



VICTIMS & WITNESSES  
of CRIME COURT SUPPORT

# **Victims' Involvement in the Sentencing Process Law Reform and Sentencing Council**

## **Submissions**

July 30, 2017

VWCCS (Victims & Witnesses of Crime Court Support) submits the following for your consideration:

## **TERMS OF REFERENCE**

1. The principles courts apply when receiving and addressing victim impact statements.
2. Who can make a victim impact statement.
3. Procedural issues with the making and reception in court of a victim impact statement, including the content of a victim impact statement, the evidential admissibility applied to a victim impact statement, and objections to the content of victim impact statements.
4. The level of support and assistance available to victims.

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## SENTENCING PROCEDURE

The sentencing procedure is a difficult one for judges that involves careful consideration of many factors. It can appear to be all about the offender and care should be taken to give great consideration to the victims who may or may not be present in court.

The majority of victims suffer long term or, in certain instances such as historical sexual assault, life-time damage and difficulties because of the serious harm done to them. It is not unusual for a victim to continue to believe that the offender still has power over them, which in fact may well be the case (various cultures and traditions to be considered). The sentencing procedure should attempt to return power and respect back to the victim. This could be done by, inter alia, the Bench confirming the integrity, courage and dignity shown by the victim throughout the trial and/or during their evidence and cross-examination and in presenting their Victim Impact Statement (VIS) to the court. The victim may find the Bench's comments profoundly comforting and rewarding which may well help in their 'healing journey'.

## ADDRESSING THE ROLE OF THE VICTIMS

1. In the early stages of the proceedings, it should be customary for the Bench to publicly recognise that the victims are present in the court room. Variations in judge's style can be addressed by making such comments from the Bench 'best practice'.
2. At the completion of the reading of each VIS the Bench could individually thank, by name, the person who wrote the statement (whether read by that person or another).

Reference could also be made to those who chose not to make a VIS and that their role and the impact on them are an important consideration also. Some words of 'personal' thanks/recognition are greatly valued and appreciated.

3. It could also be customary for the Bench to always, thank generally, all relevant victims and witnesses for the important role they have played in the process of justice, whether they wrote a VIS or not, and regardless of whether they are present at court or not.

Expressions of thanks could refer to the fact that the court appreciates the difficulties involved in coming forward in the justice system, giving evidence/information about an offence, and providing details of the impact of these offences. It is appreciated that by coming forward offenders are not only brought to justice for their crimes but also prevented from committing further offences.

Clarify that the Bench, in its considerations, is required to consider all harm done to victims and ensuing impact, physical, emotional, financial etc. and that the VIS assists in this process.

The Bench should assure victims/families that the impacts of the crime are a very important consideration on sentencing.

4. Make it clear in remarks on sentence that an important element of the sentence being handed down is to atone for the damage done to ..."name of victims or their families in case of homicide" to be mentioned here. The sentence comes from the court on behalf of victims and community.

## PROVIDE INFORMATION IN ADVANCE OF SENTENCING

The formality of a court room and the procedures therein, whilst providing a sense of the gravity of the crime, are a very foreign thing to those in the general community. Add this to the emotional stress for victims of crime at the sentencing procedure and it means that a lot of what is happening at sentencing is actually lost by the victims on the day of the procedure. As a result they may suffer more confusion and/or dissatisfaction than is necessary.

A small leaflet that provides information on all the elements and factors that are involved in the sentencing procedure could be printed, readily available and provided to victims by various agencies well before the sentencing date.

Being better informed with a leaflet that they can consider all relevant issues in their own time would mean they would follow the procedure and results more fully (there are excellent handouts that summarise guidelines for giving of evidence and this leaflet could be of a similar style).

Attached below on the final page of this document are suggested inclusions for such a leaflet.

## PLEA NEGOTIATIONS/DISCOUNTS FOR GUILTY PLEAS

1. These negotiations are often misunderstood by victims/families. They need to clearly understand this process so that they can fully understand the sentence handed down.
2. Often in these negotiations the Police Facts to be tendered to court can be changed on agreement of both parties (the prosecutor will have discussed these changes with OIC and victims/families).
3. It is always a balance between the benefits gained from a guilty plea to the difficulties of a trial. However, often it is misunderstood by victims/families that 'lesser' facts may/may not result in lesser penalty. (de Simoni)
4. The victim should be given ample time to consider all issues.
5. The prosecutor has to know and be able to inform the judge that negotiations have included the victim and that the victim has a clear understanding of all options.
6. **It is essential** the Judge and/or the Prosecutor **clarify** -
  - a) that the victim understands the possible penalties that will be applied as a result of the facts tendered; and
  - b) the discount on sentence that will be applied as a result of taking a Guilty Plea instead of going to trial.

## USE OF CCTV ROOMS

In some jurisdictions a victim can pre-record their VIS which will then be played in court. Alternatively there should be the option of using a CCTV room to read their VIS. These avenues give victims more choice and would probably allow more victims to present their VIS when they know they can do so in advance and not in the stress of a court room.

Again at the completion of the reading of a VIS the victim/family member wants to hear some words of personal recognition from the Bench (even if read by another for them).

## **TAKING A GUILTY PLEA**

If at all possible when a plea is to be taken it should be done so at the earliest opportunity and when the victims/families are in court. Adjourning to take the plea on another occasion causes further stress/trauma for victims.

## **LOCAL COURT - VIS**

Local court under-utilises the right to make a VIS. The Officer-in-Charge and the Magistrate should inform victims/families at the earliest opportunity of their right to make a VIS and for it to be read to court in the sentencing procedure. This needs to be done as early as possible as matters can proceed to hearing and sentence much quicker than in District/Supreme Courts.

The victim/family would need to have their VIS prepared and ready to present.

There is a lack of professional support for this purpose at local court level. It could perhaps be a matter that if available a Duty Solicitor or a Court Support Officer could assist with.

## **DELAY**

The time it takes for a matter to get to hearing adds to the stress that victims/families suffer.

It also makes recalling the event for the purpose of giving evidence and particularly cross examination more difficult.

Many adjournments, keeping witnesses waiting for long periods, having witnesses come to courts on days they are not required are all things which can make the judicial system appear inefficient.

Whilst some delays are inevitable, a clear message should come from the Bench, that matters should proceed as quickly as possible through the courts. "Justice delayed is Justice denied".

## SUGGESTIONS FOR SENTENCING BROCHURE

Exercise, not of particular judge's beliefs, but of application of the principle of laws and case laws.

- Maximum and minimum penalties apply and those which are in place at the time of the offence.
- The sentence will be made up of a maximum and minimum penalty.
- The offender is to spend the minimum time in custody and will then be released if certain criteria are met.
- Victims/families have a right to be advised when offender is to be released.
- These maximum and minimum penalties are a yard stick used to compare this particular case with the worst possible case.

## PURPOSE OF SENTENCING

- to protect the community;
- punish the offender;
- prevent other crime by deterrence;
- rehabilitate the offender (particularly young offender);
- make offender accountable for actions;
- denounce the offending conduct; and
- recognise the harm done to the victim.

## FACTORS TO CONSIDER

- Compare to the worst possible case.
- Consider matters of:
  - **aggravation** - violence, in company, a child, in their home, the injury, risk of death, offender on bail, position of trust, vulnerable victim, planning, financial gain, multiple victims/acts; and
  - **mitigation** - not substantial injury, not planned, provocation by victim, offender under duress, prior record, good character, likelihood of re-offending, prospects of rehabilitation, remorse, offenders age, disability, guilty plea, assistance to authorities.

## PRINCIPLES

- **Proportionality** - the sentence must be in proportion to the crime committed.
- **Parity** - between co-offenders
  - Offender can only be sentenced on the offence committed and its facts - includes aggravating factors but not so that it reaches the level of a more serious offence.
- **Totality** - multiple offences can be treated concurrently.

## SUBJECTIVE CIRCUMSTANCES OF THE OFFENDER

- previous good character;
- background;
- criminal history;
- age; and
- physical/mental condition (goes to culpability and the effect of custodial sentence).

## GUILTY PLEA

Discounts are given for a guilty plea (saving the cost of trial and the distress of victims having to give evidence).