenience when exhibits (particularly stolen property) are seized by police and held for an extended period of time as the charge proceeds through court. Crown Attorneys should encourage the police to photograph the exhibit and return it to the victim when the use of the photograph will not impair the prosecution of the case.

**Sentencing in Cases Involving Serious Injuries**

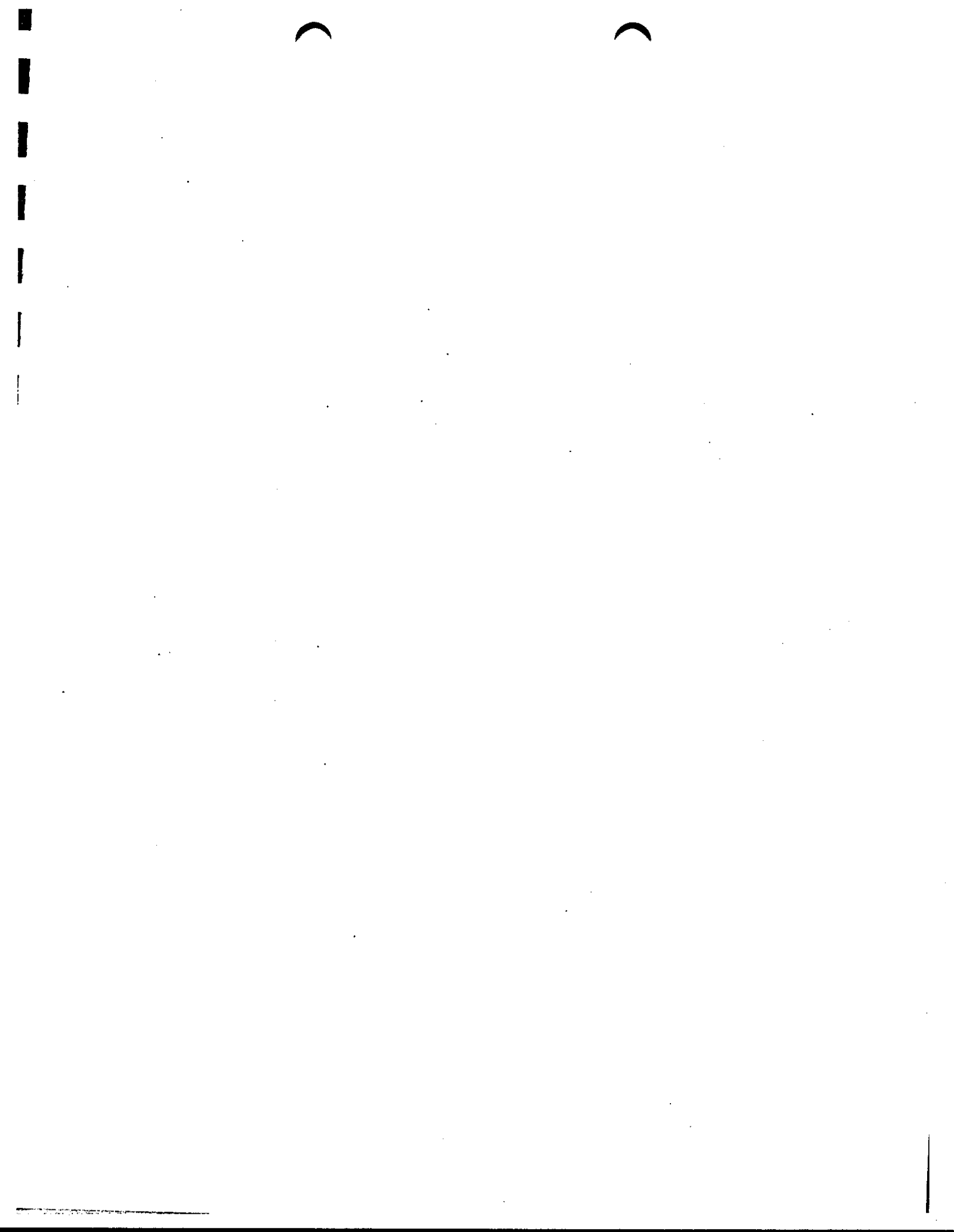
Prior to the sentencing hearing, the Crown Attorney must obtain an update as to the medical circumstances of the victim.

**RATIONALE:**

Crown Attorneys have an obligation to ensure that the concerns of victims of crime are appropriately addressed within the criminal justice system.

**Related Policies:**

Domestic Violence 2:DOM:1  
Sensitive Cases Policy 2:REP:1  
Sentencing – Restitution 4:SEN:1.6  
Victim Impact Statements 2:VIC:2





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**POLICY STATEMENT:**

Crown Attorneys must always be aware of the rights of the victims of crime. The Victim's Rights Act of Manitoba (S.M. 1998 c. 44) sets out the specific entitlements for victims of crime, but does not lessen the responsibility of this office to those whose lives have been affected by the criminal behaviour of others.

The Victim's Rights Act is not to be interpreted as imposing restraints on the Crown Attorney's ability to perform his or her function as an officer of the Court and as an independent Minister of Justice, but recognizes that victims of crime have a legitimate interest in seeing that their particular needs and concerns are acknowledged and considered by the Crown.

The Victim's Rights Act is not intended to allow the victim of a crime to direct the prosecution or to determine the outcome of their case. Crown Attorneys must still perform his or her function according to law. The duty imposed by the Act is to ensure that the general rights of the victim (set out in Section 3) are respected.

When contacted by a victim of crime, the Crown Attorney must treat that person respectfully and with the goal that the victim be afforded the minimum of necessary inconvenience from their involvement with the criminal justice system. The Crown Attorney should make efforts to avoid having witnesses testify if an agreement as to their evidence can be reached. For example, the Crown should endeavour to have property owners, who have been victimized, excused from attending Preliminary Hearings and Trials, where such individuals' potential testimony relates only to the fact of ownership.

When victims are required to testify, the Crown Attorney should offer some preparation for the court hearing, including a review of the testimony expected of the victims. The nature of the case will determine the extent of preparation required. In Winnipeg, Brandon, Thompson, The Pas and Selkirk, child witnesses should be referred to the Child Witness Assistance Program. In all cases involving child victims, the Crown Attorney must make efforts to meet with the child (and his/her guardian) in advance of the Court date. Similarly, those victims traumatized by sexual abuse or violence should be afforded the opportunity to meet with the Crown Attorney in advance of the Preliminary Hearing/Trial to prepare for the case.

Victims of domestic violence should be referred to the appropriate support resource, where available, e.g. Women's Advocacy Program, and should be offered information about protective orders available through the Courts.

In cases involving fatalities, the assigned Crown Attorney must make contact with the deceased's family at the earliest opportunity and make themselves available to meet with the family upon request. In such cases, it is required that the Crown Attorney keep the family apprised of the ongoing developments in the case. The Crown Attorney's office recognizes the emotional trauma of such cases for victims and further that those most affected by the crime have a need to be made aware of all bail hearings, the reasons for remand dates being set, as well as plea negotiations. This information must be conveyed compassionately and in a manner appropriate to the circumstances.

In cases involving serious personal injury, the Crown Attorney is encouraged to contact the victim in the manner described in the preceding paragraph. Prior to the final determination of the case the Crown Attorney must obtain an update as to the medical circumstances of the victim.

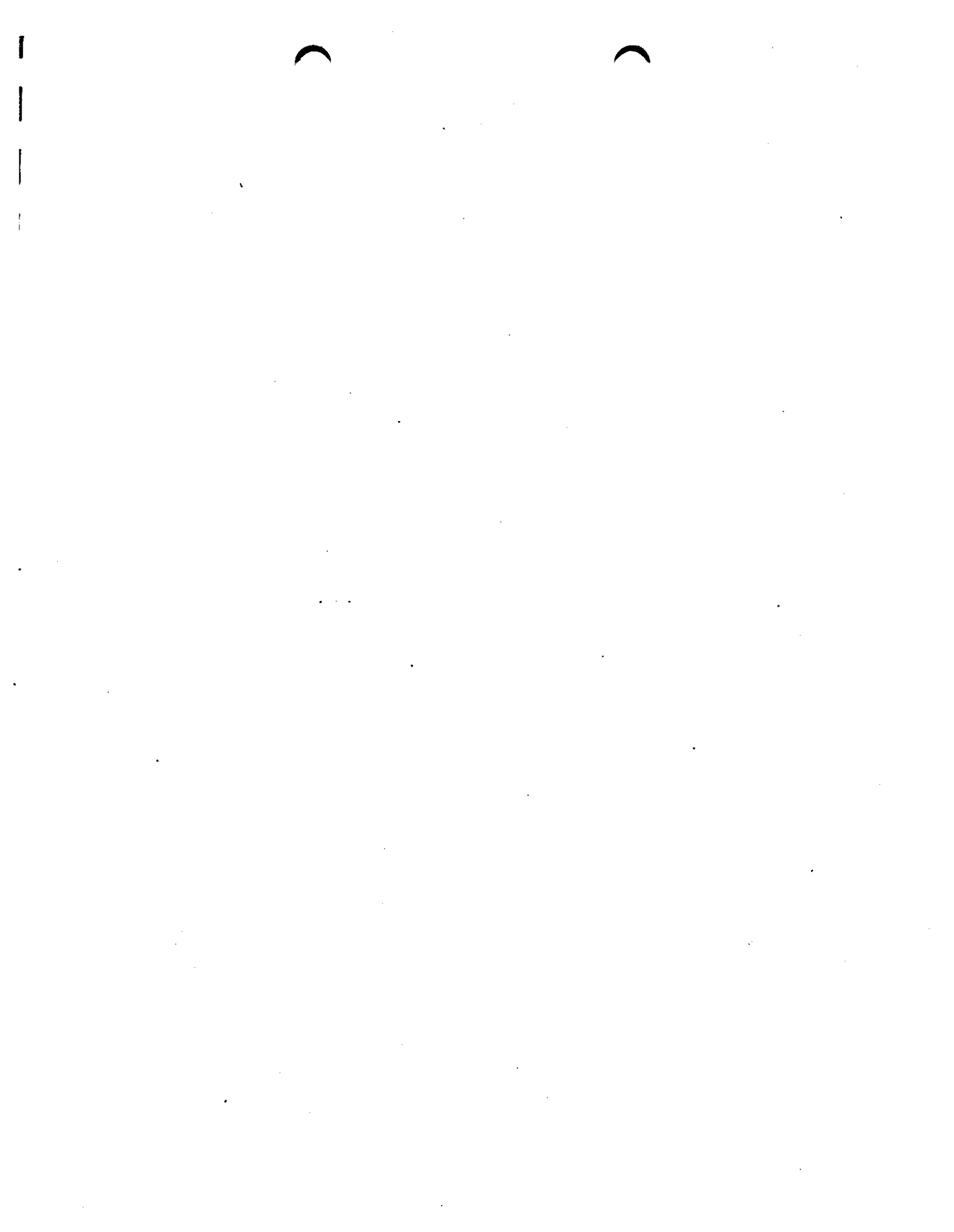
If the circumstances warrant, the Crown Attorney must request restitution on behalf of the victim for damaged/stolen property.

When determining the appropriate position on bail, or negotiating a possible settlement of a case, it is not necessary to solicit input from the victim. However, in many cases, this information is ultimately of assistance. A Crown Attorney who is aware of the ramifications of the crime on the victim is in a position to provide the Court with the most complete information. If the victim has made contact and conveyed their views to the Crown Attorney, then this will be one factor for consideration in determining the appropriate resolution of the matter.

The Crown Attorney must be aware of the Manitoba Victim Impact Statement Program and seek a victim impact statement from the victim(s) in the appropriate cases. (See Victim Impact Policy).

In some situations, the victims of crime require that efforts be undertaken to ensure their privacy and safety. The Crown Attorney should seek an order under Section 486(3) of the Code in all cases involving sexual offences, unless the victim specifically requests otherwise. In cases where the safety of the victim, or victim's family, is at issue, the Crown Attorney should advise the victim to contact the appropriate police authorities, or do so on their behalf. In extreme cases, the victim/witness may have to be referred to the Witness Protection Program. The Director of Prosecutions should be contacted in such instances.

The Victim's Rights Acts requires that the victims of crime receive information concerning their right to participate in the criminal proceedings relating to their specific case. This may relate to the status of their case, the right to prepare a Victim Impact





**Policy Directive**

**Subject: Victim Impact Statements  
Date: September 2001**

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**POLICY STATEMENT:**

Crown Attorneys should make all reasonable efforts to ensure that victim participation in the sentencing process is facilitated through the use of Victim Impact Statements (sections 722 to 722.2 of the *Criminal Code*).

**VICTIM IMPACT STATEMENT PROCEDURE**

The Victim Impact Statement Manual sets out the procedure by which a Victim Impact Statement (VIS) is to be processed within the Department of Justice. The points addressed in this policy are additional matters relating specifically to Crown Attorneys.

**Disclosure of the VIS**

A VIS is subject to the same rules of disclosure as any other material in the possession of the Crown. Since a VIS may touch on the facts of the case or provide other information useful to the defence, it must be disclosed. However, the VIS may also contain sensitive information that cannot be disclosed (e.g. information that might jeopardize the safety of the victim if it became known to the accused). Therefore, the Crown Attorney must review the VIS and edit any such information. If the victim files more than one VIS, each must be reviewed for sensitive content and disclosed.

Disclosure of the VIS should occur as soon as possible after it has been reviewed. This ensures a consistent approach. Although the result of early disclosure is that certain VIS's will be disclosed where there is not yet a finding of guilt or where there ultimately may be no finding of guilt, the risk of material information being withheld to the prejudice of the accused is avoided. There may be circumstances where disclosure of the VIS could be delayed. However, as with any other type of disclosure, delayed disclosure will be the exception rather than the rule.

See: Disclosure Policy (2:DIS:1).

**Editing of the VIS or Presentation of its Contents as "Other Evidence"**

The VIS submitted by the victim may not satisfy the requirements of s. 722 C.C. The Crown Attorney may be required to edit the VIS or to present its contents as "other

evidence". When assessing which portions of the VIS to present to the court, Crown Attorneys should keep a number of considerations in mind:

- The purpose of the victim impact provisions is to give the victim a voice in sentencing.
- There is a need to explain/discuss with the victim any decision to edit the VIS or to present its contents as other evidence.
- The contents of the VIS are not evidence to prove the charge and will not be seen by the judge until the time of sentencing. Therefore, when dealing with victim comments that may or may not qualify as appropriate under the criteria set out in s. 722, the questionable material could be left to the court to assess in terms of its value to the sentencing process.

#### When Victims Should be Encouraged to Complete the VIS

The Crown Attorney (or the Victim Rights Worker) should not necessarily encourage the victim to complete the VIS immediately after the commission of the offence. In some cases, the impact of the offence may not be immediately apparent or may change over time. For example, a victim who suffers blurred vision from an assault may find that his/her vision either improves or deteriorates over the coming months; a sexual assault victim may find that emotional effects of the offence only manifest themselves after a time. In such cases, it may be wise to encourage the victim to wait until shortly before sentencing to complete the VIS. In other cases, however, the impact of the offence will be apparent immediately after the offence (e.g. for an incident involving a broken window, the cost of repairs can be determined fairly quickly and there is unlikely to be any emotional or other effect on the victim). In these cases, it is useful to obtain the VIS as quickly as possible: the information is not going to change, it can assist in plea negotiations, etc.

While all victims are entitled to fill out a VIS, there are certain offences where the Crown Attorney should make all reasonable efforts to have a VIS prepared. These offences include:

- (a) First degree, second degree or attempted murder;
- (b) Manslaughter;
- (c) Sexual offences;
- (d) Violence against children – sexual or physical violence or violence arising from neglect;
- (e) Violence against the elderly – sexual or physical violence, violence arising from neglect or "trust situations" of economic abuse;
- (f) Criminal harassment;
- (g) Violent or armed robbery;
- (h) Significantly violent assaults (e.g. aggravated assaults, serious beatings);
- (i) Arson with disregard for human life;
- (j) Kidnapping, forcible detention, abduction or hostage taking;
- (k) Break and enter involving injury or violence;
- (l) Criminal negligence, impaired driving causing death or bodily harm;
- (m) Serious domestic violence cases; and

- (n) Any other case where the victim has suffered substantial physical, emotional or financial consequences that could, if known by the sentencing judge, affect the sentencing of the accused.

**RATIONALE:**

The primary purpose of the Victim Impact Statement Program is to give victims an opportunity to tell the court how being a victim has affected them and their relationships with others. Crown Attorneys should make all reasonable efforts to ensure that victim participation in the sentencing process is facilitated through the use of Victim Impact Statements.



