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A Victim's Guide to the Canadian Criminal Justice System: Questions and Answers

Prepared by the Canadian Resource Centre for Victims of Crime

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Victims of crime are often unexpectedly thrust into the criminal justice system by an act that has caused significant harm to their lives or to the lives of their loved ones. Already forced to deal with sudden victimization and loss, victims often feel frustration and anxiety upon encountering a criminal justice system that is complex and sometimes unsympathetic to them. Daily court proceedings can be disconcerting to victims who often have limited knowledge and understanding of the law. Filled with countless frustrating and confusing rules and procedures, it is a system that, far from easing the victims' burden, often further contributes to it.

The system can be particularly uninviting for victims who may have to deal with service providers who do not fully understand the psychological stresses that they are experiencing. Try not to get discouraged by those in the system who do not seem to empathize with your grief, depression and/or symptoms of post-traumatic stress disorder. It can certainly be frustrating for victims to confront a system that seems to have no understanding of the stress they're under. Rest assured that there are service providers who can help you deal with these emotions.

The Canadian Resource Centre for Victims of Crime created this question and answer booklet in order to alleviate some of the concerns that victims face with respect to the justice system. Unfortunately, the criminal justice system is often overwhelming for those who do not deal with it on a regular basis.

The questions and answers in this booklet were compiled from the experiences of victims with whom we work. We hope that their knowledge of the criminal justice process will help to demystify it for the reader.

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Disclaimer:
This booklet is intended as a general guide for victims of crime entering the criminal justice system. Please do not hesitate to contact our office if you require clarification, or for a referral to an agency in your community that may be able to provide services to you. As procedure may vary from one jurisdiction to another within Canada, we strongly urge the reader to contact their local Crown Attorney, police and/or parole office to answer specific/detailed questions about their case.

You have become a victim of crime – what happens now?

Victimization, in any form, is unwelcome. Dealing with the police, victim services workers, judges, attorneys and other staff of criminal courts can be intimidating for victims who are unsure of their role in the system.

The criminal justice process begins when an offence is committed. If and when the crime is reported, the police then usually handle the investigation up to the laying of charges. Once a suspect is apprehended, an information is laid (charges are laid) and the prosecution of the accused is undertaken by the Crown.

The first contact that victims will usually have with the criminal justice system is the police officer. Whether dealing with an officer at the police station or at the scene of a crime, the police are the front line workers in the criminal justice system. Several communities have established police based victim service units/programs available for your usage. Where available, these services are confidential and will provide immediate emotional support, practical assistance, general information about the criminal justice system and referrals for your consideration. You should ask police at the earliest opportunity if they have a victim services unit.

If you are reporting a crime at the police station, or if the police arrive at the scene of a crime and you are the victim, you will be required to make a statement.

1. What is a statement?

A statement is a written record of your complaint and includes everything that you can remember about the victimization. This report will be used by officers conducting the investigation and may be used at a later time during court proceedings. Record the name and badge number or get the business card of the officer who took your statement so that you may contact him or her if you remember anything else of significance about the crime.

2. Who sees my witness statement?

The Crown counsel, the defence attorney, the police, the judge and the accused will see a copy of your witness statement.

3. Can I change my statement at a later time?

Yes, you may change or amend your statement at a later date if you remember something of significance about the crime. Contact the officer who took your original statement to find out how.

Police Procedures

4. Who lays charges?

Generally, it is at the discretion of the police to investigate and lay charges where they believe on reasonable grounds that an offence has been committed.

5. Will the suspect be arrested and charged?

The suspect may not necessarily be charged with a criminal offence. The police may bring a suspect into the station for questioning, but that does not mean he/she will have formal charges brought against them.

If charges are not laid in your case, it does not mean that the police don't believe you or that a crime did not take place. It may mean that there is not enough evidence to prove the charge in court.

As a victim, you may be able to receive financial compensation from the government even if charges have not been brought against the accused (please see Victim Services section).

If the police investigation supports charges being brought against an accused, he/she will be charged with violating one or more specific sections of the *Criminal Code of Canada*. Once criminal charges are laid, the accused may be held in custody until his/her first court appearance. The police have the discretion to release and accused prior to their first court appearance. The police may release an accused before their first court appearance if the offence is relatively minor and if they do not believe that there is a threat to public safety. The first appearance in court is usually a few hours after having been charged. It is at this hearing that a judge will decide whether or not to release the accused on bail (see question #13).

6. How do police decide what charge(s) to lay? What is the Crown's involvement?

As mentioned previously, the police conduct a thorough investigation and may lay charges where they believe on reasonable grounds that an offence has been committed.

Crown counsel will carefully review all charges to ensure they meet the standard for the province/territory. Crown counsel proceed only with prosecutions which present a reasonable prospect of conviction and where the prosecution is in the public interest. Thus, even if criminal charges have been laid, it is the discretion of Crown counsel to make the decision about whether the criminal process ceases or continues.

Although Crown counsel work closely with the police, the separation between police and Crown roles is of fundamental importance to the proper administration of justice. In order to have a system of checks and balances, both the police and Crown counsel are able to exercise discretion independently and objectively.

7. What are summary and indictable offences?

The *Criminal Code of Canada* classifies crimes as summary conviction offences, indictable offences or hybrid offences. Summary conviction offences (e.g. causing a disturbance) do not allow preliminary inquiries and have much shorter sentences than indictable offences (maximum fine of $2000 or imprisonment for six months or both). Indictable offences involve serious crimes including aggravated assault and murder. If an offence is classified as a hybrid (e.g. assault, sexual assault), the Crown Attorney may choose whether to proceed with the case as either summary or indictable.

There is an important distinction between summary and indictable offences. Summary conviction proceedings shall not be instituted more than six months after the time when the subject matter of the proceedings arose. This means that the proceedings against an accused must begin within six months of the offence. There is no time limit, however, for the institution of proceedings in relation to indictable offences. Summary conviction offences may only be tried by a Provincial Court judge sitting alone.

Indictable offences may be tried in a number of different courts, depending on a number of factors, including the seriousness of the offence and the choice by the accused.

8. When an offender is charged with multiple offences and/or breaches, why are some of the charges and/or breaches dropped?

The Crown counsel has discretion with respect to proceeding with charges against an accused. If they do not feel that there is enough evidence to convict, some of the charges may be dropped. As the Crown wants to present the strongest case possible, it may not be beneficial to proceed with all of the charges against an accused.

9. Will the police investigators communicate with me?

In most cases, police detectives are very interested in the outcome of a case and appreciate communicating with the victims. Feel free to contact your investigating officer should you have questions or concerns regarding the investigation. One or more police officers may be assigned to your case.

10. How do I find out information about my case?

During the police investigation, refer your questions to the investigating officer or to the officer who took your statement. Be sure to record their name and badge number. Once charges are laid, the case will be transferred to a Crown counsel. You should ensure that you know which Crown is in charge of your case. The police officer and Crown Attorney will both have business cards that you can obtain.

Be aware that you may experience delays when communicating with the Crown and the police, as they are extremely busy. Do not give up! Since police officers usually work shift work it can be difficult to contact them while they are on duty.

11. When will a Crown be assigned to my case?

A Crown counsel will usually be assigned to your case as soon as possible following the laying of charges. In some cases, however, Crowns are not assigned until late in the process. One case may have a couple of different Crowns before a case goes to trial.

Before a Trial

12. Dealing with the media: what should I do?

Victims should be aware that the media may not wait for a court appearance to begin asking questions about your case, especially in murder or serious assault cases. At this time, victims should hesitate to speak with media or provide specific details of the case. The police and the Crown Attorney may not be able to share certain information with victims who want to speak to the media. You also do not want to say anything that may jeopardize the case.

Please refer to page 19 for more questions about the media.

13. What is a bail hearing? Does everyone make bail? If refused, can the accused get bail at a later time?

A bail hearing is where a Justice of the Peace or Judge determines if a person who has been charged should be released or held in custody pending trial. Consideration for bail is a serious issue in Canada because of the presumption of innocence. Policy requires therefore that people are not jailed unless they pose a threat to public safety or are a flight risk.

Not everyone will make bail. In order to have someone's bail denied the Crown must show just cause. If the accused has no previous criminal record, the Crown may have to disclose some of the case evidence in order to detain the accused. Be prepared to hear details of the crime.

As outlined in the Canadian *Criminal Code*, the detention of an accused in custody is justified only by the following:

- where the detention is necessary to ensure his/her attendance in court;
- where detention is necessary for the protection or safety of the public;
- and/or on any other just cause being shown and where the detention is necessary in order to maintain confidence in the administration of justice.

If refused, the accused could possibly get bail at a later time. He/she may apply to a higher court for a review of the detention order.

An accused person may postpone asking for bail until he/she has raised bail money. Other times, knowing that he/she may not be successful at a bail hearing, an accused may wave his/her right to a bail hearing.

14. I fear the person who is asking for bail, what is the best way to express my fears to the court?

If you are afraid of the person who is asking for bail, tell the Crown ahead of time. Arrange for a meeting with the Crown before the bail hearing so that you may communicate your concerns effectively. Your fears may be taken into consideration by the judge when determining if bail should be denied to protect the safety of the public. If, however, the offender is released on bail, and you are afraid of him/her, you may want to apply for a peace bond (see page 65 for more information). The police and Crown may be able to ask for a provision in the accused's bail to prohibit him/her from contacting you, either directly or indirectly.

15. What is a show cause hearing?

A show cause hearing is another term for a bail hearing. The Crown must show cause as to why the accused should not be released.

16. What conditions can be placed on an offender released on bail to ensure the safety of the victim?

Conditions that are placed on an offender who is released on bail may include that he/she abstain from communicating with any victim, witness, or any other person named in the order; or refrain from going to any place mentioned in the order; or that the accused comply with any other condition specified in the order that the justice considers necessary to ensure the safety and security of any victim or witness.

When Bill C-79 became law in 1999, it prescribed that the courts must now consider the safety of victims as a specific issue when placing conditions on an accused's bail. If you have concerns about your safety, ask the Crown about these options.

17. What happens if the accused violates the bail conditions?

If the accused violates the bail conditions contact the police. Anyone who fails to comply with bail conditions, without lawful excuse, may be found guilty of a summary offence and can be punished accordingly. An accused that is arrested and charged with breaching the bail conditions will be held in jail until a bail revoke hearing is held. Depending on the type of breech, a judge may release the person, increase the bail money, or impose a sentence. Once that sentence is served, the accused will be released again. If, however, the breech is serious, bail will usually be revoked.

18. Will my case go to trial?

Most (75-80%) criminal cases are settled by negotiated plea. This means that there will be no trial and a sentencing hearing will usually follow. Victims who wish to submit a victim impact statement may do so even if there is no trial. Your impact statement is important to the court in sentencing, as the judge must consider the harm you have suffered in choosing an appropriate sentence for the offender. Your impact statement is also important to the paroling authorities who will use it at a later time to determine if the offender is ready to return to the community. Victims should discuss when/how to submit their statement with the Crown or the victim services provider. Also, refer to question #118 for more information about victim impact statements.

19. What is a plea bargain? Do I have a say?

Plea bargaining occurs when the Crown and the defence come to an agreement wherein the accused pleads guilty. The guilty plea usually comes in exchange for a benefit such as reducing the charge against the accused or where the two sides agree upon a sentence.

If a plea bargain occurs in your case, it does not mean that the offence is less serious or that the Crown doesn't believe you. Plea bargaining is often used when either the Crown or the defence's case is weak. It is commonly used to save both time and money, as the court system could not handle the volume of cases that come before it without the plea bargaining system. Since Crowns have a good idea of the type of sentence that a judge is likely to impose for a particular crime, if they can get the accused to agree to a term close to this, they may not see the benefit of a trial. It is important to note that victims have the right to complete a victim impact statement regardless of whether a trial proceeds or not.

Although it is not always the case, Crown Attorneys are supposed to confer with victims of crime before proceeding with a plea bargain. Victims appreciate being informed of happenings in their case and are more likely to accept a plea bargain when the reasons behind it have been explained. It is also important to note that Crowns do not require a victim's permission before proceeding with a plea. A plea bargain can be made at any time including, up to, and during the trial.

20. If the Crown fails to confer with the victim's family before offering or accepting a plea bargain, what is the family's recourse?

There is no recourse for victims who are not included in a plea bargaining decision. The Crown does not require a victim's permission to proceed with a plea bargain although it is now commonplace for Crowns to explain the process and outcome to victims.

Victims who feel wronged may choose to file a complaint against the Crown with the Attorney General of the province and/or with the Head Crown Attorney.

21. If called to a plea bargaining conference, will I be allowed to have my lawyer or a victim services worker present?

If you would like to have your lawyer or a victim services worker present, speak with the Crown about this possibility. Most Crowns will not object.

22. When the case is strong and the evidence is overwhelming, and I am not in agreement that a plea bargain should be accepted or offered, what can be done to stop the process?

There is nothing that victims can do to stop the plea bargaining process. It is often difficult for victims to understand why the Crown would plead down charges against the accused, especially when the case seems so strong. Speak to the Crown and have them explain the reasons for doing so. Ultimately, it is the judge who has the final discretion in accepting or rejecting a plea. Regardless of the fact that a plea bargain has been entered, you still have the right to submit a victim impact statement.

23. Does the judge have to accept a plea bargain?

No, a judge does not have to accept a plea bargain. While pleas are joint submissions from the Crown and the defence, a judge can refuse to accept them. This however, is a rare occurrence. If a judge does refuse a plea bargain, he/she will give the court reasons for doing so.

24. What is a preliminary hearing/inquiry?

A preliminary hearing, or pre-trial, is a court proceeding that is held before the trial. Preliminary hearings are similar to trials but are usually much shorter. The inquiry may be conducted by a Provincial Court judge or, in some circumstances, by a justice of the peace. A preliminary inquiry is not concerned with establishing the guilt or innocence of the accused. It is not a trial. The purpose of the preliminary hearing is to determine whether or not there is enough evidence to proceed with a trial. During the preliminary hearing the Crown Prosecutor can call witnesses to convince the judge that there is sufficient evidence against the accused to proceed with a trial.

During a preliminary hearing, the judge may proceed with the charges, drop the charges, downgrade the charges, or upgrade the charges. In most cases the judge will find there is enough evidence to proceed with the charges and will order a trial. If the judge finds that there is not enough evidence to try the accused on the charges that have been laid, the charges against the accused will be dropped. In some cases a judge may rule that the evidence does not warrant the actual charges laid and, in such cases, the judge may downgrade the charges. For example, the judge may find that the evidence warrants a manslaughter charge rather that a second-degree murder charge. As well, if the evidence warrants it, charges could be upgraded.

If the preliminary hearing does not proceed as planned, it could be for several reasons:

- the accused may plead guilty;
- the accused has waived his right to a preliminary hearing; or
- the Crown has opted to proceed to direct indictment (very rare).

25. Is it important for me to attend a preliminary hearing?

It is important for victims to attend the preliminary inquiry because this stage often acts as a test of the Crown's case against the accused. It is not uncommon for a guilty plea to be entered following a preliminary hearing. If the accused pleads guilty, there will not be a trial. In these cases, the preliminary hearing is then the only opportunity for victims to hear important evidence, fact and details of the crime.

The victim should also consider attending the preliminary inquiry because evidence may be introduced during this stage that will not be allowed at trial, as the rules of evidence are less strict at preliminary hearings.

26. What is disclosure? Does the defence have to disclose its case to the Crown?

The *Criminal Code* obliges the Crown to disclose their case to the defence, as the accused has a right to obtain 'discovery' of the prosecution's case against him/her. The Supreme Court of Canada has ruled that "the Crown is under a duty to disclose all the material it proposes to use at trial and, in particular, all evidence that may assist the accused in mounting his or her defence even if the Crown does not propose to place such evidence before the court." The Supreme Court also ruled that "there is no reciprocal obligation on the accused to assist the prosecution." Thus, the Crown must always disclose its case. The defence is not required to disclose except where they plan to use expert evidence or alibis.

27. What is a voir dire?

A voir dire is a trial within a trial. It is a hearing held, without the presence of the jury, to determine whether an issue of fact or law will be admissible. For example, a voir dire may be used in order to decide whether certain aspects of an expert witness' testimony will be allowed during the trial.

28. What is a change of venue?

Most cases are tried in the community courthouse nearest to where the offence took place. In rare circumstances, a trial can be moved to another location. A 'change of venue' is requested when either party feels that the potential jury pool may have been tainted due to mass media coverage of the case. According to section 599. (1) of the *Criminal Code*, an application for change of venue may be made by either the accused or the Crown if the judge is satisfied that:

- the ends of justice so require; or
- that a jury panel will not be available.

The Victims' Role during the Trial

When a case goes to trial, victims are often only involved as onlookers. Some victims may be called as witnesses in the case against the accused, but victims often have no formal role at court appearances. The Crown Attorney may consult victims with respect to court dates, plea bargains, compensation programs and victim services programs, but this varies from province to province. Provinces have their own legislation with respect to crime victims - services and notification can vary greatly from one jurisdiction to another.

Unfortunately, Crowns, police and service workers often disagree about who should be informing victims of their rights. Victims should understand that they have no formal role in the process and the Crown is not their lawyer. They should be encouraged to ask a lot of questions as they go through the process. Yet, they cannot count on being informed of every detail by the Crown, police or victim service providers.

29. Who represents the victim during the trial? Should I get a lawyer to ensure that my rights are met during the trial?

Crown counsel is not and can never function as the victim's lawyer. Although the Crown appears to be representing the interests of the victim, the Crown is the lawyer for the Queen and the government during the trial. In Canadian criminal cases, the harm is perceived to have been committed against the State. This is why cases are referred to as Regina v. Smith (or R. v. Smith), Regina being the Queen in Latin. The Crown is truly representing the society, of which you are a part.

It is not necessary for victims to hire a lawyer during the trial as they rarely have a legal role. However, victims may need their own lawyers for specific issues such as publication bans or attempts by the accused to get copies of a sexual assault victim's personal psychiatric records.

30. Who advises me of court dates?

The Crown Attorney should advise victims of upcoming court dates. If they do not, the Victim Witness Assistance Program should have the information available for you. If you are called as a witness in the case, you will be issued a subpoena. A subpoena is a court order telling a person specifically when to come to court to testify. If you are subpoenaed, you cannot attend trial before you are called as a witness.

If you wish to observe the proceedings after delivering your testimony, you can apply to the judge for permission to remain in the courtroom. Speak with the Crown Attorney about this.

31. Where do I sit in the courtroom?

Victims usually sit on the right hand side of the courtroom, behind the Crown Attorney. Be aware that the courthouse is a public place and seats are not specifically reserved for the victims. You may try speaking to the Crown or police to see if they can reserve some seats for you.

32. While in court, if the accused makes threatening remarks or signals at me, what should I do?

If you are threatened by the accused in any manner tell the Crown Attorney. Additional charges may be laid.

33. Will I see and meet family members of the accused in the hallways?

You are likely to see the accused's family members in the courtroom and throughout the courthouse, including the washrooms. If you do not wish to meet them or speak to them, you are by no means required to do so.

The Trial

34. Who will be present in the courtroom during the trial?

There will be many people present in the courtroom during the trial, such as:

Judge: presides over the courtroom, controls the proceedings, makes decisions when questions of law or discretion arise.

Accused: the generic name for the defendant in a criminal case.

Crown Attorney: or the crown prosecutor, a government appointed agent who prosecutes criminal offences on behalf of the Attorney General of Canada, the Crown presents all relevant evidence to the trier of fact (the trial judge or the jury) that sheds light upon the offence of which the accused is charged. A Crown Attorney is not the victim's lawyer but is acting on behalf of all members of the public. The Crown Attorney decides whether to lay a criminal charge in some jurisdictions, and whether there is enough evidence to justify taking the case to trial.

Defense counsel: or a defence lawyer, is a lawyer who represents a person charged with a criminal offence. He/she protects the interests of the accused, has a duty to raise every issue, advance every argument, and ask every question, however distasteful, which she/he thinks will help her/his client's case.

Court Clerk: officer of the court who files pleadings, motions, and judgments, keeps a record of trial evidence, administers oaths, and announces the beginning and end of court sessions.

Court Reporter: a person transcribes by shorthand, stenographically takes down, or electronically records testimony during court proceedings, or at trial related proceedings such as depositions.

Bailiff: a court officer who has charge of a court session in the matter of keeping order, custody of the jury, and custody of the prisoners while in court.

Members of the public: trials in Canada are open to all members of the public unless a specific ban has been ordered by the presiding judge.

Members of the media: as trials in Canada are open to the public, members of the media will likely be present in the courtroom to report on the events of a trial unless the judge has ordered a publication ban on the proceedings (where a publication ban has been ordered, members of the media can remain in the courtroom but cannot report on the case).

Members of the Jury: (if an accused has been charged with an offence where he/she faces more than five years imprisonment, they may choose a trial by judge or a trial by judge and jury), members of the jury are randomly selected from a cross section of the population, their duty is to decide guilt.

35. In what language will the trial be held?

In Canada, the trial will either be in English or in French, dependant upon the accused's language of preference. By law, the accused has a right to trial in his/her own language. This may be of concern to English speaking Canadians who are forced to attend an entirely French trial in Quebec or vice versa. Rest assured that there are bilingual victim services available across the country.

If a victim speaks neither English nor French, translation services may be available. Please consult your local Victim Witness Assistance unit.

36. Will my trial be a jury trial?

Trial by jury is actually a very uncommon occurrence. Jury trials are usually reserved for the most serious cases. As a general rule, any person charged with an offence with a penalty of five or more years in prison has the right to choose if his or her case will be heard by a judge alone or by a judge and jury.

37. What is the difference between a trial by judge and a jury trial?

There are a few important differences between the two:

- In jury trial, the jury decides on the facts and determines the person's guilt; in trials with a judge alone, the judge determines the law and the facts.
- In a jury trial, the judge makes a 'charge to the jury', where she or he instructs the jurors about the law that applies to the case. There is obviously no need for this in a trial by judge alone, since the judge knows the law.
- Judges decide what evidence a jury will or will not hear. In cases where there is no jury, the judge hears all of the evidence and then decides whether it is admissible.

38. How is jury selection completed?

There may be some variation between the provinces, but as a rule, individuals from the local community are randomly selected by voter registration or enumeration lists and are summoned to appear for jury duty. Aside from some basic requirements (i.e., Canadian citizenship, 18 years of age and older), each province and territory also has a law called The Jury Act, which prohibits some members of the public from serving on a jury (police officers, lawyers, legislators, etc.)

The defence and Crown will take turns indicating whether they are content with a jury member, or whether they challenge (reject) that person. Each side has a limited number of peremptory challenges, for which no reason need be given; and an unlimited number of challenges for cause, which must be proven on specific grounds, such as impartiality. The process continues until twelve jurors have been selected. The jury pool can begin with 100 or more potential jurors in a large city.

39. Am I allowed to be present for jury selection? Do I have a say in who is chosen?

Yes, victims are allowed to be present. The Crown Attorney, the accused, the defence council, other court staff, the media, people who have been selected for jury duty and the family members of the accused may also be there. The victims do not have a say in who is chosen.

40. Can the jury wander through the courthouse during lunch hour and eat in the same cafeteria as the victims?

Yes, in some case you may see the jury members during lunch and in the washrooms. Victims should not discuss the case with members of the jury under any circumstances.

41. If I accidentally discuss the case with a jury member, what can happen?

Members of the jury are to remain impartial. Discussing the case with a member of the jury can result in a mistrial. If, however, you do discuss the case with a jury member, tell the Crown immediately. You should tell the Crown even if you think that a jury member might have accidentally overheard something you said.

42. What happens during jury deliberations?

During deliberations, the jury is to decide if the accused is guilty and if so, guilty of what offence (i.e., the judge may instruct the jury on the different levels of sexual assault or homicide). The members of the jury

remain together until they reach a decision. Sometimes the jury reaches a decision quickly, but victims should note that it can take several days or weeks to reach a decision.

43. What does it mean if the jury is sequestered?

After closing statements and the judge's charge to the jury, the jury is ushered into a special room, separating, or sequestering them from the outside world, where they hold all their discussions until they reach a verdict. Jurors usually return home after each day of the trial, but in rare circumstances the jury can be sequestered for the entire trial.

It is at the conclusion of the trial, from the time the jury retires to consider its verdict, that the jurors must stay together, isolated from friends and family. If the judge orders the jury sequestered, the jurors cannot go home. It is also important to note that the jury cannot discuss the case with the public, including their family members. This custom of sequestering the jury until a final verdict is reached was established to ensure that outside influences (e.g., media portrayals of the trial, public pressure) do not sway the jury's decision.

44. Will I be able to thank the jury? Am I allowed to have a list of their names?

There is no real opportunity for victims to thank a jury for their service. Victims will not be provided with a list of the jury members' names, although their names are read aloud during jury selection. It should also be noted that juries are not permitted to talk about what they have discussed during their deliberations, so you cannot ask them how they came to their decision.

45. Does a trial run continuously? If not, how long can it be delayed by law?

Under section 645. (1) of the *Criminal Code*, the trial of an accused shall proceed continuously subject to adjournment by the court. This means that although the trial should proceed continuously, the judge can from time to time adjourn the proceedings to a later date.

Victims should be aware that a number of adjournments may take place during the trial. From indictment through to sentencing, attorneys and judges must arrange their schedules according to availability, and getting court time that is suitable to all can be challenging.

By law, the accused has the right to a speedy trial.

46. Am I allowed to talk to defence lawyers?

Although it is not prohibited, it is not usually a good idea for the victims to speak with the defence lawyers about the case. Also, defence lawyers may choose not to speak with you. If you have any questions or concerns about your case, you should speak with the Crown.

47. Where does the accused sit in the courtroom? How close will I be to him/her?

If the accused is in custody, he or she will usually sit in a transparent enclosure, which is guarded. He or she may or may not have handcuffs on. The accused may also sit in the courtroom beside his or her lawyer. If the accused has been released on bail, he or she may be sitting beside their lawyer or in the public seating area of the courtroom.

48. Is there appropriate attire to wear to court?

Although there are no set rules on what to wear to court, there are some general rules of the court regarding attire. If you are wearing a hat, for example, you will be asked to take it off. Other rules of courtroom etiquette, such as not chewing gum and turning cell phones off, will also be enforced.

49. Am I allowed to speak with the Crown during the trial (in the courtroom)?

You should avoid speaking to the Crown during the 'in court' proceedings. The Crown is concentrating on arguing a strong case; he/she should not be disturbed. If you have questions or comments, wait until the court has adjourned for the day or for a lunch break before approaching the Crown.

50. What happens if I "lose it" in court? Will I be banned from the trial?

At times, it may be difficult for victims to keep composure during the trial. We strongly urge victims to refrain from speaking out of order in court. In extreme cases, you may be held in contempt of court, which can mean fines or even jail time. The judge is permitted to remove a person from the trial if they are causing a disturbance.

Some victims find it helpful to take notes during the trial or to write down their thoughts as a way of maintaining composure. You will not likely be removed if you become emotional and begin to cry - only if you disrupt the court in some way. If you must leave the courtroom, try to do so during one of the breaks.

Unfortunately, sound in the courtroom is very faint and the hearing devices usually don't work. Since you may have difficulty hearing important testimony, sitting near the front is suggested.

51. What are the financial costs of attending court?

The costs of transportation, child-care, food and parking can certainly add up, especially if the proceedings take months or years to complete. Witnesses and victims may receive a small fee. You may also receive a small mileage allowance depending on the distance you must travel to attend court. Ask the Crown about how to collect your fees.

Remember that your expenses are not covered if you have not been called as a witness in the case. Some victims' agencies may be able to provide financial assistance to you.

52. Can my employer fire me for attending court?

If you are subpoenaed to appear in court you are legally required to be present and your employer cannot fire you for attending. Victims who choose to attend a trial or other proceedings are not always lawfully required to be present. Unfortunately, some employers are not as compassionate as others and will not tolerate absenteeism. Individuals should speak to their individual employers as the length of trials can vary greatly from one situation to the next. Many provincial victims' rights bills protect victims from being fired. For more information about this, talk to your local victim services workers.

53. If the accused is told to pay restitution to me, where do I collect the money?

The offender's sentence may include a restitution order. This requires that the offender pay an amount directly to the victim of the offence to help cover monetary losses or damage to property caused by the crime. You will have to establish the value of the goods taken or destroyed and your expenses. The order for restitution may be for the whole amount or part. The judge has to take into account whether the offender has any ability to pay this amount, because it is part of the entire sentence.

The offender may be required to pay for damages:

- not exceeding the replacement value of damaged property;
- pecuniary damages including loss of income or support incurred as a result of bodily harm; or
- for reasonable expenses (food, temporary shelter, transportation, child care) incurred by the victim as a result of moving from the offender's residence in cases of domestic violence.

Victims will receive a notice of restitution if a court has ordered that restitution be paid to them. The offender may pay you the amount after the order is made or work out a payment schedule. The notice will refer you

to an office where you are able to pick up the money owed to you. You cannot collect the money directly from the offender. It is usually paid to the court clerk.

Restitution can be very difficult to collect, especially if the order is stand-alone. If restitution is part of a probation order it is somewhat easier to collect. If the offender makes no efforts to pay, you can file the order in the civil courts and use the same methods to collect as if you had successfully sued the offender.

You should be able to pursue these remedies on your own, although you may need some legal advice to do so. A student legal aid clinic may be able to help.

54. If I get important information relating to my case, who do I tell?

If you get important information relating to your case, contact the police investigator or the Crown Attorney if the case has already gone to court.

55. What do they mean by 'reasonable doubt'?

For an accused to be found guilty of a crime, the judge, or the jury, must be convinced 'beyond a reasonable doubt' that the accused is guilty. This is a high standard of proof and means that if there is a reasonable possibility that the accused is innocent, then she or he must be acquitted (found not guilty). It means that the evidence must be so complete and convincing that any reasonable doubts of the facts are erased from the minds of the judge or jurors.

If the accused is found not guilty, it does not mean that he or she is innocent. It may mean that the judge or jury was not entirely certain about the person's guilt. In order for the accused to be found guilty, the judge or jury must have no doubt that the accused is guilty.

56. What are final summations?

After all the witnesses for both sides have been heard, the Crown Attorney and the defence lawyer make final addresses to the jury and/or judge. These addresses summarize the evidence that has been presented, with each side arguing that their 'story' of the evidence is the most truthful, reliable and relevant.

If there is a jury, the judge instructs them as to what laws apply and how to weigh the evidence that they have heard. This is called 'instructing' or 'charging' the jury.

57. If I am not pleased with the judge's performance, what can I do about it?

There is not much that victims can do if they are not pleased with the judge's performance. If the Crown Attorney believes that an error of law has been committed, he/she may appeal the decision to a higher court. If the judge makes an offensive or inappropriate comment about you or the victim (if you are not the direct victim) you may file a complaint with the Canadian Judicial Council (or its provincial equivalent). The council will not investigate rulings or sentences.

58. How long does a trial take?

The criminal trial can be a complicated process, taking months or years to complete from pre-trial to sentencing. In other cases, an entire trial and sentencing hearing can take place in the span of a day. The length and complexity of trials cannot be predicted. Speak with the Crown Attorney in your case, as they should have a good estimate.

59. Why is the trial date so far away from the date of the crime?

The trial date can be so far away from the date of the crime for many reasons. First, the police investigation must take place. These investigations can, in some cases, take quite a long time because all witnesses must be interviewed and statements taken. Also, there are different court proceedings that take place

before the actual trial, such as bail hearings and preliminary hearings. The trial may also be delayed in order to give the accused time to find legal counsel.

Another reason for the delay is that the courts are over-burdened and have a large number of cases to process. Defence lawyers may prefer delays because witnesses forget, die, disappear, etc.

60. If I am at home when the jury reaches a verdict, will the judge wait for me to return to the court before rendering judgment?

Reaching a verdict can sometimes take a long time and you will probably have to wait around for quite a while before a decision is made. Speak with the Crown Attorney before leaving the courthouse as they can usually estimate the length of time it will take for the jury to return a verdict. It is unlikely that the judge will wait for victims to return to the courtroom before reading the jury's verdict.

Inform the Crown Attorney that you would like to be telephoned immediately if a verdict is reached in your absence.

61. What happens to letters of outrage that are sent to the judge during the trial?

Letters of outrage that may be sent to the judge during the trial are usually turned over to the Crown Attorney. The Crown may then choose to use these letters in his/her pre-sentence report to demonstrate the impact of the crime on the community.

62. How long does the justice system save all of the trial documents?

Transcripts and other important court documents remain in the court reporter's office for many years following a trial. The court reporters archive old files so if transcripts are requested at some point in the future, they can be accessed and transcribed.

63. If I am unable to attend the entire trial, what is the best time for me to be there?

If you are unable to attend the entire trial, try to be present during the summations at the end of the proceedings. The Crown and the defence will each present their version of the crime and their arguments. This is the ideal time to hear both sides of the story and the ruling that each side is asking for.

64. If the accused is kept in prison until the time of the trial, is the length of time spent in prison reduced?

As outlined in section 719(3) of the *Criminal Code*, when determining the sentence to be imposed, a court may take into consideration any time spent in custody by the person as a result of the offence. Therefore, time spent in prison prior to or during a trial, usually counts toward reducing the total amount of time spent in prison. A judge may give more weight to time spent in custody prior to conviction (i.e., accused spent two weeks, court may count that as three weeks) because in these types of cells, there is nothing for the accused to do. It is known as "dead time" and is considered more difficult than time spent in prisons or jails.

Media

65. Will the media be present in court? Can the public be banned from the courtroom?

Any proceedings against an accused are held in open court, therefore the public and the press may be there. There are exceptions to this. Under section 486.(1) of the *Criminal Code*, if the presiding judge is of the opinion that it is in the interest of public morals, the maintenance of order, or the proper administration of justice to exclude all or any members of the public from the court room for all or part of the proceedings, he/she may so order. This, for example, may often be the case where the accused is charged with a sexual offence and the victim is a child.

66. If I do not want the press to be there, will the Crown ask the court for a publication ban?

You can ask the Crown to apply to the presiding judge/justice for a publication ban. The judge/justice may also order a publication ban even if the Crown/Defence has not requested one. Under section 486(3) of the *Criminal Code*, the presiding judge or justice may make an order directing that the identity of a complainant or witness and any information that could disclose the identity of him/her, shall not be published in any document or broadcast in any way, when an accused is charged with a violent or sexual offence. In determining whether to make an order of a publication ban, the judge/justice will consider the following:

- the right 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;
- whether the victim or witness needs the order for their security or to protect them from intimidation or retaliation;
- society's interest in encouraging the reporting of offences and the participation of victims and witnesses;
- whether effective alternatives are available to protect the identity of the victim or witness;
- the salutary and deleterious effects of the proposed order;
- the impact of the proposed order on the freedom of expression of those affected by it; and
- any other factors that the judge or justice considers relevant.

Where a publication ban has been ordered, it does not necessarily mean that the press will not be there, it just means that they cannot use certain information regarding a witness or victim in newspapers or broadcasts. This is usually the standard practice with sex offences. Although a publication ban does not exclude the press from being in the court, the judge can in some cases clear the courtroom and exclude the public from the proceedings.

67. Should I talk with the media during the trial? Will this affect my case?

Speaking to the media is an individual choice. If you choose to do so, you should wait until a trial is finished. Once the case is over, you may choose to speak to the media but it is not required. You do not have to answer their questions and most will respect your decision. If you are having trouble avoiding them (for example after the trial), ask the police or Crown if there is an alternate exit you could use.

Witnesses

68. As a victim, will I have to testify?

If you were a direct victim, you witnessed the crime, or you have other information that may be useful to either the Crown or defence, you may be called upon to testify.

As a victim, you will not always have to testify. For example, if you are not a direct victim, such as a parent of a child who has been murdered, you may not be subpoenaed to be a witness. If you are subpoenaed as a witness for the Crown, you are required by law to attend court and give evidence. As previously stated, you will not be allowed to attend the trial before you testify because the lawyers and the judge do not want the other witnesses to influence your testimony. Once you have testified, you may then ask the judge for permission to observe the remainder of the trial, and you will usually be granted such a request provided the judge does not believe that you will need to testify again.

Summary conviction offences generally involve one appearance of witnesses. For indictable or more serious offences, you may be required to testify at the preliminary inquiry as well as during the trial. Generally, a preliminary hearing will occur several months after the charges have been laid, and if there is a trial, it will occur several months after the preliminary hearing. The criminal justice system is quite overburdened, thus you should be prepared for a delay.

69. How can I prepare for my testimony?

To ensure that you are properly prepared, it is suggested that you meet with the Crown Attorney before the preliminary inquiry and/or trial. The Crown will explain procedure to you, go over evidence, review your statement to the police, and give you an idea of the kinds of questions to expect. Do not hesitate to ask questions if you are concerned.

Some time before the trial, the Crown will ensure that you are provided with a copy of your statement, which will help refresh your memory (often the trial can be a long time after the offence). You may be asked to read your statement over a number of times to ensure that the answers you provide in court match the answers given in your statement. You may find it helpful to attend court before your testimony to observe another trial and how evidence is given. Most courthouses have victim/witness services that will give you a tour of the courthouse.

70. As a witness, where will I wait to testify?

When you get to court (bring the subpoena with you), you should first let a court official know that you are there. Several cases are usually heard in the same courtroom on a given day, and all witnesses testifying in the cases are asked to appear at the same time. As a result, you will undoubtedly have to wait before testifying and will probably be excluded from the courtroom. If so, you should wait in an area outside the courtroom until you are called to give evidence (there may be a specific room where you will be allowed to wait).

Since it can be a long wait before you get to the witness stand, you may wish to bring a book or magazine to read, or take along a family member, friend or crisis worker to keep you company (if the person is not a witness, she or he may be able to stay in the courtroom while you give evidence). You should also make sure you have food, or enough money to buy something to eat, in case you have to wait through mealtimes. When you are called to give evidence, you should go to the front of the courtroom near the judge. The court clerk will ask you to promise to tell the truth, either by taking an oath or by giving solemn promise known as an affirmation, and then will ask you to state your name for the record. The Crown Attorney and the defence counsel may then question you.

71. If I don't believe in God, do I have to swear on the Bible?

A witness can choose to provide an affirmation instead of swearing on the Bible. An affirmation is simply a promise to be truthful.

72. What will I be asked when I'm testifying?

The Crown Attorney will conduct their questioning of you first (examination-in-chief). During an examination-in-chief, the Crown is generally not allowed to ask leading questions. The evidence you present will flow from you, with the Crown doing little more than suggesting the topics and assisting you in keeping on topic. Such topics will typically include simply telling the court what happened, when and where it happened, what you said, what you did, what the offender looked like, etc.

Once you have been examined-in-chief, you will then be cross-examined by the defence lawyer, who will usually ask 'leading' questions – questions, which suggest the answers. The defence will be trying to expose any weaknesses or inconsistencies in your evidence, thus she or he may suggest that you were mistaken in your identification of the accused, that you consented to what happened, that you were mistaken about the details of what happened, etc.

When the cross-examination has finished, the Crown Attorney may then ask you questions about points raised in the cross-examination (called 're-direct').

73. Do I have to answer everything that they ask me when I'm testifying?

You are usually required to answer every question asked of you unless the judge tells you not to. If you do not answer you may be held in contempt of court and be fined or imprisoned, or both. It is important to remember however, that if you don't know the answer, it's okay to say 'I don't know' or 'I don't remember'.

Bring your statement to court with you, and have it by your side as you testify. Naturally, you are not expected to remember every detail, if you are unsure of an answer it is better not to guess. Feel free to ask the Crown to allow you to refresh your memory by reading from your statement. Remember to keep your answers short and to the point.

If a question is inappropriate, the Crown can object to it and if the judge agrees to the objection, you may not have to answer the question. In some cases, objections are sustained and in other cases they may be overruled, meaning that you must answer the question. Some questions, such as those in a sexual assault case about a victim's sexual history, will not be allowed unless the desired evidence meets certain requirements.

74. Other than my testimony, what else will be used as evidence?

The Crown Attorney will likely call other witnesses to testify such as the police officers who investigated the crime, doctors and nurses or people who saw you just after the offence, and maybe even other experts (psychologists, chemists, fingerprint examiners, etc.). Each of these witnesses will go through a similar process to you: examination-in-chief, cross-examination, re-direct. Photos, clothing, weapons and medical reports are other types of evidence that may be presented.

When the Crown has called every one of its witnesses, the Crown's case is complete. Then, the accused has a chance to present a defence to the Crown's evidence. The defence lawyer may call witnesses to try to show that the accused is not responsible for the crime or that someone else could be, and the Crown Attorney will have an opportunity to cross-examine these witnesses and try to expose any weaknesses and inconsistencies in their evidence.

75. Will the accused testify at trial?

The accused may testify at trial. It is important to note that he/she is not required to testify and can therefore choose not to do so. The accused is not required to prove he/she is innocent.

76. Why do the courts not allow certain evidence?

One of the main reasons for excluding certain evidence is because it may be difficult for lay people (members of the jury who are not experts in evidentiary law) to decipher evidence or put aside their personal ignorance and prejudices. The following will usually be excluded as evidence:

- The accused's bad character or previous convictions;
- The opinions of witnesses (other than 'experts');
- Evidence of what someone else has been heard to say (hearsay evidence), unless it is an admission or confession by the accused; and
- To protect the rights of individuals and to also guard against wrongful conviction, evidence that is obtained through a violation of a person's rights is excluded. An example of this would be a confession to police that is obtained under oppressive conditions, or through questioning styles that are deemed to be threatening. A confession must be voluntary to be ruled admissible at trial.

77. Can I get the items that were presented as evidence in court? How long must I wait to have them?

Yes, you may be able to get the items that were used as evidence if they were personal items. Make sure that the Crown and police are aware of your desire to get the items back and ask them what the procedure is. You may have to wait until the appeal process is over. You will be directed to the police evidence room to collect the evidence. Victims should know that the accused has the right to view all items of evidence, including personal items and photos. Also, victims will probably have to wait until the court proceedings conclude to acquire these items.

78. What happens if a witness is caught lying on the stand?

Lying on the stand under oath and knowing that the statement is false, is called perjury. Under the *Criminal Code*, anyone who commits perjury is guilty of an indictable offence and may be liable to imprisonment for a term not exceeding fourteen years.

79. What happens to a witness who refuses to testify?

A witness who has been subpoenaed to testify in court is required to do so by law. If he/she refuses to testify, the judge may issue an arrest warrant and charge the person with contempt of court.

80. Why does a witness have to tell the courtroom about their criminal history while the accused does not?

As previously stated, our laws are designed to ensure that an accused has a fair trial free from bias. If an accused's criminal history is presented, jurors may not be able to maintain the assumption of innocence. A witness must present their criminal history in order to prove that they are reliable and trustworthy.

81. Am I allowed to see court documents such as witness statements and evidence?

Generally, court materials such as these are restricted to the use by attorneys. You may wish to ask the Crown permission to view these items.

82. Can I receive a copy of the Crown Attorney's file?

It is very unlikely that you can receive a copy of the Crown's file. While the Crown has a duty to provide information to the victims, they do not have to give you full access to the file or make copies for you.

In Ontario for example, the Crown Policy Manual states, "Victims should have access to information about the court process, including victim/witness assistance, and the status of the case in which he or she is involved. Crown counsel should promote victims' understanding of the structure and operation of the criminal justice system and the role of the victim. The Crown Attorney in each jurisdiction should facilitate victims' access to information by:

- Providing copies of available pamphlets or other written material about the criminal justice system;
- Directing victims to other resources, such as publications and websites."

It is important to note that nothing is guaranteed to victims in the criminal justice system. The language used is non-committal - it simply states victims 'should' have access to information or the Crown 'owes' a special duty of candor and respect.

83. Will the Crown supply me with a copy of the court transcripts, the coroner and/or autopsy reports? If not, how do I access these documents?

As a general rule, victims are required to pay for court transcripts, which can be a very costly expenditure. If however, the Crown has ordered the transcripts, they will usually share them with the victims.

In a trial, the coroner and autopsy reports are likely to be presented as evidence and will therefore become part of the court record. If so, ask the Crown for copies of these documents. If the coroner and autopsy reports are not entered as evidence, you will have to order and pay for copies of these reports. In some cases, next of kin may be provided with the autopsy report at no cost to them.

84. Where can I get information about the accused's criminal history?

Victims are not entitled to have information about the accused's criminal history because it is a personal matter. All of the accused's personal information is sealed from the public. If convicted, you may hear details during sentencing.

85. Am I allowed a list of names and addresses of the witnesses?

You may not have an official copy of the witness list including names and addresses, but if you are present in court, they are read aloud. Also, they may appear on the court docket (list that is hung outside a courtroom announcing what cases are being heard on a particular day). If you purchase the trial transcripts, the names will be part of the record.

86. Am I allowed to speak with witnesses who will be testifying at any time?

Witnesses should not talk to each other about information regarding the case if they, or the person they are talking to, have not yet testified. If it is found that witnesses have spoken about the case before they have testified, this may result in a mistrial.

87. Why is the probation officer not allowed to testify on behalf of a victim?

A probation officer works directly with the offender and, while they may agree with victims' concerns about the offender, their job is to relate the offender's character to the court without bias.

Victim Services

Following the commission of an offence, victims may require a variety of services including emotional, psychological, medical and financial support and/or general information about the criminal justice system. There are essentially four types of victim services programs available in Canada.

- The first are police-based victim services, which usually consist of victim crisis units to help victims in the aftermath immediately following the crime.
- The second are Crown or court-based services such as Victim/Witness Assistance Programs. Such programs are designed to help enhance the understanding and participation of victims and witnesses in the process.
- The third type of service is community-based and includes sexual assault centres, victim advocacy groups, distress centres, and safe homes.
- The fourth type of service involves a system-based approach and provides a broad range of services from one location.

Most provinces use either police-based, Crown/court-based or community based approaches (or a combination thereof) for service delivery. A few of the smaller provinces use the system-based approach.

88. What do police-based victim services do for victims?

There are police-based victim services across the country that provides crisis intervention, emotional support, practical assistance and referral during the time of the initial investigation.

89. What exactly does the VWAP office in the courthouse do for victims?

The program provides victims and witnesses with:

- courtroom orientation;
- information regarding the criminal justice system;
- information specific to your case, such as bail, probation conditions, etc.;
- court accompaniment; and
- referrals to community agencies for counseling and other support services.

90. Where is the Victim Witness Assistance Program (VWAP) office?

Normally, VWAP services are located in courthouses across the country. However, not every courthouse has this service in place. If you are from a small town, it is likely that this service may not be available to you. Please contact your Crown Attorney to find out what services are available to you.

91. What are my rights?

Compared to the rights of the accused, victims have very few "rights" in the criminal justice system. While the federal government makes the law, the provinces administer it. Therefore, much of the contact victims have with the criminal justice system is determined by the provinces. Most provinces have a victims' bill of rights, but most only talk about what victims "should" have, and do not provide a complaint mechanism.

Rules and principles of the court, such as ‘innocent until proven guilty’, and that the evidence must proven ‘beyond a reasonable doubt’, are in place to protect innocent people. Try not to become discouraged by the fact that the court seems more concerned with protecting the accused, rather than with the pain you have felt and experienced. The courts are sympathetic to your situation, but they have a duty to ensure that they do not convict the wrong person.

In general, every victim in Canada should know that they have the right to complete a victim impact statement. On December 1, 1999, Bill C-79 became law and victims across Canada earned new rights. Bill

C-79 allows victims to present their impact statement in writing or orally. Also, a judge is now required to ask the Crown if the victim has been informed of their right to complete a VIS.

The *Criminal Code* also provides protections for young sexual assault complainants - e.g., testifying behind a screen, testifying via closed circuit TV, clearing the courtroom, allowing a support person with them while testifying, preventing the accused from personally cross-examining the victim, etc.

92. Does Canada have a Statement of Basic Principles of Justice for Victims of Crime?

Yes, 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 promote fair treatment of victims and should be reflected in federal/provincial/territorial laws, policies and procedures:

1. Victims of crime should be treated with courtesy, compassion, and respect.

2. The privacy of victims should be considered and respected to the greatest extent possible.

3. All reasonable measures should be taken to minimize inconvenience to victims.

4. The safety and security of victims should be considered at all stages of the criminal justice process and appropriate measures should be taken when necessary to protect victims from intimidation and retaliation.

5. Information should be provided to victims about the criminal justice system and the victim's role and opportunities to participate in criminal justice processes.

6. Victims should be given information, in accordance with prevailing law, policies, and procedures, about the status of the investigation; the scheduling, progress and final outcome of the proceedings; and the status of the offender in the correctional system.

7. Information should be provided to victims about available victim assistance services, other programs and assistance available to them, and means of obtaining financial reparation.

8. The views, concerns and representations of victims are an important consideration in criminal justice processes and should be considered in accordance with prevailing law, policies and procedures.
9. The needs, concerns and diversity of victims should be considered in the development and delivery of programs and services, and in related education and training.

10. Information should be provided to victims about available options to raise their concerns when they believe that these principles have not been followed.

It is important to note the language used in the Statement of Basic Principles of Justice for Victims of Crime. Among other things, it declares that victims "should" be informed and treated with compassion and respect. Unfortunately, no formal rights or remedies have been guaranteed to victims.

Most of the provinces and territories have enacted legislation governing victims' rights. However, most of the legislation is non-committal. The language of the legislation uses terms such as "victims should have access to..." or "Subject to limits...". It does not truly entrench the right of victims to receive services or be guaranteed a certain type of treatment. Thus, the "rights" of victims are not truly enforceable.

93. What type of psychological services are available to crime victims?

Each province offers different psychological services to victims and survivors of crime. Most funded programs are offered through community health centres. These community health care centres employ professional social workers, accredited therapists and counsellors. Services are generally provided free of charge and may include crisis intervention services such as: children's mental health services, adult's mental health services, programs for youth at risk and services to prevent violence against women. Many community health centres offer a limited number of sessions free of charge, but may offer reduced or sliding-scale fees for continued therapy. Fees vary from centre to centre.

Most victims of crime end up seeing a community counsellor because private therapists such as psychologists are very expensive, usually charging in excess of $100 an hour and services covered under provincial health care programs are generally not available or have very long waiting lists.

Financial compensation programs for victims may also be available to assist with other or continued psychological treatment expenses.

94. I feel very traumatized by the violent act committed against me or my loved one. I am having a difficult time resuming "normal" life activities. Do I need to see a psychiatrist?

'Start by seeing your family physician to get an appropriate diagnosis and rule out other health concerns. It may be that your symptoms are a primary medical condition. On the other hand, they may be caused by another underlying condition such as:

- A medical illness such as heart disease, anaemia, or thyroid disease.
- A side effect of over the counter or prescription medications you may be taking.
- Drug or alcohol abuse.

Stressful life events such as a recent job loss, separation or death and/or a history of trauma or abuse can play a contributing role in your illness. Finding support to deal with these issues is also very important.

The vast majority of people receive excellent care through their family doctor. Some family physicians are also trained in psychotherapy. When it is needed, the doctor can play a vital role in linking you to specialized services.

Unfortunately, sometimes the diagnosis of mood or anxiety disorders is missed. Feelings of sadness, anxiety, or irritability may be attributed to current life events, personality or a stage of development - like adolescence. Shame and fear of being 'labelled' may make you reluctant to be open about how you are feeling. Help your doctor by sharing what is going on. Make a list of your symptoms. Ask someone you trust to help you with this task as they may have seen changes in your health as well. Bring this information with you to the doctor's office so that they can sort through what is going on. Be sure to tell the doctor about all prescription and non-prescription medications you may be taking including herbal or alternative remedies.

Some psychiatrists specialize in diagnosing and treating depression, anxiety, and bipolar disorders. They can be very helpful when first-line treatment is not working or the side effects make continuing treatment seem impossible. Psychiatrists are medical doctors with specialized education and training in understanding and treating psychiatric disorders. They are also able to prescribe and monitor medication, if necessary, to help alleviate acute symptoms.

You will most likely need a referral from your family doctor to see a psychiatrist. Unfortunately, waiting lists to see a psychiatrist can be lengthy. Also, many people have a false idea of what a psychiatrist will do. A psychiatrist may see you only for a brief consultation providing your family physician with recommendations for ongoing treatment. Others may provide psychotherapy, cognitive or behavioural therapy depending on their area of speciality. To avoid frustration and disappointment ask questions to make sure that your expectations are in line with the services the psychiatrist offers.

Psychiatrists are often affiliated with a general hospital, which may also be helpful should your illness ever require a hospital admission for treatment. Many regions of Canada have very limited access to psychiatrists. In less populated areas, hospitals may have access to visiting psychiatrists. Videoconferencing is an approach being used in remote parts of the country to bring specialized care to under-serviced areas.[1]

Victims and survivors should be aware that psychiatrists are trained to use medication as the primary treatment option, along with supportive therapy sessions. While some victims do need medication to help them cope, others may not feel that being medicated is the best solution. Talk to your family doctor about the best treatment option for you.

Your family doctor may also refer you to a psychotherapist in private practice, or to a therapist/counsellor at a community health centre or similar agency. You may seek individual, couple, family, or group counselling to help to reduce the impact of the trauma, and its associated symptoms. There is generally a fee for these services, although it may be reduced by public funding, or may be covered by private health insurance or your province's crime compensation program.

94. Can a person testify behind a screen?

In some cases a witness may be allowed to testify outside the courtroom or behind a screen. Cases where such testimony is allowed are outlined in section 486. (2.1) of the Canadian *Criminal Code*. If a witness of a violent or sexual offence is under the age of eighteen, and if the judge is of the opinion that the exclusion is necessary to obtain a full and candid account of the acts complained of, the witness may be able to testify behind a screen or other device that would allow the witness not to see the accused.

95. What is victims' compensation? How do I apply for it?

Some provincial and territorial governments offer financial reimbursement to victims of crime. It may be referred to as criminal injuries compensation. The service is designed to financially compensate innocent victims and their families for expenses incurred as the direct result of a violent crime. This may include compensation for medical, dental or counselling expenses, funeral expenses, pain and suffering and/or loss of wages.

The distribution and amount of compensation varies depending on which province you live in. It is imperative to note that legislation concerning criminal injuries compensation differs from province to province. Thus, what may be covered in one province/territory may not be in another. In some provinces or territories, there is no compensation for victims at all. At the present time, Newfoundland & Labrador, the Yukon, the Northwest Territories and Nunavut do not offer such compensation.

In most cases, you have one year from the date of the crime to file your claim for compensation (this time limit is often extended if the victim has a reasonable excuse). You may be able to apply even if your attacker is not identified or found (a police report, however, is usually an essential part of your request).

[1] Information provided with permission from Mood Disorders Society of Canada. Learn more at www.mooddisorderscanada.ca.

You may also be eligible even if the accused is found not guilty. Applications must be made in the province where the crime took place. There is no cost for applying for compensation and you do not need a lawyer. For more information about criminal injuries compensation funds, call the board's office in your province/territory or ask the police or the Crown Attorney's office.

96. Where is the compensation board in my province?

Criminal injuries compensation is not available in all provinces. Financial compensation is available for crime victims in the following provinces:

Alberta

Victims of Crime Financial Benefits Program
10th Floor, J.E. Brownlee Building
10365-97th Street
Edmonton, Alberta, T5J 3W7
(780) 427-7217

Criminal Injuries Appeal Board
5th Floor, J.E. Brownlee Building
10365 - 97 St
Edmonton, Alberta, T5J 3W7
(780) 427-7330

British Columbia

The Crime Victim Assistance Program
P.O. Box 5550, Stn Terminal
Vancouver, BC
V6B 1H1
(604) 660-3888

Manitoba

Victim Compensation
1215-405 Broadway, Winnipeg
(204) 945-0899
Toll Free in Manitoba: 1-800-262-9344

New Brunswick

Victim Services Program
Department of Public Safety
P.O. Box 6000
Fredericton, NB E3B 5H1
Tel: (506) 453-3992

The Victims' Services Program has 12 offices across the province:

Bathurst (506) 547-2924
Burton (506) 357-4035
Campbellton (506) 789-2388
Fredericton (506) 453-2768
Grand Falls (506) 473-7706
Moncton (506) 856-2875
Miramichi (506) 627-4065

Richibucto (506) 523-7150
St. John (506) 658-3742
St. Stephen (506) 466-7414
Tracedie-Sheila (506) 395-0227
Woodstock (506) 325-4422

Ontario
Criminal Injuries Compensation Board
439 University Avenue, 4th Floor
Toronto, Ontario
M5G 1Y8
Toll-Free: 1-800-372-7463
Toronto Calling Area: 416-326-2900

Prince Edward Island
Victim Services
51 Water Street
Second Floor
Charlottetown, PE C1A 1A3
Tel: (902) 368-4582

Quebec
Direction l'indemnisation des victimes d'actes criminels
1199 rue Bleury – 9ième étage
P. O. Box 6056
Succursale Centreville
Montréal, QC
H3C 4E1
(800) 561-IVAC

Saskatchewan
Victims Services
6th Floor, 1874 Scarth Street, Regina SK,
S4P 3V7
Phone: (306) 787-3500
Telecommunications Device for the Deaf:
1-800-787-3954

*Nova Scotia
Criminal Injuries Counseling Program
5151 Terminal Road
4th Floor
Halifax, Nova Scotia
B3J 2L6
Tel: (902) 424-4651
*The criminal injuries compensation program in Nova Scotia no longer provides monetary compensation for lost wages, medical/dental expenses, and/or funeral services to persons harmed as a result of a violent crime. The program will now provide only counselling for victims.

97. Do I require a lawyer to file a claim for compensation? Is there anyone to assist me with this process?

You do not require a lawyer to file a compensation claim, but you can have one if you need assistance or feel that it is necessary. Contact your provincial office for more information. They have trained personnel available to answer your questions and assist you with the application process.

98. Will I have to physically appear before the Compensation Board?

You may or may not have to physically appear before the Board depending on the circumstances of your case. If you do wish to appear in person, you should request this when you make your application.

99. What criterion has to be met before a victim can apply for financial benefits?

Each province sets the criteria to qualify for compensation. In general, the injury or death must be a result of one of the following:

- the commission of a crime of violence constituting an offence against the *Criminal Code* and outlined in the Schedule of offences prescribed by the legislation, excluding impaired driving offences (every province but Ontario has a schedule of offences);
- lawfully arresting or attempting to arrest an offender or suspected offender, or assisting a peace officer in executing his or her duties; or
- preventing or attempting to prevent the commission of an offence or suspected offence.

100. If my province/territory has criminal injuries compensation, how much money can I be compensated for?

The amount of the award varies according to the circumstances of the case and the province/territory in which the crime occurred. In Ontario, up to a maximum of $25,000 for one-time payments and up to $1,000 in monthly payments for periodic awards are available.

101. Who can I write to if I need financial help to attend the trial?

It will be difficult to get financial assistance to attend the trial. Most victim service providers in Canada have limited funding sources and do not usually have the budget to provide financial assistance to victims. These agencies may however, be able to provide you with other forms of assistance by attending the trial in your place and/or taking notes. For a listing of the services in your area, do not hesitate to contact the Canadian Resource Centre for Victims of Crime.

102. If I cannot attend court, who will keep me up to date?

If you are unable to attend court proceedings, contact the Crown Attorney for an update in your case. Or, you may have other family members or a support system that will attend in your place. Some victim service providers will attend a trial with you or in your place if you cannot attend. Check with the victim services in your area.

103. Who do I complain to about the justice system?

Because the rights of victims are limited, there are very few formal mechanisms to handle complaints. As of yet, victims of crime do not have a formal complaints process. If a victim's rights are infringed, they may choose to speak to the media or contact a victim advocacy group such as ours. Victims cannot sue the Crown in Canada for violating their rights as the provinces and territories have no cause of action clauses in their victims of crime legislation.

While all provinces have an Ombudsman Act except for Newfoundland, PEI and the territories - these offices are for general complaints. British Columbia's Ombudsman Act allows victims to file a complaint if they feel that their rights under the BC Victims of Crime Act have been violated. Yet, the investigator does not have the right to truly resolve a victim's concerns/complaints.

Manitoba is the only Canadian province with a true complaints mechanism for victims of crime. Manitoba's *Victims Bill of Rights*, which became law in 2000, spells out a complaints process in which victims who believe their rights have been violated, can voice their complaints. Manitoba Justice has a maximum of 30 days to respond to such complaints. An extension can be granted only with ombudsman approval. As well, victims can voice their complaints to the Ombudsman's Office. Within this office there is a specialized crime victim investigator who will handle these cases.

If victims encounter difficulties in their dealings with the National Parole Board or the Correctional Service of Canada, a new National Office for Victims has been established within the Department of Public Safety and Emergency Preparedness to better meet the needs of victims of offenders under federal responsibility. Beginning November 1, 2005, this office will be able to address concerns and complaints victims of crime may have with regard to federal corrections. Victims can reach the office by calling 1-866-525-0554.

Effective 23 April 2007, Mr. Steve Sullivan became Canada's First Federal Ombudsman for Victims of Crime. The mandate of the Federal Ombudsman for Victims of Crime relates exclusively to matters of federal responsibility and includes:

- Facilitating access of victims to existing federal programs and services by providing them with information and referrals;
- Addressing complaints of victims about compliance with the provisions of the *Corrections and Conditional Release Act* that apply to victims of offenders under federal supervision and providing an independent resource for those victims;
- Enhancing awareness among criminal justice personnel and policy makers of the needs and concerns of victims and the applicable laws that benefit victims of crime, including to promote the principles set out in the *Canadian Statement of Basic Principles of Justice for Victims of Crime*; and
- Identifying emerging issues and exploring systemic issues that impact negatively on victims of crime.

For more information, visit the Ombudsman's web site at www.victimsfirst.gc.ca. Or, contact the office directly by calling 1-866-481-8429.

The Court's Decision

104. What if the jury can't reach a verdict?

In criminal trials the verdict must be unanimous, and this is one reason why some juries spend several hours, even days, to reach a verdict. Although jurors have the right to disagree about various aspects of the case, all jurors must be in agreement with the final verdict decision. If the jury is unable to come to a unanimous decision - either of conviction or acquittal - there is a 'hung jury'.

When and if the jurors cannot reach a decision, a mistrial will be declared, the jury will be dismissed, and the charges will either be dropped, or the accused will be retried by a new jury.

105. What happens after a not guilty verdict?

If the accused is acquitted (found not guilty), it means that there was not enough evidence before the court to prove the guilt of the accused beyond a reasonable doubt, and the accused will go free. It does not mean the offence did not occur or that the judge or jury thinks you are lying. Proof beyond a reasonable doubt is a very high standard to meet. If you are afraid that the accused might try to get back at you, you should speak to the police or the Crown Attorney.

After a not guilty verdict, the Crown may make an appeal, but can only appeal on a point of law. Unless the trial judge made an error of law, the acquittal stands. The Crown cannot retry an accused who is acquitted even if new evidence comes to light later.

106. What happens after a guilty verdict?

If the offender is found guilty, the sentencing process will begin. Sometimes the judge will decide on the penalty right away, but usually sentencing is put off for a while, maybe months. At this time, the accused must be given an opportunity to address the court, and the court will generally also hear from the Crown, and may receive submissions or information from victims, probation officers, and so on. The accused's criminal record, if any, will also be considered now (repeat offenders are usually given a harsher penalty), and the court may also require that a psychological or psychiatric assessment be completed and the results presented.

In deciding an appropriate sentence, the judge will gather all of the information about the crime, the offender, and his/her history (much of it through the pre-sentence report that will be compiled by a probation officer). As noted previously, it is at this time that you have a right to complete a 'victim impact statement' or to testify at the sentencing hearing.

107. Does the judge have to go by the jury's decision?

The jury's decision is final. This principle, which originally developed in England, says that the jury is independent and free to decide as it sees fit. Even though the jury has its critics, many believe the role of the jury is an important and fundamental component of our legal system because it is the only way in which ordinary citizens can participate directly in the judicial process and allow the community to make its voice heard.

108. What types of sentences can the offender get?

The law gives a judge a great deal of discretion in deciding the most appropriate penalty for each case. Although the judge can decide on the penalty from a wide range of options, the maximum possible sentence depends on the crime.

An individual, depending on the crime, may receive (alone or in combination with another):

1. Absolute discharge: the accused is found guilty, but does not gain a criminal record and is given no punishment (jail time) or restrictions placed upon them.

2. Conditional discharge: similar to an absolute discharge except the offender is placed on probation, with various conditions, and if the offender satisfies all of the conditions within the specified period, he or she is discharged and considered never to have been convicted.

3. Suspended sentence: a judge convicts an accused but technically gives no sentence. The offender is actually put on probation, and if he or she conforms to all the conditions and does not commit a new offence, no sentence ever is given.

4. Probation: the most frequently used sentence in our criminal justice system. It is where the offender is released into the community under the supervision of a probation/parole officer and must follow certain conditions such as good behaviour, abstaining from alcohol, not contacting the victim, etc.

5. Prohibition order: the offender can be banned from owning a certain object or performing a certain activity for either a certain time period or for life (e.g. prohibition from possessing a firearm, prohibition from working with children).

6. Fine: the most frequently used sentence next to probation. It involves the payment of a specific amount of money within a specified period of time.

7. Restitution order: similar to a fine however instead of paying the government, the offender compensates the victim for loss of or damage to property.

8. Community service order: the offender is required to work a set number of hours for a community agency and those who fail to complete the required hours can be charged with another offence.

9. Imprisonment: the most serious sentence of all. It is the punishment of incapacitation where someone convicted of a crime is placed into prison.

10. Conditional Sentence: A conditional sentence is a sentence that is served by the offender in the community. Conditional sentences allow offenders, who are sentenced to less than two years in prison, to serve the sentence in the community (under a number of conditions).

11. 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 times, 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 of alcohol. If the offender breaches probation, they can be charged and may face being imprisoned full time.

12. 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.

109. What is a victim surcharge?

A victim surcharge is a monetary penalty imposed on offenders, in addition to any other punishment imposed, at the time of sentencing. It is collected by the provincial and territorial governments, and the revenue is used to provide programs, services and assistance to victims of crime within their jurisdictions (it is NOT paid to the victim).

The amount of the victim surcharge is 15% of any fine that is imposed on an offender as a sentence, and, in the absence of a fine, $50 for summary conviction offences and $100 for indictable offences. 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.

110. Can serious violent offenders receive sentences like discharges and probation?

Yes. When the maximum penalty for a crime is fourteen years in prison or longer, and there is no minimum punishment prescribed, the minimum sentence a judge can give is an order to report to a probation officer for a set period of time (a suspended sentence with probation). When the maximum penalty is less than fourteen years in prison, and there is no minimum punishment prescribed, the minimum sentence a judge can give is an absolute discharge.

Thus, except for those offenders convicted of first-degree murder, second-degree murder and offences involving the use of a firearm (which all have prescribed minimum punishments), violent offenders can receive the above mentioned type of sentences. Some offenders may also receive a 'conditional sentence'. Conditional sentences allow offenders who are sentenced to less than two years in prison to serve the sentence in the community (under certain conditions).

111. How likely is it that the offender will be sent to prison?

There are a variety of dispositions or sentences that can be imposed upon an offender and imprisonment is only one of them. In fact, only a minority of convicted offenders will be sent to prison. A sentencing judge is required by law to consider <u>all</u> alternatives for an offender and to reserve imprisonment for the worst offence/worst offender scenarios. Repeat offenders are more likely to go to prison.

That being said, each case is unique, and the more serious the conviction, the greater the chance of a prison sentence. As noted above, only first and second-degree murder, and offences involving a firearm carry with them a mandatory minimum sentence of imprisonment. That is, only these offences are assured of a prison sentence, if and when a person is convicted.

112. What is the most severe punishment that an offender can get?

The most severe punishment in our criminal justice system is a life sentence (the death penalty was abolished by Parliament in 1976). While a number of offences list a life sentence as their maximum punishment, in reality, it is usually only administered on convictions for murder (first and second-degree). Life sentences other than those for first and second-degree murder (i.e. manslaughter) allow offenders to apply for parole after seven (7) years.

Our criminal justice system also allows for an indeterminate period of incarceration for those offenders labeled as 'dangerous offenders', who typically have committed a number of violent and/or sexual offences. Just as with those given life sentences, dangerous offenders will not necessarily be in prison for the rest of

their life, but will technically be under some type of supervision - either in prison or on parole - for the remainder of their life.

For repeat sex offenders that do not qualify as a 'dangerous offender', the court may declare the offender a 'long-term offender'. If declared a long-term offender, the offender can have up to ten additional years of community supervision (parole) added onto the end of their sentence.

113. How do judges decide upon a sentence?

While taking into account information presented in pre-sentence reports, victim impact statements, sentence recommendations from the lawyers, and various other information, judges still have a great deal of discretion with respect to the type and severity of sentences that they can impose. For most offences, the *Criminal Code* prescribes only a maximum penalty, and the rest is left to the individual judge (most maximum penalties are never imposed). When determining a sentence, judges usually rely quite strongly on precedents (previous decisions in similar cases), which prevent different courts from deciding similar cases in contradictory ways, ensuring a measure of certainty in the law.

Of course, there are exceptions, and some judges - depending on the particular case, the lawyers involved, and the judge's own particular attitudes – will administer a sentence that is either lenient or harsh as compared to other similar cases. In imposing a sentence, judges are also guided by various principles of sentencing, including punishment and the need to express society's abhorrence for the accused's conduct, deterrence, rehabilitation, and so on. Further, since some offenders may spend a considerable amount of time in custody between arrest and sentencing, a judge may take this time into account to give a shorter prison term than would otherwise be appropriate, or even no prison term at all.

114. Why can an offender convicted of two (or more) offences get the same sentence that they would get if they were convicted of only the one?

One of the many bizarre features of our criminal justice system is the concurrent sentence. With a concurrent sentence, separate sentences imposed for two or more offences are served at the same time (e.g. an offender sentenced to two concurrent terms of ten years each, serves ten years in total, rather than twenty; an offender given concurrent sentences of three and five years would serve five years in total, not eight). It is as though only the first offence or the most serious offence is the one that matters.

115. What will happen if the accused is found to be mentally ill?

According to the section 16.(1) of the *Criminal Code*, no one is criminally responsible for an offence he/she committed while suffering from a mental disorder that rendered him/her incapable of appreciating the nature or quality of the act or of knowing that it was wrong. If an accused is found to be mentally ill at the time of committing an offence, the person can be found 'not criminally responsible on account of mental disorder' (NCRMD).

Where a verdict of NCRMD is rendered, there are three possible dispositions (sentences). As with the dispositions for offenders found to be unfit to stand trial, in making a decision in respect of an accused found NCRMD, the court or a review board (made up of 5 or more members, including a psychiatrist) must take into consideration the various needs of both the accused and the public. A few options are available for those found NCRMD including: an absolute discharge (which is required by law if the accused is found not to be a 'significant threat' to the public), a conditional discharge, or a period of detention in a hospital.

For accused people who are found unfit to stand trial, the review board also has three disposition options: a conditional discharge, detention in hospital, or a treatment order (which cannot usually exceed 60 days). Many of those confined to mental hospitals are confined for long periods - sometimes even longer than if they had been found guilty and sentenced for the crime with which they were charged - however, the opposite is also true. There is often no fixed sentence period for those confined to mental hospitals.

Sentencing

116. What is a pre-sentence report?

A pre-sentence report is a report prepared by a probation or parole officer that the judge may use in determining a sentence for a person who pleads guilty or is found guilty. The pre-sentence report may include information regarding the accused's background such as their family, education and employment history.

According to section 721.(1) of the *Criminal Code*, the report must contain the offender's age, maturity, character, behaviour, attitude and willingness to make amends, the history of previous dispositions or alternative measures used to deal with the offender, and any information that the province determines should be included. These reports have a great influence in determining a sentence.

117. Are victims allowed to read a pre-sentence report?

Once a pre-sentence report is entered into evidence in the courtroom, the information within it becomes public and victims should be able to access and read this report. Ask the Crown Attorney to provide you with a copy of this report.

Please note that if your case involves young offenders, it may not be possible to view the pre-sentence report because of the privacy protections afforded to young offenders.

118. What is a victim impact statement? Does the judge request it? Can I present my impact statement orally?

A victim impact statement is a written account of the personal harm suffered by a victim of crime. The statement may include a description of the physical, financial and emotional effects of the crime. Your statement should detail the effect of the crime on you and your family.

It should not reiterate the facts of the case because this may give the defence an opportunity to challenge the facts as they have been presented. Do not recommend a sentence for the offender and avoid repeating any rumours or allegations about the offender. The impact statement may be divided into three categories: financial, physical and emotional impact.

Financially - you should include all of the actual costs involved such as medical, funeral expenses, costs for therapy and loss of income. It is also appropriate to estimate future expenses.

Physically - account for all the injuries you or your family has suffered. Make the court aware of whether these injuries are temporary or permanent. It is appropriate to note any future medical problems that may arise as a result of the crime.

Emotionally - you should account for the distress that the crime has caused you. Note depression, mood swings, or nightmares.

Speak to the Crown about preparing a victim impact statement as soon as possible, as it may take you some time to prepare it. Judges are required by law to ask a Crown, before imposing a sentence, whether the victim has been informed of the opportunity to prepare a victim impact statement.

If desired, victims may choose to read their impact statements out loud at the time of sentencing. It is advisable to discuss this option with the Crown.

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 the area.

119. Can the accused's lawyer question me about my statement?

The victim should be aware the defence has the right to question victims about their statement, but that this is a rare occurrence.

120. Who will get a copy of my victim impact statement? Does the media have access to it?

The victim should note that the victim impact statement will be shared with the defence and therefore the offender will see it. Once an impact statement has been entered into court, it becomes public record, and thus the media will also have access to it.

121. When do I have to submit by impact statement?

An impact statement will not be used unless or until a criminal conviction has been rendered. It can also be used in the case of a plea bargain. Victims should discuss when to submit their statement with the Crown or the victim witness assistance program worker.

122. Does the judge really consider a victim impact statement?

Although the decision to write an impact statement is voluntary, consideration of it by a judge is mandatory. Where a victim impact statement has been prepared, it must be taken into consideration by the sentencing judge.

123. What happens to my impact statement once the judge has read it? Is it placed in the offender's prison records?

Yes, your victim impact statement is placed in the offender's prison file. Copies of it will be forwarded to the National Parole Board and to Corrections Canada. These institutions may refer to your statement when considering an offender for temporary passes and/or parole in the future. Note that victims can update their victim impact statement for consideration at future parole hearings. Once updated, forward your statement to the board that will be considering the offender for parole.

124. Is my community allowed to give the judge a victim impact statement?

According to the *Criminal Code of Canada*, victim impact statements can only be given by a victim (a person to whom harm was done or who suffered physical or emotional loss as a result of the commission of the offence). Or, if the victim is deceased, ill or incapable of making a statement, a spouse, relative, dependant or guardian may prepare a statement for the victim. Community members may be able to write to the Crown to express their feelings.

Appeals

125. What is an appeal? Is this automatic?

The court process may not be over once the accused is sentenced. An appeal is an application for judicial review by a higher court of a lower court's decision. Appeal courts exist to make sure that courts do not make mistakes applying the law.

The defence or the Crown can appeal in regards to a conviction, acquittal or a sentence. The accused generally has to demonstrate that the judge or the jury made a legal error during the trial. In order for an appeal to be heard, there usually needs to be a question of law (not guilt).

Criminal cases are heard in superior courts across Canada. Upon appeal, the court transcripts will be reviewed by the Court of Appeal for the province or territory. If the Court of Appeal does not reach a unanimous decision, the case will automatically be reviewed by the Supreme Court. If either the Crown or defence believes that an error of law or fact existed, they may submit leave to appeal to the Supreme Court of Canada.

Appeals must be started at least thirty days from the imposition of the sentence. In some cases, the accused may be able to be released on bail until his/her appeal is heard. In most instances, there is no automatic right to an appeal as the Crown or defence must apply for one.

126. What is an inmate appeal?

An inmate appeal is an appeal filed when the offender is in custody and is not represented by a lawyer. In Ontario, inmate appeals are heard monthly by the Court of Appeal for Ontario in Toronto with respect to cases where the appellant was given a reformatory sentence and every other month in Kingston with respect to cases where the appellant was given a penitentiary sentence. In the case of inmate appeals, the offender usually attends and argues his/her own appeal. Given the absence of opposing counsel, these appeals require special attention from Crown counsel to ensure fairness and balance in the appeal process. Such cases also carry with them additional administrative and judicial involvement to ensure fairness and a timely resolution.

127. Are witnesses forced to testify again if there is an appeal?

A higher court does not always agree to hear the appeal, but if it does, it will usually use the transcript (the written copy) of the trial and arguments from the lawyers to decide whether or not the trial court made a mistake. While witnesses are not called to testify at this stage, if a new trial is ordered, you may have to testify again. The appeal will not normally be heard until several months have passed.

128. Am I allowed to attend the appeal trial?

Victims and other members of the public are allowed to attend the appeal trial.

129. Who will advise me if the accused is granted an appeal?

The Crown Attorney should advise the victim if the accused is granted an appeal. They will also be able to advise you of future court dates.

130. How many times can the Crown appeal its case? Is there a limit?

Both the Crown and the defence may only appeal a decision until the Supreme Court of Canada (SCC), which is the highest court in the land. However, the SCC only reviews cases and issues of national importance and has the authority to refuse to hear any case, without giving reasons as to why this is so.

131. Is it possible for the court of appeal to increase or decrease an offender's sentence?
Yes. Appeal courts often enter judgments regarding an offender's sentence. If a sentence is perceived as too lenient, it may be increased. The Court of Appeal may also decrease a sentence if it is perceived as too harsh.

132. What circumstances would allow the accused to successfully appeal their conviction?
The appeal may be successful if the appeal court finds that the trial court made a mistake of law and/or of fact, (i.e., allowed evidence that should not have been allowed, error in a judge's charge [instructions] to the jury, etc.).

133. If the appeal court orders a new trial, can the accused apply for bail while awaiting trial?
Yes, an accused may apply for bail while awaiting a new trial. The same procedures would apply as during the initial trial.

134. If an appeal is granted, does that mean that the trial starts all over again?
If an appeal is granted, the trial will not always start over. It depends upon the issue of appeal. If the appellate court orders a new trial, the process may then start all over again.

After Sentencing

135. What happens when the offender is sentenced to prison?

An offender who has been sentenced to a federal prison term (two years or more) may remain in a local jail for a few days before being transferred into a federal penitentiary. This allows them to attend to their personal affairs, including filing an appeal.

After attending to personal business, the offender will normally be transferred to an institution to have an assessment done. The assessment will look at the offender's risk to the other inmates and staff, identify needed programs, and will recommend a security classification and penitentiary location (the location will not necessarily be in your own province/territory). Upon the completion of the assessment, the offender will be transferred to the appropriate federal penitentiary and assigned an institutional parole officer who will follow up on their progress and assist them in preparing for their eventual release into the community.

A similar process occurs for provincially sentenced offenders (those sentenced to two years less a day). They are assessed upon intake into an institution and may later be transferred to a different facility/detention centre.

136. Which trajectory does the offender follow from the moment that he/she is sentenced?

After an offender has been found guilty, the presiding judge determines the sentence to be imposed and indicates its length. It is not uncommon for an offender to be convicted of several offences at one time. In this situation, the judge may order that sentences be served at the same time (concurrently), or one after the other (consecutively). It is rare for offenders to receive consecutive sentencing in Canada. Sentences are automatically served concurrently in Canada unless the judge specifies differently.

Transition Period from a Provincial Jail to a Federal Penitentiary (up to 15 days)

The offender may have been kept in custody before trial or sentencing. If so, this will normally have been in a provincial correctional facility. Other offenders may have been in the community on bail. At the moment a sentence of imprisonment is imposed, the offender will remain in, or be immediately taken into, provincial custody.

An offender who has been sentenced to a penitentiary term (two years or more) may remain in a provincial institution for up to 15 days before being transferred into a penitentiary. This 15-day period allows federally sentenced offenders to attend to their personal affairs, including in some cases filing an appeal, before being transferred to a federal penitentiary.

During this transitional period, a federal parole officer meets the offender to conduct a preliminary assessment. The purpose of this assessment is to note any immediate and critical concerns (suicide, offender's physical and mental health), rather relevant information and identify the offender's community supports. The information that the community supports provide will assist correctional staff to verify information provided by the offender and identify problem areas, which will require attention during the period of incarceration (e.g. substance abuse, family violence).

Offender Intake Assessment and Correctional Planning

At the end of the 15 days (or less if the offender agrees), the offender will normally be transferred under guard to the closest federal regional reception centre. A reception centre is a special penitentiary, or part of a penitentiary, dedicated to the assessment of offenders. The offender then undergoes a comprehensive assessment called the Offender Intake Assessment (OIA) within 70 calendar days from the offender's sentence commencement date.

The purpose of the OIA is:

- To complete a comprehensive profile of an offender's criminal and social history;
- assess the risk posed by the offender;
- identify the problem areas which need to be addressed to reduce the risk of re-offending;
- complete the Correctional Plan outlining how the problem areas will be addressed throughout the sentence;
- recommend a security classification and initial penitentiary placement.

During the OIA, factors that led the offender into criminal behaviour are identified, as also areas in the offender's life which can reduce the risk of re-offending. The results of the OIA are documented in the Correctional Plan, which will serve as a basis to monitor the offender's progress throughout the sentence. It outlines and prioritizes the areas that must be addressed to reduce an offender's likelihood of re-offending and to prepare him or her to safely reintegrate into society.

Placement to a penitentiary (after 70 days or less)
When the Offender Intake Assessment is completed, the offenders are transferred to a penitentiary corresponding their security classification and program needs. Offenders are assigned to an institutional parole officer who will implement the offender's OIA, do the follow-up of their Correctional plan. If the offender fails to follow his Correctional Plan reduces the offender's chances of being granted parole or other conditional releases.

Transfers of Offenders (throughout the sentence)
At any time during their sentence, offenders can be transferred to higher of lower security institutions to meet their individual security requirements and their program needs. Offenders should be serving their sentences at the lowest level of security considered necessary to meet their individual program needs and their security requirements. Most offenders will be transferred to lower security institutions during their sentence. This process of 'cascading' offenders to lower security institutions assists the Correctional Service of Canada and the National Parole Board to assess the readiness of offenders to safely reintegrate into society.

137. If an offender gets a prison sentence, who decides to which jail the offender will be sent?

The Correctional Service of Canada assesses federally sentenced offenders (those sentenced to more than two years) and decides in which institution he/she will serve their time. Judges have no say in this decision and cannot make recommendations.

Offenders serving provincial sentences (those less than two years), are assessed by the detention centre to which they are initially sent. These offenders are given a number of psychological assessments and may be transferred to a different detention centre depending upon their treatment needs. Some provinces have information lines for victims to call for details about offenders sentenced in their province.

138. Once sentenced, how do I keep track of the offender?

You may request (in writing) information about the offender from the National Parole Board or Correctional Services Canada. The Victim Notification List is a database maintained by the Correctional Service of Canada and the National Parole Board containing the names, current addresses and telephone numbers of those victims wishing to receive ongoing information regarding an inmate. It is important to note that the victim must request notification – it is not automatic.

You must make sure, if you want ongoing information about the inmate that you are on this list. It is the victim's responsibility to contact the corrections and paroling authorities to request notification.

If you are registered on this list you can receive additional information that is not usually disclosed to the public.

If asked, these agencies must release certain information, for example: when the sentence began; the length of the sentence; and dates the offender becomes eligible for unescorted temporary absences and parole. More information can be released if it has been determined that a victim's interest outweighs any invasion of the offender's privacy. This may include: whether the offender is in custody; the penitentiary in which the offender is incarcerated; the date of any hearing, the date and type of release; the destination of the offender; and conditions of release.

For information on inmates in the provincial systems of Ontario, Quebec, or British Columbia, you should contact the provincial parole board and inquire about their particular services.

The following are examples of commonly requested information (depending on the sentence that the accused has received and if he/she is serving time in a federal or provincial institution). Feel free to use this list in your letter to the authorities:

1. The date the sentence commenced;
2. The conviction and length of sentence;
3. Unescorted Temporary Absence Date;
4. Escorted Temporary Absence Date;
5. Day Parole Eligibility Date;
6. Full Parole Eligibility Date;
7. Statutory Release Date;
8. The location of the penitentiary in which the sentence is being served;
9. Current Security Classification;
10. Decisions made or proposed regarding detention;
11. Next hearing date for any form of early or conditional release;
12. Any previous early or conditional release granted on this or other sentence and result thereof;
13. Judicial Review Eligibility Date;
14. Any applications made for judicial review.

Prisons

139. What does the Correctional Service of Canada do?

The Correctional Service of Canada (CSC) is a division of the Department of Public Safety and Emergency Preparedness Canada that administers the sentences of those sentenced to prison for periods of two years or greater. More specifically, the CSC is responsible for:

- The gathering of relevant information about offenders from a variety of sources, including the courts and the police.
- In the absence of a Victim Impact Statement and if the victim wishes, a Community Assessment may be completed by a community parole officer.
- The care, custody and control of offenders during imprisonment.
- Providing programs to offenders; for providing the National Parole Board with case information and recommendations to assist in conditional release decisions;
- Some conditional release decision-making authority (work releases, most escorted temporary absences, some unescorted temporary absences).
- Supervising offenders on all forms of conditional release.

140. What's the difference between prison security levels?

Federal institutions are designated as maximum, medium, minimum, or multi-level security (most provinces/territories have similar designations for their institutions).

- Maximum-security classifies offenders as posing a serious risk to staff, offenders, and to the community, and as offenders who are expected to make active attempts to escape. As such, maximum-security is characterized by strict control over offender movements and activities.
- Medium-security classification includes offenders who pose a limited risk to the safety of the prison 'community', and who are not expected to escape, but if given the opportunity to escape, would probably do so. As such, medium-security is characterized by moderate control over inmate activities and privileges. Most medium-security prisons have the same type of security fences that maximum-security prisons do, but the environment within the prison can provide more freedom to inmates.
- Minimum-security classification includes offenders who pose a limited risk to the safety of the prison 'community', and who are not expected to make any attempt to escape. As such, minimum-security is characterized by minimal control and supervision of inmate activities, associations, and privileges. Minimum-security inmates have relatively unrestricted movement. While maximum and medium-security prisons have surrounding walls and fences, minimum facilities usually have neither. Inmates come and go freely, traveling to and from day parole and/or work/program placements.

Some offenders may be housed in community correctional facilities or halfway houses. These facilities are similar to minimum-security facilities, allowing offenders to come and go with permission and conditions. These facilities are often used to house offenders who have just come out of a more formal facility and to help them return to society. If you are curious about the institution in which your offender is doing time, and would like to arrange a tour, speak to the National Parole Board communications officer or to the prison's Victim Liaison Officer.

Inmates do not usually remain at the same security level or penitentiary throughout their entire sentence in fact: an inmate may be transferred from one security level to another for security or program-related reasons. Further, when deemed safe and a low risk of escape, most inmates are eventually moved to a lower security level, in order to prepare them for their eventual transition back into the community.

Recent amendments to Correctional Service of Canada policy now requires those offenders convicted of murder to remain in a maximum-security institution for at least the first two years of their life sentence.

141. What kinds of programs do inmates take in a federal penitentiary?

Offenders may take:

- education programs, including adult basic education, secondary education, vocational, college and university level programs (post-secondary education must be paid for by the inmate);
- 'living skills programs' which are designed to prepare an offender for their return into the community (e.g., parental skills, anger management);
- substance abuse programs;
- various programs for sex offenders;
- violence prevention programs;
- family violence programs;
- programs specifically for aboriginal offenders;
- programs specifically for female offenders;
- ethnocultural programs;
- employment programs;
- chaplaincy programs;
- services for offenders with mental health problems; and/or
- Industrial and Agribusiness Program (CORCAN).

142. Do the programs offenders take in prison work?

Research evaluating the effectiveness of treatment programs in terms of reducing recidivism (commission of new offences) or reducing the severity of new offences remains inconclusive. The best that can be said is that some treatments 'work' for some offenders, some of the time.

In general, treated offenders do better than those without treatment. Needless to say, not all high-risk groups respond well to treatment. Those diagnosed as psychopaths for example, are considered among the most difficult offender groups to 'successfully' treat. Overall, the recidivism rates at the provincial level are very high compared to the federal level.

It should also be noted that offenders are not required to participate in any treatment program while incarcerated. Although active participation is beneficial in terms of seeking parole, offenders cannot be forced into programs.

143. Do offenders work and get paid in prison?

Offenders can be 'employed' in a prison or penitentiary either through working in the kitchen, doing maintenance work, or cleaning. Some prisons have farming opportunities for inmates.

Federal inmates are also offered training and may actually work in the penitentiary system's CORCAN program. CORCAN's offender 'participants' receive training in the manufacture and provision of a wide range of products and services including office furniture, clothing, shelving, agricultural products, metal fabrication, data entry, digital imaging and telemarketing. The wide range of industrial and agricultural products that they do manufacture and produce are then marketed to federal, provincial and municipal governments, and non-profit organizations. CORCAN also offers community-based short term employment, job counseling and placement programs.

Inmates may earn around five to seven dollars per day in an institution, depending on their performance on the job, while unemployed inmates receive an allowance rate of around two dollars per day (Basic Facts About Corrections in Canada, 1997).

144. If an offender escapes from the institution where he/she is serving his/her sentence and is found guilty of escaping lawful custody, will his/her new sentence be served once the first sentence is completed?

Whether sentences for crimes are to be served consecutively (one after the other) or concurrently (sentences for different crimes are served at the same time as one another), is a determination to be made by the sentencing judge. If a judge does not specify consecutive or concurrent terms in their decision, the law states that sentences must be served concurrently.

145. If an inmate commits a violent crime while in jail, will he/she be charged and tried in a court of law? If so, will the new sentence be served after the original one is served?

If an inmate commits a serious crime, the prison authorities will decide whether to proceed with formal charges against the inmate or whether to deal with the matter internally. If the crime is very serious, formal charges may be laid against the inmate. Again, it is the sentencing judge who determines whether sentences are to be served concurrently or consecutively.

The Probation and Parole System

146. Who will explain the parole system to me?

Call the National Parole Board for information. The National Parole Board has a toll-free victim information line that can be dialed from anywhere in Canada and the United States and directed to the NPB regional office, which serves that area code. This toll-free number is 1-866-789-INFO (4636).

The National Parole Board has several offices that can also provide assistance to you. Or, visit their website at www.npb-cnlc.gc.ca:

Atlantic Region
National Parole Board
1045 Main Street, 1st floor, Unit 101
Moncton, NB E1C 1H1
1-800-265-8644 or 8744
1-888-396-9188
(506) 851- 6345
fax (506) 851-6926

Pacific Region
National Parole Board
32315 South Fraser Way, Suite 305
Abbotsford BC V2T 1W6
1-888-999-8828
(604) 870-2468
Fax: (604) 870-2498

Ontario Region
National Parole Board
516 O'Connor Drive
Kingston ON K7P 1N3
1-800-518-8817
(613) 634-3857
fax: (613) 634-3861

Québec Region
National Parole Board
Guy-Favreau Complex
200 René-Lévesque Blvd West
10th floor, Suite 1001
West Tower
Montréal QC H2Z 1X4
1-877-333-4473
(514) 283-4584
fax: (514) 283-5484

Prairies Region
National Parole Board
101 - 22nd Street East, 6th floor
Saskatoon, SK S7K 0E1
1-888-616-5277

(306) 975-4228
fax: (306) 975-5892

Edmonton Office (Alberta, North West Territories)
Scotia Place, Scotia 2, Suite 401
10060 Jasper Ave.
Edmonton, Alberta
T5J 3R8
1-800-597-4397

Different victim services providers in your area may also be able to explain the parole system to you. Contact your local Victim/Witness Assistance office or the Canadian Resource Centre for Victims of Crime for answers to questions you may have.

147. What is the National Parole Board?

The National Parole Board (NPB) is an independent administrative tribunal that has exclusive authority under the *Corrections and Conditional Release Act* to grant, deny, cancel, terminate or revoke day parole and full parole. The NPB may also order certain offenders to be held in prison until the end of their sentence. This is called detention during the period of statutory release. In addition, the Board makes conditional release decisions for offenders in provinces and territories that do not have their own parole boards. Only the provinces of British Columbia, Ontario and Quebec have their own parole boards that have authority to grant releases to offenders serving less than two years in prison.

The Board has no control over juveniles convicted under the Youth Criminal Justice Act, or escorted temporary absences which are usually under the jurisdiction of the Correctional Service of Canada (except in cases of offenders serving life or indeterminate sentences).

148. Will victims automatically receive information about an offender following his incarceration?

No. This information will only be given to victims in response to a request from them. Victims may also wish to receive ongoing information so they may be kept informed of changes such as an offender's move from one institution to another of the grant of conditional release.

Victims may contact any regional office of the National Parole Board or the Correctional Service of Canada. These agencies have designated staff ready to assist victims and their families.

149. Who is considered a victim?

The National Parole Board (NPB) defines a victim as:

- Someone who was harmed by a crime or who suffered physical or emotional damage as the result of a crime, or

- Where the victim is deceased, ill or otherwise incapacitated, the person's spouse, an individual who is cohabiting, or was cohabiting at the time of the person's death, with the person in a conjugal relationship, having so cohabited for a period of at least one year, any relative or dependant of the person, or anyone who has in law or fact custody or is responsible for the care or support of the person.

Victims who were harmed by an offender may present a statement whether or not the offender was prosecuted or convicted for this crime as long as a complaint was made to the police or the Crown Attorney, or an information was laid under the *Criminal Code*. The NPB must have a written confirmation that a complaint was laid.

These definitions apply to victims of the current offence, as well as to victims of previous offences.

150. Can someone request and receive information about a federal inmate on my behalf?

Yes. While many victims wish to deal with the Correctional Service of Canada and the National Parole Board directly, you might not. For these reasons, victims are allowed to have an agent who will request and receive information on their behalf.

You may also authorize someone to act for you at a parole hearing. The Board will recognize someone as your representative if you make a written declaration to the Board. You may also designate an individual or an agency, such as the Canadian Resource Centre for Victims of Crime, to serve as your contact with the NPB and CSC.

151. What information can be obtained?

Victims, like any member of the public, may receive the following information about offenders from the National Parole Board or the Correctional Service of Canada, as outlined in the Corrections and Conditional Release Act (1992):

- the length of the offender's sentence;
- when the offender becomes eligible for parole; and
- All Board decisions made after November 1, 1992 (by written request).

152. Can victims obtain additional information?

Yes. Victims are entitled to receive additional information following a written request if the appropriate authority of the National Parole Board and/or the Correctional Service of Canada decides that the victim's interest clearly outweighs any invasion of the offender's privacy that could result from the release of information. That information includes:

- whether the offender is in custody, and if not, why;
- where the offender will be released;
- where the offender is being held;
- when the offender is released;
- what type of release the offender received; and
- any conditions attached to an offender's release.

153. Am I allowed to write to the parole board?

Yes. Victims may correspond with the National Parole Board at any time. Most often, correspondence usually takes the form of a Victim Impact Statement (VIS).

Your statement may include a description of the continuing impact of the crime since sentencing. This could include information about the physical, emotional, medical and financial impact of this crime on yourself, your children and family members, or others who are close to you. It may also include concerns you have for the safety of yourself, your family, or the community with regard to the offender should he or she be released. It is helpful to explain why you believe there may be a risk. Victims can also include any new information they feel is relevant and the Board will consider it.

A victim may choose to forward their VIS from the court proceedings, or to update their statement if many years have passed. Victim Impact Statements are not altered or edited by Board officials.

The Canadian Resource Centre for Victims of Crime has found that parole board members take statements provided by victims very seriously. In fact, members will often directly question offenders about information

provided in the victim impact statement. The VIS is a good way for victims to have their feelings and concerns noted and addressed.

154. Where should the information be sent?

A victim may contact any regional office of the National Parole Board or Correctional Service of Canada to find out where to send their victim impact statement.

155. When should the information be provided?

Although information can be received at any time, victims are encouraged to send this information in written form as soon as possible after the offender is sentenced or before an offender becomes eligible for parole. By law, an offender must be able to review all documents 15 days prior to the parole hearing and if information is not given in time, he/she may postpone the hearing. The board requires the statement in writing thirty days before the hearing or if translation is required, forty-five days before hearing date. Victims can submit updates at any time.

156. Do parole boards and prison officials consider information provided by victims?

Yes. Information from victims can help both the parole boards and correctional services assess offenders. Because all offenders become eligible for consideration for conditional release at some point during their sentence, victims can provide valuable information through their victim impact statement about offenders, and about the seriousness of the offence.

Impact statements also help decision-makers assess what programs may be needed to change the offender's behaviour. They can also assist Board members in assessing whether the offender understands the impact of the crime on the victim, or is likely to re-offend, and whether special conditions may be needed if release is granted (e.g., to stay away from you).

The law requires however, with few exceptions, that the authorities share any information with the offender that will be considered during any decision-making process, and this includes information provided by the victim. Rare exceptions to this rule include situations such as jeopardizing the safety of a person, the security of a correctional institution, or an ongoing investigation.

157. Can someone else write a letter to the parole board on my behalf?

Yes. A victim can appoint an agent to submit a statement on their behalf. Also, any member of the public may write to the National Parole Board to express their concern about an offender's pending parole. Victims may also wish to seek the support of victims' groups or police forces and associations and forward them to the Board.

158. If I write a letter to the parole board, is the prisoner able to read it? Can my address be excluded?

According to law, disclosure of the information that will be presented at the parole hearing must be available to the accused before the hearing. Therefore, the prisoner will be able to read it.

If however, the Board believes that the disclosure of evidence would threaten the safety of someone, they are not required to disclose this information to the accused but may provide a summary of the information.

Rest assured that offenders will not receive any personal information such as the address or phone number of the victim.

159. What is a parole hearing?

A parole hearing is a meeting between the offender and members of the National Parole Board. It usually takes place in the institution where the offender is incarcerated, but it can take place at a regional office if the offender is already on parole in the community and is seeking a parole extension.

A hearing is conducted to assess the risk that the offender may pose to the community should he/she be granted conditional release (while most decisions are made after a hearing, some decisions are made on the basis of a file review).

Board members, taking into account various criteria, review the offender's case, make their decision, and explain the reasons for their decision to the offender. The whole process, on average, usually takes about two hours. Unlike court proceedings, parole board hearings are designed to be informal. Members of the Board are not restricted in any manner as to the questions they may ask of an offender. Participants are encouraged to use everyday language, the offender and members of the Board sit around the same table (observers usually sit in chairs against the wall).

The process begins with the hearing assistant explaining the procedure to the offender and with Board members introducing themselves. The Parole Officer may then give a summary of the case and his/her recommendations. The parole Board members then question the offender. If the offender has an assistant present, he/she is given a chance to say something and then the offender is allowed to say something. Everyone except the Board members and their assistant will leave the room while the board deliberates. They will then return when the Board is done for the decision.

The hearings are held in the official language of the offender's choice. However, victims may present the statement in either French or English. The Board will arrange for the statement to be translated into the language used at the hearing.

160. Can I attend a federal parole hearing?

Yes, usually anyone can attend as long as they eighteen years of age. To apply to observe an offender's hearing, an application form must be filled out and sent to the office of the National Parole Board in the region where the hearing will take place.
Applications should be made in writing and as early as possible, preferably at least sixty days before the hearing, to permit the security check that is required by law before a victim can be admitted to a penitentiary. While it is rare, applications can be refused if security is a concern, space is limited, or if it is believed that the observer will upset the Board's ability to assess the case or will adversely affect someone who has given information.

While you will be able to attend the hearing, you will not be allowed to be present while the Board members discuss their decision. If you are unable or would feel uncomfortable attending a hearing, you may authorize someone to act for you at a parole hearing provided you make a written declaration to the Board. There are also victims' agencies like the Canadian Resource Centre for Victims of Crime that will attend with you or on your behalf (where possible).

Each of the provincial boards determines their own rules on victim attendance at provincial parole hearings. Currently, neither Ontario nor Quebec allows victims to attend parole hearings, while British Columbia does. Ontario allows victims to speak with parole Board members prior to hearings.

161. Is there financial assistance available for victims to attend parole hearings?

Yes, since attending parole hearings often involves travel and accommodation away from home. Financial assistance, called the Victims Fund is available as of November 1, 2005, to registered victims who wish to

attend parole hearings of the offender who harmed them. Funding assistance allows victims to participate more freely and fully in the criminal justice system, without having the burden of out of pocket expenses.

162. Who administers the travel funding?

The Victim Fund is administered by the Department of Justice's Policy Centre for Victim Issues.

163. Who is eligible to apply for financial assistance to attend parole hearings?

Victims may apply to the Department of Justice for travel funding assistance if they are registered with Correctional Service of Canada or the National Parole Board, been approved to attend the hearing, and wish to attend a hearing related to the offender who harmed them, either to observe or present a victim impact statement.

164. What are the specific expenses which the Victims Fund will cover?

The Victims Fund will help cover the following expenses: travel costs, in accordance with Treasury Board, Government of Canada Travel Guidelines (gas mileage rates, air, bus or train travel at economy rates). Hotels, generally to a maximum of two nights at prevailing government business travel rates may also be covered. Meals and travel to and from parole hearings will also be covered. In all cases, victims must keep receipts.

165. What is the length of time covered for traveling expenses?

In most cases, those receiving financial assistance will travel the day before the hearing and return home the day following the hearing. The maximum is three days and two nights in hotel accommodations. There may be exceptions for those traveling from rural or remote areas, or those traveling great distances.

166. What are 'incidentals'?

Incidentals are a daily allowance to cover the costs of items which can be attributed to a period in travel, but for which no other reimbursement or allowance is provided, which helps offset some of the expenses incurred as a result of having to travel. It includes but is not limited to such items as gratuities, laundry, dry cleaning, bottle water, phone calls. Allowance for incidentals currently is $17.30 per day and no receipts are required.

167. What if two or more victims travel together?

A separate application is required for each victim who seeks funding. Where two or more victims travel together, one of them should apply for and claim all the expenses of shared transportation (gas mileage) and accommodation, and only his or her own meals and incidentals. The application form must clearly identify which expenses cover both the applicant and other victims. The other victims would apply for and claim their own meals and incidentals and their own transportation if not shared.

168. Where can I obtain an application form for the Victims Fund?

You can obtain a copy of the Victims Fund application if you wish to be compensated for attending parole hearings by writing to the Victims Fund Manager. You can also receive an application by calling 1-866-544-1007, or online at http://canada.justice.gc.ca/en/ps/voc/funding.html.

169. Once applications are completed, where should they be sent?

Once applications are completed they may be sent to the Victims Fund Manager at:

Programs Branch, Victims Fund Manager
Department of Justice
284 Wellington Street, 6th Floor
Ottawa, ON K1A 0H8

Or, fax it to 613-941-2269.

170. What is the approval process like?

Applications are reviewed for completeness and eligibility for funding. Decisions on eligibility of applicants and the amount of funding he or she may receive are made as soon as possible after receipt of a properly completed application. Applicants are advised by letter of the decision, including confirmation that the expenses will be covered.

171. When will approved funding be received?

When the applications for funding have been submitted at least 30 days before the hearing, the chances of receiving a decision letter and some funding before the hearing date is better. Payment is generally made in two installments; the first installment will represent approximately 70% of anticipated travel expenses, and issued before the hearing, if possible. The second installment will be paid after the hearing, after the Victims Fund Manager has received the applicant's expense claim, supported by receipts for actual expenses incurred. If the application is received less than 30 days before the scheduled hearing date, and if the application is approved, eligible expenses will be reimbursed after the hearing when the Victims Fund Manager has received an expense claim with receipts. It is important to note that expense claims with receipts should be submitted to the Victims Fund Manager within 30 days of having to attend the parole hearing.

172. Could my application for funding be denied?

Yes. Where an application for funding is received after the hearing date, no retroactive financial assistance will be available unless the hearing has proceeded on short notice, or where the applicant who attended can show that he or she was not aware of the Victims Fund.

173. What if the hearing date is not yet finalized?

The application should be submitted with whatever information is available to the applicant. For example, the exact date of the hearing may not be known, but the month it will be held may be known. Dates are not finalized by the National Parole Board until 21 days before it takes place. The processing of the application, therefore, will be finalized after confirmation of the hearing date.

174. What happens if funding is provided and the hearing is postponed or cancelled?

If a hearing does not proceed as scheduled and is not rescheduled within three months, those who had received financial assistance must return to all advanced funds to the Victims Fund Manager. This includes unused tickets that have been purchased. Where recipients of funding have already traveled to a schedule hearing that does not end up proceeding, and have incurred expenses as a result, they can still claim eligible expenses. If the funds advanced exceed what has been spent, the difference must be returned to the Victims Fund Manager.

175. What happens if the I get unavoidably delayed on the way to a hearing at the last minute and cannot enter the institution?

A telephone number will be provided so that the victim can inform the National Parole Board that he/she was delayed on route or cannot bring themselves to enter the institution.

176. What information must I provide on an application for funding my attendance to a parole hearing?

Basic information such as both your name and the offender's name, as well as telephone numbers, fax numbers, e-mail addresses, whether or not messages can be left at those numbers, and the name of an alternative contact. You will also have to provide specific information about the hearing, such as the approximate date, proposed method of travel, anticipated expenses that they will incur, the proposed dates that they will travel.

177. Is the information I place on my Victims Fund application kept confidential?
Applicants should note that information submitted may be subject to a request under the *Access to Information* and/or the *Privacy Act*. However, both Acts provide for the protection of personal information from disclosure. Although unlikely, in certain cases the Government may disclose. Decisions will be made on a case-by-case basis.

178. What if I have some suggests or are unsatisfied with the way the Victims Fund has assisted me?
The administrators of the Victims Fund will ask those who receive funds to participate in a short survey to evaluate the program to make improvements to it.

161. Who is present at a federal parole hearing?
There will usually be two or three Board members present (there must be three Board members present in the case of a lifer applying for release), the offender, the offender's assistant (such as a family member, friend, lawyer or spiritual advisor), the offender's parole officer, and a hearing assistant from the National Parole Board. Other observers who show a demonstrated interest, such as victims, the media, or criminal justice professionals may also attend.

162. Can I participate in the parole hearing?
Victims in Canada can participate in both provincial and federal parole hearings by submitting written victim impact statements for consideration by the Board. Victims who wish to do so should submit their statements at least fifteen days before the hearing, because the offender should have the opportunity to read it.

As of July 1, 2001, victims are able to read their statements at federal parole hearings. If a victim is unable to attend they may choose to write, or send an audiotape or videotape of their statement. Please contact your regional office for more information about presenting impact statements at hearings.

The statement should be concise and normally not take more than ten minutes to read. Victims can choose to make their presentation at the beginning or the end of the hearing.

163. Can I get a copy of a National Parole Board decision?
Yes. The National Parole Board maintains a record of its decisions and the reasons for those decisions in a data bank called the decision registry. The registry allows individuals who demonstrate an interest in a specific case to access Board decisions relating to an offender. Anyone interested in a specific case may request in writing to the National Parole Board for a copy of a conditional release decision (made after November 1, 1992).

For the Board to be able to release information about offenders, anyone requesting information must give the reason for the request. The only information the Board will withhold is that which may jeopardize the safety of someone, reveal a confidential source of information, or adversely affect the return of an offender to society as a law-abiding citizen, in such cases personal information may be blocked out.

Decisions made by heads of federal correctional institutions concerning temporary absences and work releases are not included in the NPB decision registry.

164. What is conditional release?
Conditional release is a program allowing an offender to be released from prison to serve part of their sentence in the community under supervision, provided they abide by certain conditions (e.g. obeying the

law, curfews, and prohibitions on alcohol use). It does not shorten the offender's sentence, but it does shorten the time spent in prison.

Ontario, British Columbia and Quebec have their own provincial parole boards that determine the conditional release of prisoners in the provincial system (those with sentences less than two years), while the National Parole Board and the Correctional Service of Canada determine the conditional release of inmates in the remaining provincial and territorial prison systems, as well as those offenders serving their prison time in the federal system.

165. Who supervises offenders when they are on conditional release?

The Correctional Service of Canada (CSC) is responsible for supervising offenders on conditional release from a penitentiary and institutions in provinces or territories without their own boards of parole.

Supervision is also provided by contract through the Correctional Service of Canada with provincial governments and non-government agencies such as the Salvation Army, John Howard Society, Elizabeth Fry Society, St. Leonard's Society and some native organizations such as the Native Clan Organization and the Native Counselling Services of Alberta. These agencies are required to follow the same standards for supervision as those applied by the Correctional Service of Canada. CSC usually also informs the police whenever an offender is released which can assist in monitoring the offender.

Provincial correctional services in Quebec, Ontario, and British Columbia are responsible for supervision of inmates from provincial institutions in those provinces.

166. Why are offenders released before the end of their sentence of imprisonment?

By law, all offenders must be considered for some form of conditional release during their sentence. This does not mean that release is guaranteed. In order to help prevent offenders from re-offending, most are released early in their sentence with conditions so that they can be monitored. If not, they are released at the end of their sentence with no supervision.

167. What are the types of conditional release?

There are numerous ways in which an offender can be released from prison, at least temporarily, before the end of their court-decided sentence:

Work release:

- involves work or community service outside the penitentiary; supervised by a staff member or other person or organization authorized by the institutional head;
- generally, an inmate is eligible for work release when he or she has served one-sixth of the sentence or six months, whichever is greater;
- can be granted for a period of up to 60 days; and
- granting work release to inmates is controlled by the Correctional Service of Canada (unless the offender is a lifer or Dangerous Offender) and does not require approval from the National Parole Board (there is no hearing).
- work release is one of the first steps in the safe, gradual reintegration of offenders in society.
- offenders in maximum-security institutions are not eligible for work release.

Temporary Absence:

- there is usually no hearing to determine if an offender should be granted a temporary absence;
- may be escorted (ETA) or unescorted (UTA);

- granted so that offenders may: receive medical treatment; have contact with their family; undergo personal development and/or counseling;
- participate in community service work projects; and they may also be granted for compassionate reasons (e.g. a funeral);
- the duration of an ETA varies from an unlimited period for medical reasons to not more than 15 days for any other specified reason;
- depending on sentence and length of time served, there may or may not be a hearing; and
- a UTA can be for an unlimited period for medical reasons and for a maximum of 60 days for specific personal development programs. UTA's for community service or personal development can be for a maximum of 15 days, up to three times per year for a medium-security inmate, or four times per year for a minimum-security inmate. The duration of other types of UTA's ranges from a maximum of 48 hours per month for a medium-security inmate to 72 hours per month for a minimum-security inmate.

Day Parole:

- may be granted six months prior to full parole;
- prepares an offender for release on full parole or statutory release by allowing the offender to participate in community-based activities; and
- offenders on day parole must return nightly to an institution or a halfway house unless otherwise authorized.

Full Parole:

- the offender serves the remainder one third of the sentence under supervision in the community;
- in serious cases, judges have the option of forcing an offender to serve half of the sentence before applying for full parole; and
- the offender must report to a parole supervisor on a regular basis and must advise of any changes in employment or personal circumstances.

Accelerated Parole Review:

- a streamlined process of review for day and full parole for cases of first-time penitentiary offenders who are serving a sentence for a non-violent offence;
- National Parole Board must direct release on day parole at six months or one-sixth of the sentence, whichever is longer, and full parole at one-third of the sentence, unless the Board determines that the offender is likely to commit an offence involving violence before the end of the sentence; and
- Not all first-time offenders are eligible. There are exclusions in the Corrections and Conditional Release Act.

Statutory Release:

- by law, federal offenders are released after serving two-thirds of their sentence (except those serving life or indeterminate terms);
- the decision for release is not a discretionary one, it is virtually automatic;
- the offender must report to a parole supervisor on a regular basis and must advise of any changes in employment or personal circumstances for the remaining one-third of their sentence; and
- because there is no "two-thirds" of their sentences, lifers and Dangerous Offenders are not eligible for statutory release.

168. How do they decide if an offender should be granted conditional release?
The National Parole Board must make the protection of society the most important consideration in a conditional release decision. At the same time, members must make the least restrictive decision consistent with public safety.

Thus, the Board will grant parole if, in their opinion, the offender will not by re-offending present an undue risk to society, and if they believe that the release will contribute to the protection of society by helping the offender return to society as a law-abiding citizen. If the offender's risk is manageable in the community, he/she can be released.

To make their decision, the Board members will first review all available and relevant information about the offender to make an initial assessment of risk. This will include information about the offence, the offender's criminal history, any social problems (such as substance abuse), their mental status, relationships, employment, opinions from professionals and others such as aboriginal elders, judges, police, information from victims, and their performance on previous release, if any.

After this initial assessment, the Board looks at such specific factors as their behaviour in prison and information from the offender that indicates evidence of change and insight into criminal behavior. While most parole Board members insist that their decisions are guided by federal legislation, Board policy and numerous inmate files, the judge's reasons for sentencing, psychiatric assessments, and victim impact statements, other Board members have conceded in the past that they often rely on intuition during the inmate interview.

169. I have concerns about my safety once an offender is released. Who do I tell?
Victims should write to the National Parole Board (NPB) to express any concerns they have for their safety, the safety of their family and/or community. Information from victims allows the board to assess the offender's release plans and manage any risk that the offender might present, especially if the offender will be near the victim or is a member of the victim's family. The NPB may, for example, impose a special condition for the offender not to contact a victim or not to be in the presence of children.

170. What is the difference between probation and parole?
Probation is a sentence imposed by a judge, usually instead of, but sometimes in addition to, a term of imprisonment. It allows the person to live in the community under the supervision of a probation officer. Probation can only be given for sentences of less than two years (provincial).

Parole may be granted after the offender has served part of the sentence in an institution, allowing the offender to live in the community under supervision for the remainder of the sentence. The decision to grant parole is the responsibility of a Board of Parole. Parole is a privilege, not a right.

171. Is parole automatically granted?
No, except for most cases of accelerated parole review which is reserved for first-time, non-violent offenders. The percentage of inmates granted parole, of course, varies according to the types of crimes committed - the National Parole Board claims to deny full parole in eight out of ten cases involving offenders serving time for violence and/or sex offences.

172. Is parole the same as statutory release?
No. Most federal inmates are released automatically by law on statutory release after serving two-thirds of their sentence. On the other hand, parole is (except for accelerated parole review) at the discretion of the National Parole Board and the inmate usually has to prove that they are worthy of release into the community. In both cases, offenders are subject to conditions and supervision in the community.

173. Can an offender be detained past their statutory release date?

Yes, offenders can be detained past their statutory release date, but this is a rare occurrence. The National Parole Board can only consider detaining an offender if recommended by the Correctional Service of Canada. CSC recommends detention only when an offender meets certain criteria. They must 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.

The only offenders that are not released after two-thirds are those serving life or indeterminate terms, and those who meet the detention criteria. Most federal inmates are automatically released into the community with conditions after serving two-thirds of their sentence. The offender does not have to prove that she or he is worthy of release, unlike other types of conditional release. The National Parole Board reserves the right to add conditions to those imposed on all offenders on statutory release, as well as revoke a release if there is a breach of a condition.

174. Will all inmates be eventually let out of prison?

Yes. Since most inmates are serving definite sentences, meaning that after completing a specific period of days, months or years of incarceration, the offender must be released.

Inmates given life or indeterminate sentences can be kept in prison for life. However, most will eventually be allowed out of prison (temporarily or for good). It is important to note that all lifers will be subject to some form of supervision for the remainder of their life.

In Canada, few murderers will truly serve a life sentence. In fact, 'lifers' in Canada serve an average of 28 years in prison for their crimes.

In most cases, 'life' does not mean life in Canada, and this can be particularly difficult for victims and other members of the public to accept. In some exceptional cases, certain offenders who are either 'lifers' or 'dangerous offenders', will be denied every time they apply for parole. These offenders are considered extremely likely to re-offend, and thus will never be set free.

It is important to note that even those offenders who will never receive full parole into the community may still be granted temporary absences. Those inmates with 'fixed' sentences however (not life or indeterminate) must be released once their sentence expires (warrant expiry), regardless of the danger they present. Of course, the police will be informed of such danger and in turn will likely watch him/her quite closely.

There is, however, no legal mechanism in Canada to hold an offender once their sentence expires. In some cases, society is simply forced to wait for the next victim.

175. Why do we have conditional release?

The reason cited for having conditional release is that, given that the majority of inmates will eventually be released back into society conditional release allows a gradual and safe transition back into the community. It is viewed as favorable to being released at the end of a sentence without any supervision.

From this view then, conditional release is viewed as a bridge between incarceration and the return to the community. Former inmates - particularly those who have served long sentences – agree that parole is a vital bridge between the tedium of prison and a high-speed, bewildering society.

Officially then, the main purposes of conditional release are the rehabilitation and reintegration of the offender. Conditional release also encourages offenders to have good behaviour while in prison.

176. How successful is conditional release?

Conditional releases generally have good success rates. The following data is from the Corrections and Conditional Release Statistical Overview, December 2006, regarding the overall successful completion rates for federal offenders on full parole, day parole and statutory release.

In 2005-06:

- The percentage of successful day paroles was higher for men than for women (83.7% versus 82.0%, respectively), with 3.6% of day paroles ending with a non-violent offence and 0.5% with a violent offence. A day parole is considered successful if it was completed without a return to prison for a breach of conditions or for a new offence.
- The percentage of successful full paroles was higher for women (77.7%) than men (70.2%), with 8.7% of full paroles ending with a non-violent offence and 1.0% with a violent offence. A full parole is considered successful if it was completed without a return to prison for a breach of conditions or for a new offence. These data do not include offenders serving life or indeterminate sentences as these offenders, by definition, remain under supervision for life.
- The percentage of successful statutory releases was higher for women than men (63.1% and 58.9% respectively), with 8.8% of statutory releases ending with a non-violent offence and 2.0% with violent offence. A statutory release is considered successful if it was completed without a return to prison for a breach of conditions or for a new offence.

The success rates of conditional release become controversial when an offender breaches one or more conditions, yet they are not returned to prison or charged with a new offence so their release is considered successful. For example, if an offender comes back to a halfway house stoned, even though this may be a violation of conditions to abstain from intoxicants, this case is considered a success. Such criteria undermine the true "success" rate of conditional release and simply create more public skepticism of the system.

177. When can I expect the offender to be considered for conditional release?

Most offenders may be released into the community on full parole after serving one-third of their sentence, or the first seven years, whichever is less. The sentencing court may also determine, for some offenders, that the portion of the sentence that must be served before parole eligibility is one-half or ten years, whichever is less. Whether granted parole or not, most federal offenders are automatically released after serving two-thirds of their sentence. Eligibility dates do tend to vary slightly from one offender to another however. The following guide should be helpful:

Life sentence - murder, first or second-degree

Full parole:
- First-degree - 25 years
- Second-degree - 10-25 years, as determined by a judge
*Judicial review possible after 15 years
Day parole: three years before parole eligibility date (PED)
UTA: three years before PED
ETA: any time, at discretion of CSC and subject to approval/recommendation of the Board
Statutory release: not applicable

Indeterminate sentence - dangerous offenders

Full parole: three years for offenders sentenced prior to August 1, 1997; seven years for offenders sentenced on or after August 1, 1997
Day parole: three years for offenders sentenced prior to August 1, 1997; three years before PED for offenders sentenced on or after August 1, 1997

UTA: same as day parole
ETA: any time, at the discretion of CSC and subject to the Board's recommendation in certain circumstances
Statutory Release: not applicable

Other sentence - two years or more
Full parole (regular sentence): the lesser of 1/3 of the sentence or seven years
Full parole (judge's determination): the lesser of 1/2 of the sentence and ten years
Day parole: six months into the sentence or six months before full parole eligibility, whichever is later
UTA: the greater of 1/6, or six months (offenders classified as maximum-security are not eligible)
ETA: any time, at the discretion of CSC
Statutory Release: 2/3 of the sentence

Other sentence - less than two years
Full parole: 1/3 of the sentence
Day parole: 1/2 of PED
UTA: provincial jurisdiction
ETA: provincial jurisdiction
Statutory release: offender released, no mechanism for detention

178. What is 'Judicial Review' for offenders serving life sentences?

Section 745.6 (1) of the *Criminal Code* allows people who are convicted of murder and have served fifteen years of their sentence to have their parole ineligibility period reviewed and possibly shortened. Also known as the 'faint hope' clause, the law seeks to provide an incentive for offenders to behave by affording them the opportunity to seek parole eligibility sooner than their sentence permits.

Before the application is heard in court, section 745.6 requires that the Chief Justice of the province where the offence took place screen an application for Judicial Review. If the Chief Justice decides that the application may proceed, there will be a hearing. At the hearing, evidence is first presented by the applicant. Witnesses for the applicant usually include the applicant's family and friends, psychologists or psychiatrists, guards employed at the facility where the applicant is imprisoned, and teachers (if the applicant has taken any courses).

Representatives of the National Parole Board have also been called to testify that even if this application is successful, the Board does not always grant parole to these applicants. The Crown prosecutor may then present evidence regarding such things as the applicant's conduct and behaviour while incarcerated.

Before the application is heard in court, section 745.6 requires that the Chief Justice screen an application for Judicial Review. If the Chief Justice decides that the application may proceed, the jury will hear the case. The jury must come to a decision after considering the following:

1. The character of the offender after having served fifteen years.
2. The conduct and behaviour of the offender while in prison.
3. The nature of the offence, based on the 'agreed upon' facts of the case.
4. Information provided by the victim.
5. Specific matters the judge deems relevant to the application.

After hearing the application the jury can make the following possible decisions:

1. The offender can immediately apply for parole.
2. Reduce the parole eligibility period by a specified amount of time.

3. The offender must serve the entire twenty-five years before parole eligibility.

*The decision to reduce the parole eligibility period of an offender must be unanimous.

The following questions will be put to a jury once the hearing is completed:

PART 1

A. Do you unanimously agree that the applicant's number of years of imprisonment without eligibility for parole ought to be reduced, having regard to the character of the applicant, his conduct while serving his sentence, the nature of the murder for which he was convicted and the victim impact statements?

Yes _____ No _____

If Yes, go to question B.
If No, go directly to question A under Part II.

B. Are no less than two-thirds of you satisfied that the applicant should be eligible for parole immediately, having regard to the character of the applicant, his conduct while serving his sentence, the nature of the murder for which he was convicted and the victim impact statements?

Yes _____ No _____

If Yes, end of deliberations.
If No, go to question C.

C. Having decided that the applicant's number of years of imprisonment without eligibility for parole ought to be reduced from 25 years, what lesser number of years do at least two-thirds of you order substituted for the 25 year period?

Number of years _____

PART II

A. Do at least two-thirds of you agree that the applicant should not be permitted to make another application under section 745.6 of the *Criminal Code*?

Yes _____ No _____

If Yes, end of deliberations.
If No, go to question B.

B. Having decided that the applicant should not be prohibited from re-applying under section 745.6 (1), what date two or more years after today's date do at least two-thirds of you agree should be set after which the applicant may re-apply under section 745.6 (1)?

Write in the date: _____

Even if the jury reduces the parole ineligibility period, the National Parole Board must then establish, at a parole hearing, whether an offender should receive parole. Not all applications to the Board lead to an offender's release. In making its decision, the Board must consider whether an offender's release will present an undue risk to society.

Even if the jury reduces the parole ineligibility period, the National Parole Board must still establish, at a parole hearing, whether an offender should receive parole. Not all applications to the Board lead to an offender's release. In making its decision, the Board must consider whether an offender's release will present an undue risk to society.

179. Are Judicial Reviews successful for the most part?

In the past, most Judicial Reviews have resulted in a reduction in parole ineligibility. However, most offenders do not even apply for early release under section 745.6.

As of April 9, 2006:

- Since the first judicial review hearing in 1987, there have been 802 offenders eligible to apply. A total of 154 (19.2%) have had decisions rendered by the courts.
- Of these cases, 83.1% (128) of the court decisions resulted in a reduction of the period that must be served before parole eligibility.
- Of the 128 offenders who have had their parole eligibility date moved closer, 125 have reached their revised eligibility date. Of these offenders, 114 have been released on parole, and 85 are currently being actively supervised in the community. Of the 114 offenders who have been released on parole, 16 offenders have been returned to custody, nine offenders are deceased, two are unlawfully at large and two offenders have been deported.
- A higher percentage of second-degree (87%) than first-degree (82%) murder cases have resulted in a reduction of the period required to be served before parole eligibility.[2]

180. What is community supervision?

Community supervision involves monitoring and helping the offender to reintegrate into society. The parole supervisor reviews the offender's file and sets a schedule to meet with the offender, gives instructions, contacts community resources and the police, and visits the offender's family, friends, employer or others.

If offenders do not abide by the conditions of release, they may be returned to prison. The majority of offenders returned to prison while on conditional release are returned for a violation of a condition of release, not because of a new crime.

181. If an offender is denied parole, can they apply again?

An offender who has been denied full parole can have his or her case reviewed again within two years. Offenders can also appeal a conditional release decision to the Appeal Division of the National Parole Board.

182. What are the standard conditions of release?

Any offender released on parole or statutory release must abide by following conditions:

- Upon release, travel directly to the offender's place of residence, as set out in the release certificate, and report to the parole supervisor immediately, and thereafter as instructed by the parole supervisor;

- Remain at all times in Canada, within territorial boundaries prescribed by the parole supervisor;

- Obey the law and keep the peace;

- Inform the parole supervisor immediately if arrested or questioned by the police;

[2] From Corrections and Conditional Release Statistical Overview, December 2006.

- Always carry the release certificate and identity card provided by the releasing authority and produce them upon request of identification to any police or parole officer;

- Report to the police as instructed by the parole supervisor;

- Advise the parole supervisor of the offender's address of residence on release and thereafter report immediately
  - any change in address of residence;
  - any change in occupation, including employment, vocational or educational training, and volunteer work;
  - any change in the family, domestic, of financial situation;
  - any change that may reasonably be expected to affect the offender's ability to comply with the conditions of parole or statutory release.

- Not own, possess or have the control of any weapon, as defined in the Criminal Code, except as authorized by the parole supervisor;

- For an offender released on day parole, return to the penitentiary of community residential facility at the date and time on the release certificate;

An offender released on a temporary absence must also return to the penitentiary from which he/she was released at the date and time provided for in the absence permit.

The National Parole Board can also impose special conditions to control behaviour, such as curfews, prohibiting the offender from contacting the victim or their family, remaining within or outside of specific geographical areas, and any condition, which relates to previous criminal behaviour, such as abstaining from alcohol use, or not associating with convicted criminals.

If offenders do not abide by the conditions of release, they may be returned to prison. The majority of offenders returned to prison while on conditional release are returned for a violation of a condition of a release, not because of a new crime.

183. Can a victim ask that additional conditions be added?
Yes, a victim can ask the Board to impose additional conditions or ask an advocate, such as the Canadian Resource Centre for Victims of Crime, to do so on their behalf. Additional conditions must relate to previous criminal behaviour.

184. What happens if conditions are violated?
The Correctional Service of Canada can take action if it believes the offender is violating release conditions or may commit another crime. It can suspend the release and return the offender directly to prison until the risk is reassessed. Some offenders may remain in prison if the National Parole board revokes their parole. Others may be released again but under more severe restrictions and after more supervision or community support services are in place.

185. Can an offender be charged when he violates his conditions?
An offender cannot be charged for violating a parole condition. If offenders do not abide by the conditions of release, they may be returned to prison. The majority of offenders returned to prison while on conditional release are returned for a violation of a condition of a release, not because of a new crime.

So, the Correctional Service of Canada can take action if it believes the offender is violating release conditions or may commit another crime. It can suspend the release and return the offender directly to prison until the risk is re-assessed. Some offenders may remain in prison if the National Parole Board revokes their parole. Others may be released again but under more severe restrictions and after more supervision or community support services are in place.

186. Are victims told what an offender did to violate his conditions of release?

No. Privacy laws protect the offender and victims are not told what the offender did to violate his/her conditions of release. The Canadian Resource Centre for Victims of Crime is advocating for this policy to be changed. Since victims are able to receive information about violations of conditional release if they attend a parole hearing or receive parole decision sheets, it does not make sense that this information is restricted when the violation occurs, especially if it pertains to the safety of the victim.

187. Why is the offender's right to privacy often deemed more important than the need for information of crime victims?

Unfortunately, there is an imbalance in the system that allows the offender's right to privacy to outweigh a victim's need for information. The CRCVC has long advocated for expanding the type of information provided to crime victims by the corrections and parole system, to allow victims to better assess the danger an offender may still present to them, if any.

188. What does a parole officer do?

Upon release, the offender, with the assistance of the parole officer, must follow a pre-approved release plan. A parole officer's duties are thus to monitor the offender and to help him or her reintegrate safely into society. Their job is therefore part police officer, part social worker. Fairly regular meetings with the offender are supposed to focus on compliance with the conditions of release, employment, income, family relations, housing, and other matters contributing to becoming a law-abiding citizen.

The parole officer will often visit the offender at home or at their job, or demand that the offender provide a urine sample to ensure that he or she is complying with his or her parole conditions. Parole officers routinely write reports on the progress of offenders, discuss cases with their supervisors, and may also maintain contact with the offender's family, the police, employers, community agencies and persons who may be assisting the offender in a program.

If the offender breaches parole conditions or seems likely to do so, the parole officer may take disciplinary measures, which may include taking the necessary steps to send them back to prison.

Parole officers are guided in their work by rules and standards. Parole officers routinely write reports on the progress of each offender and discuss cases that require additional attention with their supervisors. Officers work together with many community agencies to help secure stable housing, employment, income, and positive personal contacts.

Parole officers are usually quite overworked with a caseload of, on average, 25 to 30 offenders.

189. What steps, if any, are taken to apprehend a parolee, who, upon release, has failed to report to the parole officer?

Failure to report to a parole officer may constitute a violation of the parole conditions. When a parolee violates conditions, a suspension warrant is issued and the parolee (if he is found) is held in custody. Within forty-five days, the parole board will hold a hearing. If it is found that the parolee did violate the conditions placed upon him/her, the parole board may do one of two things:

- order the offender to return to a correctional facility for the remainder of his/her sentence; or

- upon determining that the offender is not a risk to society, cancel the suspension and return the offender to the community, possibly with additional conditions.

190. Can an offender have their criminal record erased?

Through the granting of a pardon, an offender who has completed their sentence and demonstrated that they are law-abiding citizens, can have their criminal record sealed. Pardons, however, are not automatic, do not erase the fact of conviction, do not declare the conviction wrong, or excuse the criminal behaviour. What happens is that the record of conviction is removed from the RCMP computers and kept separately.

If convicted of a summary (less serious) offence, the offender can apply for a pardon three years after finishing their entire sentence (including parole). If convicted of an indictable (more serious) offence, the offender can apply after five years. Police will maintain some information about sex offenders who obtain a pardon for volunteer agencies who work with children. In addition, pardons are not available to lifers and Dangerous Offenders since their sentences never end.

191. What is the Royal Prerogative of Mercy?

Clemency through the Royal Prerogative of Mercy is an exceptional remedy, which may be granted where there exists circumstances of extreme hardship or inequity beyond that intended by the Courts, or out of proportion to the nature and seriousness of the offence. The National Parole Board conducts the investigations into the merits of the applications and makes a recommendation to the Solicitor General. Where the Minister supports the grant of clemency, he/she submits his/her recommendation to the Governor-in-Council, or in some cases, to the Governor General of Canada, who will make the final decision.

192. A violent inmate released on parole has murdered my family member. Why was this person even released? Who will investigate the parole board for me to ensure that I am given rational and honest answers?

While not a common occurrence, there have been instances when offenders on release commit horrific crimes. The National Parole Board must consider public safety while balancing the rights of an offender to be housed in the least restrictive means when deciding to release offenders into the community. It is certainly very difficult for victims to understand why and how a dangerous criminal would ever be released to commit new crimes.

When a federal offender on some form of conditional release commits a serious offence in the community, the Correctional Service of Canada and/or the National Parole Board may convene a Board of Investigation into the crime. They will examine the offender's criminal history, the circumstances surrounding his/her release and the circumstances of the new crime. The report may make recommendations to the authorities about how to prevent similar tragedies in the future.

If such an investigation has occurred, victims can receive the report through Access to Information laws. The Correctional Service of Canada has its own Access to Information officers that can supply the report for a small fee. Victims should be aware that the reports are often difficult to read and make sense of due to entire portions being literally blacked out or entire blank pages. Personal information is often restricted in these reports to protect the privacy of the offender and other third persons (e.g., employees).

You should be told an investigation is being done and you may be given a chance to make suggestions for issues that should be examined. You may not be given a copy of the report until after the trial is over.

The provincial correctional systems produce a similar type of report for offenders that commit crimes while on probation or parole. These reports can also be accessed, but the process can be much more restrictive than obtaining a federal investigation.

Young Offenders

193. Is the criminal justice system for youths different from that for adults?

Yes. In Canada, those aged twelve to seventeen are considered youths under criminal law, and fall within the scope of the Young Criminal Justice Act (YCJA). Under the YCJA, a youth who is suspected of having committed a crime will have a hearing in youth court (which is like a trial). Under the YCJA the very same laws apply to youths; yet the procedures, courts and manner in which they are managed are distinctly separate. Special youth courts deal with young offender cases.

The creation of the two systems is intended to reflect the fact that young people lack the maturity of adults. Emphasis is placed on rehabilitation and on giving youths a second chance.

Several of the many ways in which YCJA differs from the adult system include:

- measures of accountability are consistent with young person's reduced level of maturity;
- procedural protections are enhanced;
- rehabilitation and reintegration are given special emphasis;
- sentences are dispositions;
- and the importance of timely intervention is recognized.

194. How different are youth sentences from adult sentences?

In youth court, sentences are usually called dispositions, however they are quite similar to those available to adult court judges. Youth in conflict with the law receive much more supervision, guidance and closer monitoring under the YCJA.

For example, probation is more intensive, and the custody requirement now has an accompanied supervision element. One difference is 'open custody'. Open custody refers to facilities such as community or residential centres, group homes, or forest or wilderness camps. Limits and curfews are imposed on the youth, yet they can still leave the facility to attend school or for appointments. 'Secure custody' is defined as any facility for the secure containment or restraint of young persons (it cannot, however, be in an adult prison, or even on the same floor of a building where adults are held). Secure custody is to be reserved primarily for violent offenders and serious repeat offenders.

Prior to imposing a custodial sentence, the Court must have considered alternatives to custody. A special sentence for serious violent offenders is Intensive Rehabilitative Custody and Supervision Order. The Department of Justice has set aside special funding for the province and territories to ensure that this sentencing option can be made available throughout the country.

The main difference between youth and adult sentences is the length of the sentence. Where the maximum length of a sentence for an adult is life, the maximum possible sentence for a young offender is two years unless the offence is murder, in which case the maximum penalty is up to ten years, six years in closed custody, followed by four years of open custody.

195. What are alternative measures?

For young offenders, the police and the court system may decide that criminal court proceedings are not in the best interests of the youth or society. In such cases, the youth is referred to an alternative measures program where the youth and the justice system agree on an appropriate penalty.

Alternative measures, which can only be used for certain offences and under certain conditions (usually reserved for the non-violent, first-time offenders), can be applied either before or after a youth has been

charged. Once a youth has agreed to participate, an alternative measures agreement is negotiated between the youth and the Crown. If the youth does not comply with the agreement, the case can be referred back to the court.

Alternative measures may include such things as volunteering for a non-profit organization, community service orders, attending a wilderness camp that allows youths access to counseling and teaches life skills, attending substance abuse or aggression programs, and even reconciliation programs where the victim and offender talk about and discuss what happened.

196. Under what conditions can a youth court impose an adult sentence?

Provisions found in the old Young Offenders' Act regarding the transfer to adult court were removed in the YCJA. The legislation now provides for the imposition of adult sentence only following the determination of guilt. The youth court judge has been given the authority to impose this sentence in five categories of offences; murder, attempted murder, manslaughter, aggravated sexual assault and serious violent offences for which an adult would be liable to imprisonment for a term of more than two years.

The YCJA sets the age for the presumption of an adult sentence at 14. The individual provinces, however, have the authority to set the age at 15 or 16. If the Crown decides not to seek an adult sentence, the youth court may not impose an adult sentence.

The requirements to test for suitability for adult sentence include whether the length of the youth sentence is sufficient to hold the youth accountable. The accountability of the young person must be consistent with the greater dependency of young persons and their reduced level of maturity. If a youth sentence is sufficient, this is the sentence the court must impose.

The YCJA also contains new provisions relating to placement of a young person who receives an adult sentence. Unless the judge is satisfied that it would not be in the best interest of the young person or would jeopardize the safety of others:

- A young person who is under the age of eighteen at the time of sentencing will be placed in a youth custody facility; and
- A young person who is over the age of eighteen at the time of sentencing will be placed in an adult facility.

197. Are there juries in youth court?

Yes. Youths charged with offences that may be subject to an adult sentence (listed in question 185) where the Attorney General has given notice of the intention to seek an adult sentence are given the option of choosing a trial by youth justice court judge or judge and jury. If they do not so choose, then a judge and jury will automatically try them.

198. Can young offenders get parole?

Youths tried as adults can get parole, but youths that receive a youth disposition are not eligible. Incorporation of the new YCJA shows significant improvements regarding custody orders, non-custodial sentencing options, and sentencing for serious violent offenders.

Also, mandatory reviews of youth dispositions do occur which can result in changes to their disposition. Where a young person has been sentenced to custody for a period of more than one year, the offender will automatically be brought before a youth court to review this disposition after he or she has served one year of the sentence. Review of young offender dispositions may also be available, upon application in some cases, to young offenders who have been sentenced to less than one year of custody.

199. What happens if the offender is less than 12 years of age?
Children under the age of twelve are not held criminally responsible for their actions, and will usually be dealt with under provincial child welfare and mental health legislation.

200. Is the public allowed to attend a Young Offender transfer hearing?
Yes, anyone from the public can attend unless there has been attendance restrictions imposed by the presiding judge.

If there is no publication ban, the media may report on the proceedings, but they cannot identify the young person charged, or any young person involved such as a witness or a victim.

Civil Litigation

201. Can I sue the accused in civil court?

If the accused has caused you, intentionally or unintentionally, personal injury or financial loss you may sue him/her in civil court.

It should be noted that the civil litigation system is very costly and much more time consuming than the criminal process. Civil litigation also provides for an enormous emotional burden on the victims, as it does not restrict the flow of information or questioning like the criminal system does. A victim's past can be cross-examined liberally. Civil litigation is also a risky avenue to pursue, as criminal defendants often do not have the financial means to compensate a victim for their pain and suffering.

Legal Aid programs generally do not accept civil litigation matters either, so victims will have to pay a lawyer at their own expense.

202. What's the difference between a civil case and a criminal case?

While there are some similarities between civil and criminal cases, including the potential for a jury trial, there are a number of distinct differences. The main differences are that:

- Criminal cases are actions between the Crown and the accused, whereas civil cases are between the plaintiff (you) and the defendant;
- In criminal cases the burden of proof rests upon the Crown to prove the accused's guilt beyond reasonable doubt, whereas in civil cases it is the plaintiff who usually bears the burden of proof;
- Civil cases have a much lower standard of proof than criminal cases: the plaintiff only has to prove his/her case according to a balance of probabilities; and
- The objectives of a successful civil suit are varied - compensation for the plaintiff, a court order in her or his favor, or a declaration as to her or his rights, etc.

203. Can I get financial compensation from the offender?

Restitution cannot be ordered for pain and suffering or other damages that can be assessed in the civil courts. Thus, if you are seeking such damages, you may want to consult a lawyer, legal aid clinic or community law office about taking civil action.

The fact that the accused was not charged by the police or has not been found guilty in criminal court does not necessarily mean you will be unsuccessful. You can only take civil action if you can identify the person who attacked you and if you know where to find the person. It is important to point out that if you have already received money from a victims' compensation fund, you may have to repay it if you receive money in a civil action. It would therefore be wise to check with the compensation fund before proceeding with your civil case.

204. Can victims sue the Correctional Service of Canada or the National Parole Board for releasing an offender who went on to commit a serious crime?

Victims can and have sued the correctional and paroling authorities in such circumstances. It has been done in the interest of holding such institutions accountable for their actions. Victims should keep in mind that the civil litigation process is very time-consuming and very costly. Victims will likely have to pay lawyers fees in the range of 25-35% of the damages awarded or settlement amount.

Legal Aid

205. What is legal aid? Are victims entitled to it?

Legal aid is free legal counsel given to those who qualify. Legal aid offers different kinds of help depending on your legal problem and where you live in Canada.

In Ontario, Legal Aid is broken into four categories: Criminal, Family, Immigration/Refugee and Other Civil. To qualify for Legal Aid in Ontario you must have little or no money left after you pay for basic necessities like food and housing. Your legal problem must be serious. People on social assistance almost always qualify for Legal Aid. You may be eligible for Legal Aid even if you have some money in the bank or even if you own a home.

The Legal Aid office will look at your family responsibilities and your expenses to determine whether you are eligible for assistance. Your application will be rejected if the assessment shows that you can pay your own legal costs.

Legal aid may cover issues relating to victims of crime depending on what you are seeking it for. Some victims have received Legal Aid for civil suits against the corrections and paroling authorities. Also, you may choose to apply for legal aid in order to secure a publication ban of your case, or to prevent the defence from accessing your personal/medical records in sexual assault cases. You should contact your local legal aid office and advise them of your circumstances to see if you may be entitled to legal aid.

Be aware that the funding for many legal aid programs has been cut substantially during the last decade. Thus, funding for victims to get legal assistance may not be possible in many cases.

206. Why is the accused entitled to a free Legal Aid defence?

Every Canadian is entitled to a full and fair legal defence. As such, the government has a duty to provide legal resources to those who cannot afford it. The services of a lawyer are very costly. Legal Aid is the most just way to ensure that all members of society secure a legal defence, not just the wealthy.

207. What is the maximum amount of Legal Aid that an accused is allowed to receive?

Each province will have different maximums set as to the amount of legal aid services a criminal accused may receive. Usually, the provinces set a maximum amount of hours allowed. Please consult your provincial Legal Aid office for more information.

Restorative Justice

208. What are the principles of restorative justice?

Restorative Justice (RJ) is a way of looking at crime. It can be defined as a response to crime that focuses on restoring the losses suffered by victims, holding offenders accountable for the harm they have caused, and building peace within communities.

We have begun to see a litany of criminal justice programs that try to apply various principles of restorative justice. These programs should involve the voluntary participation of the victim of the offence, the offender and members of the community. Those affected directly by the crime may come together for discussions a bout it and its impact on their lives. The process requires wrongdoers to recognize the harm they have caused and to accept responsibility for their actions. Wrongdoers must also make reparation to the victims and the community.

209. What are the limits of the current justice system?

In the current criminal justice system, we go out of our way to encourage the accused party to deny guilt, even when guilty. We exclude the injured party – the victim. We focus more on how evidence was gathered than we do about what that evidence means. The current criminal justice system is one designed by lawyers, for lawyers and the result is that victims and offenders are often bystanders in the proceedings.

During the past 30 years, a restorative justice movement has emerged in Canada. It is a movement that finds the current justice system inadequate in terms of dealing with offenders, victims and communities in the aftermath of crime. The current criminal justice system is seen as retributive, concentrating solely on fixing blame and guilt. Restorative Justice asserts that victims are forgotten entities in the current justice process and should have a greater role in determining the outcome of their case.

210. Will restorative justice help me find out more details about the crime?

Restorative justice may provide the opportunity for you to communicate with the offender. Some options include writing letters, video conferencing or face-to-face meetings in the presence of a mediator. Restorative justice projects give interested victims an opportunity to talk about the crime, express their feelings and concerns, and try to get some answers.

211. Are there conditions that must be met before beginning?

Most programs are only available if both the victim and the offender voluntarily agree to them. Most programs also require the offender to accept responsibility for his/her actions.

It is also important to note that programs can take place at different stages of the criminal justice process. Some programs may require the offender to plead guilty before proceeding with the program. Others may take place after charges have been laid. Some initiatives take place after conviction but before sentencing occurs (pre-sentence programs), while others take place after an offender has been sentenced (post-sentence programs).

Please note that not all programs apply all the principles of RJ. Some may not require victim participation and instead apply other principles. That does not make the program futile, but it is important to understand when assessing a program.

Victims should also be prepared for frustration and disappointment should the offender in their case be uninterested or unwilling to participate. Some offenders are simply not willing to accept responsibility for their actions or to show remorse. This may be devastating to a victim who thought they might finally be able to receive answers to their lingering questions about the crime.

212. What are some examples of restorative justice programs?

Some examples of restorative programs are victim offender mediation, circle sentencing, family group conferencing, mediation, and alternative dispute resolution. There are also specialized RJ projects to deal with young offenders and serious crime.

213. My case involves the commission of a serious violent crime. Am I eligible to participate?

Far more advanced training of mediators and preparation of the parties is required in cases involving sexual assault, attempted homicide and murder. There are only a couple of such programs in Canada. In Langley, British Columbia, Dave Gustafson developed the Fraser Region Community Justice Initiatives Association – which fosters peacemaking and resolution of conflict in the community through the development and application of mediation and conciliation. They offer a day treatment program, a victim offender mediation program and a victim offender reconciliation program. In Ottawa, the Collaborative Justice Project – mediates cases of violent crime and is based in the courthouse.

214. I want to talk to the offender and find out why he/she did this to me. Am I allowed to meet with him/her?

There are restorative justice programs across the country that can help to facilitate meetings between victims and offenders. Some of these programs take place before a trial as an alternative measures program. Other programs deal with cases that have gone through the trial process and may be many years later. If you do wish to meet with the offender you should contact your Crown Attorney (during trial stage) or the correctional service (after trial stage) responsible for administering the inmate's sentence.

Also, the Correctional Service of Canada has a dispute resolution unit that may be able to refer you to a restorative program in your area.

Restorative Justice and Dispute Resolution Unit
340 Laurier Ave. West
Ottawa, ON K1A 0P9
Tel.: (613) 943-5049
Fax: (613) 943-2171

215. What is victim/offender mediation?

Victim Offender Mediation is a process that provides victims of crimes with the opportunity to safely and confidentially gain information about the crime and about the offender, express the full impact of the crime on their lives, get answers to questions they have and achieve a greater sense f closure on some issues. The mediation process is entirely voluntary and explicitly flexible. It does not necessarily aim to involve parties in face-to-face meeting. The pace and extent of involvement is determined by the participants. Interventions can include:

- support, counselling, legal transmission of needed information to both parties (where that information is freely provided for such release);
- indirect communication by means of letters and/or video tapes;
- direct communication through one or more face-to-face meetings facilitated by a trained mediator/facilitator;
- aftercare: follow-up support, as desired and appropriate, for both parties

These interventions are not meant for all crime victims nor for all offenders and an assessment is always a part of the process. Protocols are in place, which are highly sensitive to participant needs and readiness to proceed.

There are a variety of Victim-Offender Mediation/Dialogue programs in Canada. When an offender is in the federal correctional system, victims who are interested in learning more about victim offender

mediation/dialogue or surrogate processes may contact: The Restorative Justice and Dispute Resolution Unit, Correctional Service of Canada, 340 Laurier Avenue West, Ottawa, Ontario K1A 0P8 Tel. (613) 947-4980. This Unit can also provide suggested referrals to independent and confidential mediator/facilitators who work with serious crime situations.

216. What are the limitations of Restorative Justice?

There will always be a need for the traditional justice system, as some cases are simply not appropriate for RJ programs. Remember that restorative justice can only take place when:

- An offender admits guilt, accepts responsibility for his/her actions and agrees to participate in the program;
- The victim of the crime freely agrees to participate in the program and without feeling pressured to do so; and
- Trained facilitators are available in the community and a restorative program is in place.

There are offenders who are not appropriate candidates for such programs, as well as victims and their families who do not want to have a role in restorative programs. Even if an offender participates in a RJ program, he/she may still be dangerous and therefore must still be sent to prison. Also, a person who has been wrongfully charged with an offence must have an opportunity to prove his/her innocence in a court of law. Thus, restorative justice programs are not appropriate in every situation.

Victims should also be aware that restorative programs are time consuming and emotionally draining. For some victims, even the idea of meeting the offender can be overwhelming. Victims may also suffer further distress if they feel at all pressured to participate in such programs.

217. Do I have to forgive the offender?

No. It is true that some victims have found the principles of forgiveness, reconciliation and restoration very rewarding in their journey toward healing. While forgiveness may be appropriate for some victims and it may result naturally for some participants in RJ programs, it should not be the goal. Victims must not be pressured to forgive an offender. The burden on the victim is heavy enough without being made to worry about forgiveness. If there is pressure to forgive and at the end of the process the victim is unable to do so, this may be unnecessarily interpreted as a failure.

218. How can victims benefit from restorative justice programs?

Restorative justice programs can be beneficial in that victims can express their thoughts, feelings and emotions about the crime and the harm arising from it. Such programs offer a variety of settings and circumstances through which victims, offenders and communities can address and repair the harm caused in a particular case. Since the goal of the process is repairing harm and restoring relationships victims are given an important voice in making things right. Many victims have expressed high levels of satisfaction with the justice system after having participated in such programs. Involvement may also help victims heal emotionally in the aftermath of the crime, as well as reduce the fear of the offender and further criminal victimization.

Victims of crime should proceed through the criminal justice system in the manner they are most comfortable. While not appropriate for every case, victims who have an interest in pursuing restorative programs, have every right to do so.

219. How do I ensure my rights are considered?

Good restorative justice programs have well-trained facilitators who are sensitive to the needs of victims, who know the community in which the crime took place and who understand the dynamics of the criminal justice system. If you are considering taking part in a restorative program, make certain that it considers

your safety, provides you with all of the information you require, allows you to choose the path you wish to follow, allows you to tell your story, validates your loss as a victim and considers restitution for you.

The following is a checklist for restorative justice professionals to ensure that their programs are indeed meeting the needs of victims. Victims of crime can also use this checklist to evaluate a RJ program and ensure that it is meeting their needs.

SAFETY:
- Is the safety of victims a priority?
- What safety measures does your program have in place to ensure the victim's safety before, during and after the process?
- Are victims asked if they feel safe, and what would make them feel safer?

INFORMATION:
- Are victims given a comprehensive explanation of the events to take place?
- If victims need help with referrals, do you tell them how to advocate for themselves and help with the process if needed?

CHOICE:
- Does your program inform victims of their options for varying levels/degrees of participation?
- Does your program offer the victim the opportunity to have an advocate, victim services worker or other support person present?
- Does your program amend its normal practices to meet the special needs of a victim?

TESTIMONY:
- What procedures are in place in your program to ensure that there is always an appropriate environment for victims to tell their stories?
- If a victim chooses not to participate, are there other options for the victim to provide testimony? Are those options described in writing and given to victim?
- Is there an opportunity provided for the victim to ask questions of the offender?
- Does your program offer victims assistance in this process?

VALIDATION:
- Does the perpetrator get the clear message, "What you did was solely your responsibility and it was not okay to do that"?
- Does the victim get the clear message, "What was done to you was wrong; it was not your fault; you are justified in feeling afraid, angry and unforgiving"?

RESTITUTION:
- Do you consider restitution?

Peace Bonds

220. What is a peace bond?

A peace bond is a criminal court order that sets out specific conditions to protect the safety of others or property. It can be ordered where there is a reasonable fear that another person will cause personal injury to them or their family, will damage his/her property, or where there is a reasonable fear that another person will commit a sexual offence against them. A peace bond may be issued under section 810 of the *Criminal Code*.

Section 810.1 for example outlines pedophile peace bonds. There are two other specific types of peace bonds - Section 810.1 deals with fear of sex offences (usually used by police for high-risk offenders) and s.810.2 deals with fear of serious personal injury.

Peace bonds are often used in cases of family violence and stalking. They include specific terms that may, for example, forbid the defendant from calling, contacting or visiting the applicant's home or workplace, forbid them from carrying firearms or ammunition, or require that they go to counselling. A Peace Bond does not cost anything and you do not need a lawyer to get one.

221. How can you get a peace bond?

Only a judge, Justice of the Peace, or a magistrate can issue a peace bond. If you live in Manitoba, Newfoundland, Nova Scotia, or Ontario you can apply directly for a peace bond at a Provincial Court. If there is no Provincial Court in your community, go to your local police station. If you live in Alberta, British Columbia, New Brunswick, Northwest Territories, Prince Edward Island, Quebec, Saskatchewan, or the Yukon you can go to the police.

Once you have told the police or the Provincial Court that you want a peace bond, they will summons the other party and tell them when to go to court. The applicant must also appear in court on that day.

222. What happens in court?

You must show that you have a reasonable fear the defendant will harm you or your family, or will damage your property. You will give evidence under oath describing why you are in need of the Peace Bond. You cannot make emotional pleas without evidence; therefore, you should:

- document every time the person stalked you or threatened you;
- keep any evidence of abuse such as hospital records, photographs, etc.;
- in the case of a partner/ex-partner, if applicable, evidence of his mistreatment of your children; and
- document every time the person damaged your property or threatened to; take photographs, if possible.

If the judge believes, on reasonable grounds, that an order should be made, terms of the order will be decided. The defendant will then be asked to enter into the bond. If he/she agrees, the peace bond will be ordered. If he/she refuses, there will be a hearing where the judge will hear both sides, and then decide on ordering the peace bond. If the defendant still refuses to sign it, they can face up to twelve months imprisonment.

223. What should I do if asked to sign a 'mutual' peace bond?
If possible, avoid singing a mutual peace bond. Sometimes, the person you are trying to protect yourself against will tell the court that they need to be protected from you. Or, they will refuse to sign the peace bond unless you do so as well.

In such cases, the justice of the peace or judge may issue a mutual peace bond requiring that you cannot seek out your partner/ex-partner, as well. This suggests that you have done something to provoke the harassment, which is not often the case. Also, your partner/ex-partner may try to set you up to break the mutual peace bond. The CRCVC strongly recommends speaking to a lawyer before signing anything like a peace bond.

224. What must be proved?
A peace bond may be available if you:

- have been threatened;
- have a reasonable fear for the safety of yourself, your spouse or your child; or
- have a reasonable fear that someone will damage your property.

You do not need to prove that an assault has been committed.

225. How long will it take?
A weakness of the peace bond process is that it usually takes a long time, approximately two to three months. If you are in immediate danger, temporary terms can be made until the hearing.

226. Do I need a lawyer?
You do not need a lawyer. You can present your case to the court without a lawyer. If you wish, you may hire a lawyer or you may be able to get Legal Aid. If there is a hearing, depending on where you live, either a Crown Attorney will be appointed, or you may have to tell the court about your own case.

227. Will the defendant get a criminal record?
The defendant will not get a criminal record just for signing the peace bond. If, however, it is found that a term has been breached, they may get a criminal record.

228. What can you do if the terms are broken?
Go to a safe place. Make sure that you retain an official copy of the order and keep it with you at all times. If a term is breached call the police. If you are in immediate danger, call 911. The person may be arrested and criminal charges may be brought against them.

It is important to note that the police may not always respond positively in enforcing peace bonds. If the officer responding to your call does not provide an effective remedy, you should talk to his/her supervisor. You should also talk to the Victim-Witness Assistance Program staff about what should happen next time the order is broken.

229. Can the terms be changed?
Yes, the terms can be changed. They can only, however, be changed by a judge or Justice of the Peace and this process is complicated and difficult. If you would like to change the terms, contact the police or Provincial Court.

230. How long is it in effect?
Peace bonds can only last for up to twelve months. They are not renewable. If you need another one, you must make a new application.

231. What are the limitations of peace bonds?

One of the limits of a peace bond is that it cannot necessarily prevent anyone from breaking the law. A peace bond may not deter some people who engage in threatening or violent behaviour. Peace bonds do however facilitate more effective police and court action after a violation of a term of the bond.

232. What is the difference between a peace bond and a restraining order?

Restraining orders are non-criminal court orders that have certain conditions such as prohibiting contact. They are usually made in connection with a custody or separation action in a Family Court. If you and the defendant are married, living common-law, separated, divorced, or if you are a parent of a child that is involved in the proceeding you may also apply for a restraining order. To get a restraining order however, you will probably need a lawyer.

Families of Murder Victims

233. Who will explain the cause of death to me?

The police are responsible for explaining the cause of death to the victim's family. This usually occurs along with the death notification. More information may be revealed at the preliminary hearing or during the trial when forensic witnesses testify.

234. Do I have the right to donate my loved one's organs in a murder situation?

Generally, whether or not the victim had previously signed a donor card, family members have the final say on whether or not the person's organs are donated. However, organ donation may prove to be difficult in murder cases because of delays with the police investigation and with the autopsy.

235. How do I initiate a formal inquiry into the death of my family member?

Victims may choose to write to their provincial coroner's office to request that an inquiry be held. This however, will not guarantee that an inquiry is launched.

Please note that the coroner's office will usually require that all legal matters are complete before beginning an inquest. In some cases, legal proceedings, including appeals, can continue for many years following the death of a loved one. Victims should be aware that coroner may still refuse to hold an inquest even after all legal proceedings are completed because so much time has passed and the availability and reliability of witnesses may be compromised.

236. Can the family of a murder victim prepare a victim impact statement?

Yes. If you are a relative, spouse, parent, guardian, or dependant of a victim who was murdered, you may prepare a victim impact statement. (For more information about victim impact statements, refer to the section on sentencing.)

237. Will the deceased victim's photo be shown in the courtroom and to whom?

It is possible that a picture of the victim may be shown in the courtroom as evidence. If a picture of the victim is used as evidence, it will be shown to the judge and/or jury, the Crown, the defence, and to witnesses who may be giving information regarding the picture.

It may be possible for victims to view the photographs before they are presented in court. Speak to the Crown Attorney about viewing the photographs to avoid being shocked by graphic photographs in the courtroom.

238. Will my loved one's belongings be returned to me?

In murder cases, it may not be possible to have the victim's property returned to the family immediately or at all. Survivors should speak to the police and the Crown Attorney about this issue.

239. My loved one has been murdered. I am confused about what charge will be laid. How will the decision be made?

The *Criminal Code* can be very confusing for families involved in a murder case. This is because there are three different definitions for murder and each of them have very different outcomes regarding sentencing.

The killer may be charged with first-degree murder, second-degree murder or manslaughter. The important difference between the three categories is the intent involved.

First-degree murder is planned and deliberate. The planning and deliberation must come before the homicide. For example, someone makes a conscious decision to kill someone else, sets a plan in place and carries it out.

If convicted of first-degree murder a person is automatically sentenced to life in prison. The eligibility for release on full parole is prohibited until the person has served at least twenty-five years in custody.

Second-degree murder is not planned, but it is intentional. The murder must still be intentional, or it is not murder, but it becomes second-degree murder when the intention to cause the person's death did not occur before the act began. In other words, there was no planning or deliberation. For example, someone assaults another person without having had any plan ahead of time to kill this person, but once the assault is commenced, intends to kill him.

A person convicted of second-degree murder is also automatically sentenced to a term of life imprisonment. Parole ineligibility in such cases varies. Unless the sentencing judge decides to increase the period of parole ineligibility, Parliament has directed sentencing judges to fix such a period at ten years. In such a case, the convicted murderer must serve at least ten years from the time he or she entered custody on the murder charge before becoming eligible for full parole. A judge can set the parole ineligibility period higher than ten years (somewhere between 10 – 25), but this is usually reserved for exceptional cases.

Manslaughter is the killing of another person by an unlawful act such as an assault at a time when the accused was provoked. Where there was no intent to cause death (or bodily harm that is likely to cause death), but the person causing the death was negligent as to whether death occurred, the appropriate charge is manslaughter. Manslaughter is sometimes referred to as an accidental killing committed in the heat of passion.

Remember that it is at the discretion of the police to lay charges. If and when criminal charges have been laid, it is the discretion of the Crown Attorney to make the decision about whether the criminal process ceases or continues.

If you have questions about the initial charges (or changes made to charges) you should speak to the arresting officer. If there is confusing about the law or the legal process, you should address the Crown's office.

Glossary of Terms

Absolute Discharge: An absolute discharge may occur where the accused is found guilty or has pleaded guilty, but is deemed not to have convicted of the criminal offence and is given no punishment or restrictions placed upon them. Such a discharge cannot be given if the offence carries a minimum punishment, or is punishable for 14 years or greater.

Accused person: a person charged with a criminal offence.

Acquittal: A court finding of not guilty.

Act: An act is a law that has been passed by the federal or provincial legislature.

Adjournment: A temporary delay of court proceedings.

Affirmation: A non-religious oath given by a witness before testifying, promising that the evidence they offer is, to the best of their knowledge, the truth.

Alternative or extra-judicial measures: These programs are used most often for young offenders and provide an opportunity for a young person to avoid the formal justice system. They may include victim/offender reconciliation, community service, and payment of fines. Such programs are usually reserved for first time, non-violent offenders.

Appeal: An appeal is an application for judicial review by a higher court of 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: Financial or other security put up by the accused or by someone on the accused's behalf as an assurance that the accused will appear on the date of his/her trial.

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

Beyond a Reasonable Doubt: In criminal cases the Crown has to meet a standard of proof beyond a reasonable doubt. The Crown must show that the evidence is so complete and convincing that the judge/jury has no reasonable doubts regarding the accused's guilt.

Challenge for Cause: During jury selection, both the Crown and Defence may make an unlimited number of challenges for cause. A challenge for cause is a challenge that must be proven on specific grounds, such as jury impartiality.

Change of Venue: Generally, cases are tried in the community courthouse nearest to where the offence took place. A change of venue is where the case has been moved to another courthouse in another place.

Complainant: The victim of an alleged offence.

Community assessment: This is a report that captures complete, accurate and quality information that assists in every activity related to the offender's progress.

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.

Conditional Sentence: A conditional sentence is a sentence that is served by the offender in the community. The offender would essentially remain in the community under supervision, and would be required to abide by a number of conditions.

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 Attorney: A government appointed agent who prosecutes criminal offences on behalf of the Attorney General of Canada. The Crown presents all relevant evidence to the trier of fact (the trial judge or the jury) that sheds light upon the offence of which the accused is charged.

Dangerous Offender: A dangerous offender is an offender who has been convicted of a serious personal injury offence and the court has found him/her to be a danger to society. If the court finds an offender to be a dangerous offender, a sentence of incarceration for an indeterminate period will be imposed.

Damages: Damages include monetary compensation for financial loss, property loss, emotional injuries, physical injuries, loss of earnings, and costs of care.

Day Parole: Day parole is a type of early conditional release from incarceration. It may be available at six months prior to full parole and allows the offender to participate in community-based activities during the day and return the institution by night.

Dual Procedure Offence: A category of criminal offences where the Crown Attorney has the choice to proceed by summary conviction or indictment.

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.

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 Offences: Indictable offences are a category of criminal offences that are usually more serious crimes and carry greater maximum sentences.

Information: A written accusation against a person charged with a criminal offence.

Intermittent Sentence: A sentence that allows the offender to serve his/her time of incarceration in intervals.

Laying an information: The formal means of laying a charge. The *Criminal Code* requires that a charge be brought in writing and under oath before a justice of the peace.

Leave to appeal: Permission or authorization to appeal.

Legal Aid: Legal Aid offers legal services to those who cannot afford counsel. Legal Aid offers different kinds of help depending on your legal problem and where you live in Canada.

Parole: Parole is the early release of an offender from incarceration in which he/she serves the remainder of his/her sentence in the community under supervision and specific conditions.

Perjury: Perjury occurs when a person gives evidence in court that he/she knows is false. As outlined in the Criminal Code, anyone who commits perjury is guilty of an indictable offence and may liable to imprisonment for a term not exceeding fourteen years.

Plea bargaining: Plea bargaining occurs when the Crown and the defence come to an agreement wherein the accused pleads guilty. The guilty plea usually comes in exchange for a benefit such as reducing the charge against the accused or where the two sides agree upon a sentence.

Preemptory Challenge: A preemptory challenge is a challenge made by the Crown or defence counsel to eliminate a potential juror during jury selection. Counsel can only make a limited number of preemptory challenges, for which no reason need be given.

Preliminary Hearing: A preliminary hearing is a court proceeding that is held before the trial to determine if there is enough evidence to proceed with the charges. During the preliminary hearing the Crown prosecutor can call witnesses to convince the judge that there is sufficient evidence against the accused to proceed with a trial.

Pre-Sentence Report: A pre-sentence report is a report prepared by a probation officer that the judge may use in determining a sentence for a person who pleads guilty or is found guilty. The pre-sentence report may include information regarding the accused's background such as their family, education and employment.

Probation: Probation is a sentence in which the offender is released into the community under the supervision of a probation officer and must follow certain conditions such as being of good behaviour, abstaining from alcohol, not contacting the victim, etc.

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.

Reception centre: This is a special penitentiary, or part of a penitentiary, dedicated to the assessment of offenders.

Recognizance: A promise, made by an accused pending trial, to appear in court and answer to the criminal charges that have been brought against him/her.

Restitution: A type of sentence that can be imposed on an offender that requires him/her to make restitution (compensation) to the victim for the loss or destruction of property and/or bodily harm.

Sentence: A formal judgment imposing a punishment upon conviction for a criminal offence.

Statutory Release: Statutory release is a form of conditional release that allows most federal offender to serve the last one-third of his/her sentence in the community.

Subpoena: A subpoena is a command that a witness attend court at a certain time to give evidence.

Summary Conviction Offences: Summary offences are a category of criminal offences that are usually less serious crimes and carry lower sentences.

Summons: A legal document ordering an accused person to appear in court.

Temporary Absence: An escorted or unescorted temporary absence may be granted to incarcerated offenders in order for them to receive medical treatment; have contact with their family; undergo personal development and/or counseling; and participate in community service work projects; may also be granted for compassionate reasons (e.g. a funeral).

Testimony: Evidence given by a witness who is under oath or affirmation.

Trier of Fact: In a criminal case, the trier of fact refers to the jury who listens to the evidence and decides on the guilt of the accused based on the facts of the case against him/her.

Verdict: A verdict is the jury's (or the judge's) finding of a case. In criminal cases, the verdict must be unanimous.

Victim: Someone to whom harm was done or who suffered physical or emotional damage as result of an offence.
Victims Fund: Allows for victims to seek travel and accommodation expenses for attending federal parole hearings.

Victim Impact Statement: A victim impact statement is a written account of the personal harm suffered by a victim of crime. The statement may include a description of the physical, financial and emotional effects of the crime. Where a victim impact statement has been prepared, it must be taken into consideration by the sentencing judge.

Victim Surcharge: A victim surcharge is a monetary penalty imposed on offenders, in addition to any other punishment imposed, at the time of sentencing. It is collected by the provincial and territorial governments, and the revenue is used to provide programs, services and assistance to victims of crime within their jurisdictions (it is not paid to you). The amount of the victim surcharge is 15% of any fine that is imposed on an offender as a sentence, and, in the absence of a fine, $50 for summary conviction offences and $100 for indictable offences.

Voir dire: A voir dire is a trial within a trial. It is a hearing held, without the presence of the jury, to determine whether an issue of fact or law would be admissible. For example, a voir dire may be used in order to decide whether certain aspects of an expert witness' testimony will be allowed.

Warrant: A court order authorizing the police to arrest a person or to search a place.

Work Release: Work release is a correctional program that enables inmates to leave the correctional facility to work during the day and return to the facility at night.

Young Offender: In Canada, those aged twelve to seventeen are considered youths under criminal law, and fall within the scope of the Youth Criminal Justice act.

Youth Court: The court that deals with criminal charges against young offenders.