



Your Voice in Criminal Court

a guide to court orientation
for adult witnesses

INFORMATION + RESOURCES FOR VICTIM SERVICE WORKERS



Ministry of
Public Safety
and Solicitor General



introduction

Victim Service Workers have an important role to play in the administration of justice and in educating victims and witnesses about the criminal court process. The video, *Your Voice in Criminal Court*, along with this booklet were designed to assist you in orienting clients for Provincial Court by offering general discussion points on a variety of court-related topics.

The **Victims of Crime Act of BC** ensures that victims have the right to information on the justice system, victim services and related legislation. You may be asked to assist with a **Victim Impact Statement**, an application for Crime Victim Assistance, or accompaniment to Crown meetings and court dates. All efforts should be made to facilitate court accompaniment, whether with a Victim Service Worker or with a client's friend or family member.



You may be asked to assist with a Victim Impact Statement.



It is vital that you do not discuss any of the evidence or testimony to be presented in court with your client as you complete the court orientation because the suggestion that you have influenced the client's testimony could lead to the charges being dismissed or your being called as a witness.

court orientation: the courtroom personnel

Judge — The presiding Judge sits on a raised bench and controls all court proceedings. The Judge is referred to as “Your Honour” in Provincial Court and as “My Lord/My Lady” in Supreme Court. The Judge must remain impartial and unbiased throughout the entire proceedings. The judge is not given any information about the case in advance and therefore will make a decision based solely on the evidence that is presented in court. The Judge is usually the “finder of fact” and will decide whether or not the accused is legally guilty.



In higher penalty cases (*i.e.* indictable and some dual procedure offences) where the accused has elected to be tried in a higher court, the Provincial Court Judge will preside over the Preliminary Inquiry — a hearing to determine whether there is sufficient evidence to order a trial in the Supreme Court of BC (with/without a jury).

Lawyers — There are usually at least two lawyers in each criminal court case. Both lawyers are officers of the court and as such are obliged to help the court reach an honest and just decision. In court, they refer to each other as “my friend.”

- Crown counsel act as agents for the Attorney General of British Columbia. Crown counsel is not your client’s lawyer but is the lawyer who represents the community and who presents the case against the person charged with breaking the law. Crown



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counsel is sometimes called the Prosecution or a Prosecutor.

- Defence counsel is the lawyer who represents the accused. His or her primary task is to ensure that their client's rights are upheld and to test the evidence of the Crown. The accused is not obliged to testify and the defence counsel may or may not present evidence.

Sheriff — The uniformed officer is responsible for the safety and security of everyone in the courtroom, including the accused.

Court Clerk — The Court Clerk acts as the administrative assistant to the Judge, swearing in witnesses, tape-recording the proceedings, and marking and keeping track of the exhibits. The Court Clerk also calls the court to order and reads the charges against the accused.

the accused

Burden of Proof — In criminal court, a person who is accused of breaking the law is presumed to be innocent until proven guilty beyond a reasonable doubt. The burden of proof rests



with Crown counsel to show that no reasonable doubt exists as to the guilt of the accused. A reasonable doubt is one that a reasonable person might have, and for which they could give a reason.



Testifying – The accused has the right to remain silent and cannot be compelled to testify. This is often very frustrating for clients.

Public Hearing — The accused has the right to a public trial. In most cases, therefore, the courtroom will be open to the public.

Self-Representation – The accused has the right to represent him or herself in court and to conduct his or her own cross-examination. This is extremely rare, however, your client should be advised of this right.

Facing the Accusers — The accused has the right to face his or her accusers and hear all of the evidence presented in court. Adult witnesses will be required to testify with the accused in the same room, except in very special circumstances (i.e. deemed to be a vulnerable witness as defined by Bill C-2).



In most cases, the courtroom will be open to the public.

the trial

In criminal court, the Court Clerk calls the court to order, asking everyone to rise while the Judge enters the courtroom. After the Judge is seated, everyone may resume his or her seat. The Court Clerk hands the Judge a document setting out the charge(s) (known as the Information or in Supreme Court as the Indictment) and the lawyers introduce themselves for the record. After looking at the charges, the Judge returns the information or indictment to the Clerk who reads the charges. In some situations, the defence counsel may ask to have the reading of the charges waived. If a plea has not already been entered, the Judge asks the accused how they plead and the accused responds.



Crown counsel will stand and ask for **“an order excluding all witnesses.”** The Judge will then order all witnesses in the criminal case to leave the courtroom and not return until they are called to testify.

Crown counsel will present the prosecution case first. Crown witnesses will, therefore, be called to testify as part of the prosecution

case. If defence counsel presents any evidence, this will be done after the Crown has completed its case. Once both lawyers have called their witnesses to give evidence and

made their closing

submissions, the Judge will render a verdict. The decision may be made at that time or at a later date. If the accused is found guilty, the Crown and defence counsel will make submissions on sentence to the Court. The Judge will impose sentence either at that time or at a later court date.



If the accused is found guilty, the Crown and defence counsel will make submissions on sentence to the court.



There are often many delays during the trial process. Advise your client(s) that they should expect to be at court the entire day, if called to testify in the morning. They may also be required to attend on additional days if there are delays and they have not completed their testimony.

prior to your client's attendance at court

Subpoena — Explain that your client should receive a court document called a subpoena that will indicate the location of the court, the date, time and courtroom number of the case. The subpoena will refer to R. v. <the name of the accused>. The letter “R” is short for “Regina” which means Queen in Latin. The letter “v” is short for “versus” which means “against” in Latin. The Queen is Canada’s head of state; therefore her name is used to represent the community in any criminal trial. Remind your client to bring the subpoena to court on the day that he or she is to testify.

Pre-Trial Crown Meetings — Witnesses often meet with Crown only on the day of the court case. In some cases, Crown may contact a



witness ahead of time to meet to review testimony and statements. Encourage your client to contact Crown counsel to discuss any questions or concerns regarding their testimony, their safety while at court, any scheduling conflicts, any special accommodations that require attention prior to the court date (i.e. translation services, wheelchair accessibility), or concerns about the presence of the accused or the potential presence of the media.

Court Accompaniment — As a Victim Service Worker, you are required to facilitate court accompaniment to Crown meetings and court. If your program is unable to accommodate the accompaniment needs of your client, ensure that arrangements are made for a friend, family member or other support person to accompany your client to court.



Making a positive impression is important.





Personal Grooming — Encourage your client to dress comfortably and conservatively. Emphasize that making a positive impression is important. Discuss what would and would not be appropriate attire. If your client is attending Supreme Court, the dress code is much more formal.

Pre-Court Considerations — Ask your client if they need to arrange for childcare, transportation, or time off work. In some instances, witnesses may be able to claim expenses for travel and/or childcare. To find out more, your client can contact the Witness Notifier in Crown counsel's office.

Employers must give witnesses time off work to go to court. Employers do not have to pay witnesses for the time they spend in court. Some unions, however, cover court time in their collective agreements.

Remind your client to bring refreshments and a stress-relieving item (magazine, book, deck of cards, etc.) as witnesses often must wait before testifying.



the day of court

Notify Crown Counsel — Advise your client(s) that on the day they attend court, they should report directly to Crown's office with their subpoena and let Crown know they are present. Crown will advise them where they should wait until they are called to testify.

While They Wait — Let your client know that it can be stressful waiting to testify. The accused or family members or friends of the accused may be outside the courtroom waiting to testify. De-stressors include:

- Speaking with Crown counsel or a Sheriff if your client is feeling unsafe
- Relaxation exercises; concentrate on breathing slowly and deeply
- Talking with the client's support person about anything but the evidence the client will be giving in court that day; remind your client they must not discuss any particulars of the case because the suggestion that his or her testimony has been influenced by someone else may cause the case to be dismissed.



testifying in court

Courtroom Courtesies — Instruct your client(s) to turn off their cell phone and/or pager prior to entering the courtroom. Other courtroom etiquette includes:

- no gum chewing
- no drinking (except water)
- no talking, yelling, outbursts
- no visible or audible signs of annoyance (i.e. rolling of eyes or loud sighs)

The Witness Box — Advise your client(s) that when they are asked to enter the courtroom, they should go directly to the witness box. They should remain standing and wait for the Court Clerk to speak to them. The Clerk will ask the witness to state their name and to spell their last name. They will then be asked if they wish to “swear an oath” or “affirm the truth.”

Swearing an Oath — means that the witness will place his/her hand on top of a Bible and promise to tell the



All witnesses are concerned about testifying in court.



truth. Arrangements can be made with Crown counsel if your client prefers to swear an oath using another Holy Book or sacred object.

Affirming the Truth — means that the witness will be asked to solemnly promise to tell the truth to the court.

Three Phases of Testimony — All witnesses are concerned about testifying in court. Review the three phases of testifying in court:

1. *Direct-Examination*
2. *Cross-Examination*
3. *Re-Examination*

As a witness for the Crown, Crown counsel will ask questions first. These questions are called the **direct examination**. The purpose of direct examination is to allow each witness to explain what he or she knows about the case. Crown cannot make suggestions or “lead” witnesses through their testimony.

After the direct-examination is finished, defence counsel will conduct the cross-examination. Cross-examination has two important functions. First, it can test the witness’ memory of events. Second, it can bring out vital



information that did not come out in direct examination. It is important that witnesses understand that **cross-examination** is intended to check the facts. It should not be viewed as a personal attack. During cross-examination, Counsel may ask leading questions or make suggestions to test the veracity of the testimony given. All witnesses on both sides of the case may be cross-examined.

After cross-examination is finished, Crown counsel may wish to ask further questions, called **re-examination**, about matters that arose during cross-examination. Once these questions are answered, the witness will either be dismissed and be able to sit in the courtroom for the rest of the trial or be asked to leave the courtroom as they may have to testify again at a later date. If, for example, it is a Preliminary Inquiry, the witness must leave the courtroom. Remind your client to ask Crown counsel or the Judge for direction in this matter.



Witnesses must give their answers out loud.



Giving Evidence — When testifying, points to review with your client(s) include:

- address the Judge as “Your Honour” or as “Judge” or in Supreme Court as My Lord/My Lady
- remember that the Judge knows nothing about the case; every detail is therefore very important!
- look directly at the Judge, instead of the lawyers, when giving their answers
- look around the entire courtroom if they are asked to identify the accused before answering; they are permitted to take their time
- speak clearly, slowly and keep their voice up as the Judge must be able to hear their answers; additionally, the courtroom microphones are used to record a witness’ voice — they do not necessarily amplify it;





witnesses must give their answers out loud
— the microphone cannot record a nod or a head shake

- listen carefully to the question asked, making sure the lawyer has finished talking
- take a moment to organize their responses
- take a deep breath before answering any question; do not feel rushed to respond
- answer only the question being asked
- avoid arguing with the lawyers or the Judge
- ask the Judge to clarify a question asked if not understood
- ask the lawyer to repeat or rephrase the question if not understood
- avoid sarcasm, jokes and losing one's temper
- keep calm and relaxed
- ask the Judge for a break or for a glass of water
- expect interruptions when testifying (i.e. lunch breaks, objections)
- always tell the truth (no embellishments or guesses)



Courtroom Objections — Advise your client that if either lawyer objects to a question, they should remain quiet until directed by the Judge to answer. They may be asked to leave the courtroom while the lawyers make submissions or argue about the relevancy of a specific question. This may be referred to as a **voir dire**. Once the issue is resolved, the questioning by the lawyers will continue.

the verdict

Guilty — Your client(s) will be asked by Crown counsel to submit a **Victim Impact Statement** that will be used if the accused is found guilty. They are not required to submit a Statement; however, it is helpful to the Judge during the sentencing phase of the case. If your client(s) have any questions regarding their Victim Impact Statement, offer to assist them or advise them to contact their Crown counsel.

Not Guilty — If the accused is found not guilty, it is important to stress to the client that it does not mean that the Judge did not believe them; it means that there was not enough information presented during the trial for the Judge to be convinced, beyond a reasonable doubt, that the accused was legally guilty.



court definitions

Counsel — the lawyers involved in the court proceedings.

Court Clerk — the assistant to the Judge who swears in witnesses and marks and keeps track of the exhibits during the trial.

Cross-examination — the questions asked by counsel for the other side. The aim is to test the witness' evidence and to see if any new evidence can be brought out.

Crown counsel — lawyers who work for the Attorney General's office. It is their job to present the Crown's case. They are also known as prosecutors.

Defence counsel — lawyers who defend the person accused of a crime.

Defendant — the accused in a criminal case.





Direct-examination — when counsel who called the witness asks the questions first. The questions allow the witnesses to explain fully what they know.

Hearsay — evidence that is not admissible in court because the witness was not “a witness to the facts”.

Evidence — the information presented by counsel. It includes the testimony of witnesses as well as objects and documents known as exhibits.

Judge — the “finder of fact” in a court case. The judge decides what happened based on the evidence presented, decides how the law applies to the facts and then renders a judgment.

Mistrial — the Judge declares the trial at an end due to an irregularity in the proceedings. Crown may or may not be able to recommence the proceedings at a later date.

Preliminary Inquiry — a hearing in Provincial Court, Criminal Division, to determine if there is sufficient evidence to proceed to trial in Supreme Court.



Re-examination — questions asked by counsel who called the witness, after cross-examination by the other counsel. Re-examination happens if the cross-examination has brought out new facts, or if something was unclear in cross-examination.

Sheriff — the Sheriff's responsibilities are to ensure the Courtroom is safe for everyone present, including witnesses, jurors, accused and members of the public.

Subpoena — an official court document that orders a witness to come to Court to give evidence.

Victim Impact Statement — a court document completed by victims, explaining the emotional, psychological, physical and financial effects of the crime.

Voir Dire — a hearing to determine the admissibility of evidence.

Witness Notifier — the person who works for Crown counsel whose job it is to ensure witnesses know their trial date. They can give the witness general information about Court procedure.



Your Voice in Criminal Court

Provided by the Victim Services and Community Programs Division, BC Ministry of Public Safety and Solicitor General in partnership with the Law Courts Education Society of BC.

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