

CHAPTER FOUR: VICTIMS

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CHAPTER FOUR: VICTIMS

I. INTRODUCTION

Victims of crime require a wide variety of assistance depending on their needs. This chapter will outline the avenues a client can take to address being a victim of crime.

In 2015, Parliament enacted the *Canadian Victims Bill of Rights*, SC 2015, c 13, s 2 [CVBR], which is expected to come into force on July 23, 2015. The CVBR recognizes victims of crime and their families deserve to be treated with compassion and respect, and have the right to be considered throughout the criminal justice system. In particular, the CVBR acknowledges victims of crime have the following rights:

- the right to information about the criminal justice system, the services and programs available to victims of crime and the complaint procedures available to victims when their rights have been infringed or denied;
- the right to information about the status of criminal proceedings and information about hearings after the accused is found not criminally responsible on account of mental disorder or unfit to stand trial;
- the right to have their security and privacy considered by the appropriate authorities in the criminal justice system;
- the right to protection from intimidation and retaliation;
- the right to request testimonial aids;
- the right to have the courts consider making a restitution order against the offender; and
- the right to have a restitution order entered as a civil court judgment that is enforceable against the offender if the amount owing under the restitution order is not paid.

The CVBR provides victims of crime the right to make a complaint to the relevant federal, provincial or territorial department, agency or body if they are of the opinion that any of their rights under the Act have been infringed or denied (s. 25). It is important to note, however, that the CVBR does not create a civil cause of action for victims (s. 28) nor does it grant victims the status of party to criminal proceedings.

A. *Governing Legislation, Regulations, Policy Guidelines, and Resources*

1. **Legislation and Regulations**

Canadian Victims Bill of Rights, SC 2015, c 13, s 2 (In force on July 23, 2015).

Website:

<http://www.parl.gc.ca/HousePublications/Publication.aspx?Language=E&Mode=1&DocId=7935412>

Victims of Crime Act, RSBC 1996, c 478

Website: www.qp.gov.bc.ca/statreg/Stat/V/96478_01.htm

Crime Victim Assistance Act, SBC 2001, c 38.

Website: www.qp.gov.bc.ca/statreg/stat/C/01038_01.htm

Crime Victim Assistance (General) Regulation, BC Reg 161/2002.

Website: www.qp.gov.bc.ca/statreg/reg/C/161_2002.htm

Crime Victim Assistance (Income Support and Vocational Services and Expenses) Regulation
BC Reg 162/2002

Website: www.qp.gov.bc.ca/statreg/reg/c/162_2002.htm

Criminal Code, RSC 1985, c C-46.

Adult Guardianship Act, RSBC 1996, c 6.

2. Policy Guidelines

Ministries of Attorney General, Public Safety & Solicitor General, and Children & Family Development, *Violence Against Women in Relationships Policy* (British Columbia, December 2010).

Criminal Justice Branch, Ministry of Justice Crown Counsel Policy Manual, *Vulnerable Victims and Witnesses – Adult*, Effective December 29, 2014.

Website: http://www.ag.gov.bc.ca/prosecution-service/policy-man/pdf/CJB-VUL1-VulnerableVictims_Witnesses-Adult.pdf

Criminal Justice Branch, Ministry of Justice Crown Counsel Policy Manual, *Sexual Services: Purchase of and Related Offences*, Effective February 25, 2015.

Website: http://www.ag.gov.bc.ca/prosecution-service/policy-man/pdf/CJB-SEX3-SexualServices-Purchase_Related.pdf

3. Resources

Crime Victim Assistance Program

P.O. Box 5550 Stn. Terminal

Vancouver, B.C. V6B 1H1

E-mail: cvap@gov.bc.ca

Website: www.pssg.gov.bc.ca/victimservices/financial/index.htm

Telephone: (604) 660-3888

Toll-Free: 1-866-660-3888

- Provides financial assistance and benefits to victims of violent crimes, their immediate family members and some witnesses to offset the costs of the victimization and to promote their recovery from the physical and psychological effects of the offence.

Directory of Victim Service and Violence Against Women Programs in BC

<http://www.pssg.gov.bc.ca/victimservices/directory/index.htm>

- A directory for violence against women and victim service programs across BC.

Victim Notification – Victim Safety Unit

302 – 815 Hornby Street

Vancouver, B.C. V6Z 2E6

Email: ysusg@gov.bc.ca

Website: <http://www.pssg.gov.bc.ca/victimservices/victim-safety/>

Telephone: (604) 660-0316 (Lower Mainland)

Toll-Free: 1-877-315-8822

- The Victim Safety Unit provides information to victims when the accused or offender is supervised by B.C. Corrections. Some information may also be provided to persons named in a civil protection order. Victims may be provided with ongoing information about the status of an accused or an offender, including whether or not they are currently in provincial jail, when they may get out of provincial jail, what community they may be in and what conditions they accused or offender may have to follow.

JusticeBC

<http://www.justicebc.ca/en/cjis/you/victim/index.html>

- Provides information and guidance to support victims and help victims learn more about services and resources available to victims of crime in British Columbia.

Community Safety and Crime Prevention Branch

Ministry of Justice
302 - 815 Hornby Street
Vancouver, B.C. V6Z 2E6

E-mail: crimeprevention@gov.bc.ca

Website:

<http://www.pssg.gov.bc.ca/crimeprevention/index.htm>

Telephone: (604) 660-5199

Fax : 604 660-1635

- As the provincial centre of responsibility for victims' issues, human trafficking and crime prevention, the Division develops legislation and policies, provides training and delivers and funds programs that support victims, address human trafficking and provide a restorative justice response to crime.

VictimLink BC

Toll-Free: 1-800-563-0808

TTY: (604) 875-0885

- VictimLink BC is available 24 hours, seven days a week and has information about and referrals to a number of support systems that are available to victims of crime.

Public Guardian and Trustee of British Columbia

700 - 808 West Hastings Street

Vancouver, B.C. V6C 3L3

E-mail: mail@trustee.bc.ca

Website: www.trustee.bc.ca

Telephone: (604) 660-4444

Fax: (604) 660-0374

- Provides assistance to adults who need support for financial and personal decision-making and administers estates of deceased persons if there is no one else to do it. They may also administer trust funds on behalf of minors. Service is available in 130 different languages.

II. REFERRALS AND FOLLOW-UP

If you refer the client to a lawyer, social service agency, or health professional, remember to follow up to ensure that the client is looked after. A simple phone call to the client should suffice. Should you need to consult with a professional (for instance, a psychiatrist) about a client's ongoing case, you need to have the client sign a written release form authorizing you to collect information about them, or on their behalf. The referrals below are for more specific types of victims than the referrals at the beginning of the chapter:

Ministry of Child and Family Development The Helpline for Children

Telephone: 310-1234 (no area code needed)

- To report suspected cases of child abuse or neglect

Ministry of Child and Family Development After Hours Services

Vancouver, North Shore, and Richmond: (604) 660-4927

Rest of the Lower Mainland, from Burnaby and Delta to Maple Ridge and Langley: (604) 660-8180

Elsewhere in B.C.: 1-800-663-9122

- Refers those in crisis situations to food and emergency housing resources (after office hours and weekends).

General Ministry Inquiries

Telephone: 1-877-387-7027

Email: MCF.CorrespondenceManagement@gov.bc.ca

Provincial Government Referral Service

Victoria: (250) 387-6121

Elsewhere in BC: 1 800 663-7867

Metro Vancouver: (604) 660-2421

British Columbia Centre for Elder Advocacy Support (BCCEAS)

E-mail: info@bcceas.ca

Website: www.bcceas.ca

Telephone: (604) 437-1940

Toll-Free: 1-866-437-1940

- Province-wide service with an advocacy help line, information and referrals.

VictimLink BC

Toll-Free: 1-800-563-0808

TTY: (604) 875-0885

- VictimLink BC is available 24 hours, seven days a week and has information about and referrals to a number of support systems that are available to victims of crime.

UBC Life & Career Centre (Formerly the UBC Women’s Resources Centre)

UBC Robson Square, 800 Robson Street, Plaza Level, Room 1.400

Vancouver, B.C. V6Z 3B7

Telephone: (604) 822-8585

- Information and referral, counselling support groups for women, stress management, depression. Abusers may also be referred here.

III. AVENUES TO ADDRESS CRIME

A. *Pursuing the Matter Through the Criminal System*

Apart from the initial report to police, the victim is not responsible for the prosecution of the offender. The burden to conduct the case is on the Crown. The crime is also against the community, and the victim is a witness to this crime. Whether the victim wants to proceed, drop charges, or testify has little bearing on the case.

Police can make an *arrest* if there are reasonable grounds for the police to believe that an offence has been committed, if there is a warrant, or if they find a person committing an offence. If the Crown believes that there is a reasonable likelihood of conviction and it is in the public interest to proceed, a *charge* must then be laid. However, if the police decide not to recommend charges and if the explanation is unsatisfactory, the client may want to discuss the situation with a superior officer. In B.C., the police are not responsible for laying charges; they are responsible for completing an incident report or a Report to Crown if they are recommending charges, but it is up to Crown to determine whether charges will be laid. If Crown has not approved charges and the explanation is not satisfactory, the client may wish to discuss the matter with a more senior Crown Counsel. If still not satisfied, the client may write to Regional Crown Counsel. Finally, it may be appropriate to write to the B.C. Attorney General in Victoria.

For a client in a situation they believe is dangerous, but which does not constitute assault, sexual assault or another of the more common violent offences, there are various sections of the *Criminal Code* that may be relevant. If a client is a victim of one of these offences, it is within their rights to contact the police and ask that charges be laid. The following is a list of some related offences:

- s 264.1: Uttering Threats; s 346: Extortion; s 372(1): False Messages; s 372(2): Indecent Phone Calls; s 372(3): Harassing Phone Calls; s 423: Intimidation; s 425: Offences by employers (threats and intimidation); s 430: Mischief (damage to property); and s 810: Breaching a Peace Bond.

If the accused is convicted of an offence, the victim may submit an application for an order that the accused pay an amount by way of satisfaction or compensation for loss or damage to property suffered by the applicant as a result of the commission of an offence. This is known as a restitution order and can be found under s 738 of the *Criminal Code*. The application must be made early enough for the judge to render a decision at the time of sentencing and the loss must be quantifiable. After sentencing, the judge has no jurisdiction to order restitution. If the accused does not pay, the applicant can, by filing the order, enter a judgment in Supreme Court. The judgment is rendered against the accused in civil proceedings. Often restitution is part of a probation order, which is a good way of securing compliance. Compensation may also be ordered to a *bona fide* purchaser of property that is restored to its rightful owner.

1. Court Orientation, Preparation and Accompaniment

If a charge is laid, the client may be asked to testify as a witness, or want to deliver a victim impact statement. They can receive help from Victim Service Workers, who can explain their rights, the type of support available, and their role in the criminal justice process. Victim Service Workers can also help with Crime Victim Assistance Program applications, and provide victims with information about subpoenas, pre-trial meetings with Crown, the court process, as well as court accompaniment for victims who attend court. For more information, including guides for both child and adult witnesses, and on victim impact statements, see:

<http://www.pssg.gov.bc.ca/victimservices/court/>

2. Victim Travel Fund

The Victim Travel Fund provides funding to a maximum of \$3 000 per family/victim to help attend and participate in justice-related proceedings. Funding is available to victims who have suffered significant physical or emotional trauma as a result of a serious criminal offence. Funding is also available to immediate family members of deceased victims (e.g., parents, spouse, children, and siblings). Eligible expenses may include meals, accommodation and the most economical form of travel. Applicants for the Victim Travel Fund must also meet the following criteria:

- Applications should be made prior to the justice proceeding.
- To be eligible, the applicant has to travel more than 100 km one way to attend the justice proceeding.
- The justice proceeding will take place in B.C. and the proceeding is expected to impact the outcome disposition or results of the proceeding or hearing. (This excludes provincial parole and federal hearings)
- Travel and related expenses are not being covered by Crown counsel, the Crime Victim Assistance Program or any other source.

For more information or to request a Victim Travel Fund application form, call the Victim Safety Unit at 604-660-0316 or toll free at 1-877-315-8822, or e-mail vsusg@gov.bc.ca.

3. Parole Board of Canada Hearings

If the criminal prosecution is successful, clients may still be affected later on by decisions to release the offender(s). Victims who wish to attend Parole Board of Canada hearings may apply for financial assistance, including for travel, hotel and meal expenses. In order to be eligible, victims must have registered with Correctional Service Canada (for information on registering, see <http://www.csc-scc.gc.ca/victims/003006-0001-eng.shtml>). Support persons may also be eligible for funding. Please note that this is only available for federally supervised offenders, and that **applications should be submitted at least 30 days before the hearing date.**

For more information, see the Department of Justice website at:

<http://canada.justice.gc.ca/eng/fund-fina/cj-jp/fund-fond/attend-audience.html>

B. Crime Victim Assistance Program

The *Crime Victim Assistance Act* [CVAA] is the primary piece of legislation that governs the Crime Victim Assistance Program (CVAP).

Although the CVAA and the *Criminal Injury Compensation Act* are both in force, it is expected that the *Criminal Injury Compensation Act* will ultimately be repealed. The transitional provisions of the CVAA allow previously adjudicated claims under the old Act to be transferred to the new Act for ongoing administration and for any further reviews. It is important to remember that, unlike under the old Act, a person cannot be awarded damages for pain, suffering, mental trauma, etc. under the CVAA – although a person can be awarded a variety of benefits, such as counselling, medical expenses, and other services or expenses. The CVAP replaces the Criminal Injury Compensation Program. The Victim Services and Crime Prevention Division of the Ministry of Justice administers this program.

The CVAP has been developed in response to the changing needs of victims and others impacted by violent crime. Benefits are available to victims of crime, and their immediate family members and those who meet the legislation's definition of witness. One should note that the Program is **not** based on a compensation model, but rather is based on a financial assistance model. This provides eligible claimants with financial support as well as additional services and assistance to aid in their recovery from the physical and psychological effects of their victimization and to offset the costs of the victimization.

Under the CVAA, a victim can still:

- initiate civil proceedings on his or her own; and/or
- make a claim under the Act.

If a client wishes to initiate civil proceedings after making an application under the CVAA, the CVAP Director must receive a copy of the notice of civil claim within 10 days of service on the defendant (CVAA, s 15(1)). Keep in mind that after paying fees and disbursements, any money awarded to the victim in the civil proceedings must go toward paying back the money they received under the CVAA.

The fact that an accused has not been criminally charged or has been acquitted of criminal charges is not a bar to commencing civil proceedings since the legal issues and the standard of proof are different. The difficulty with recovering anything directly from the accused is that there is seldom anything to be collected.

Moreover, the procedure for making an application for assistance under the CVAA is less complicated than initiating a civil action.

1. The CVAA Does Not Apply To All Offences

The CVAA applies to offences involving violence, as opposed to property related offences. The list of offences for which the CVAA applies is set out in the Schedule of Offences that can be found in Schedule 1 of the *Crime Victim Assistance (General) Regulations*. The CVAA does not apply where the injury or death of the victim occurred:

- in relation to an offence that occurred on or before July 1, 1972 (this is when the *Criminal Injury Compensation Act* came into effect);
- as the result of a motor vehicle offence, other than an assault using the motor vehicle;
- out of, and in the course of their employment; for which compensation is payable through workers' compensation; or
- outside of British Columbia.

The CVAA does not apply when the applicant is a party to the prescribed offence.

2. Who is Eligible and What They May Receive

a) *Victims*

“Victim” means a person who is injured or killed as a direct result of either a prescribed offence or when acting as a “good Samaritan” while:

- (i) lawfully arresting or attempting to arrest a person, or assisting or attempting to assist a peace officer to arrest a person, in respect of a criminal offence; or
- (ii) lawfully preventing or attempting to prevent an offence or a suspected offence under the *Criminal Code* or assisting or attempting to assist a peace officer to do so.

Victims may be eligible for the following benefits:

- medical or dental services or expenses;
- disability aids;
- vocational services or expenses;
- repair or replacement of damaged or destroyed personal property (glasses, disability aids or clothing only - not stolen property);
- vehicle modification or acquisition for disabled victims;
- maintenance for a child born as a result of the prescribed offence;
- lost earning capacity (in relation to long term injuries);
- prescription drug expenses;
- counselling services or expenses;
- protective measures, services or expenses for high risk victims;
- home modification, maintenance or moving expenses;
- income support;
- transportation and related expenses; and/or
- crime scene cleaning.

b) *Immediate Family Members*

“Immediate Family Members” include persons who at the time of the offence were:

1. a spouse, child, sibling, step sibling, half sibling or parent of the victim, and, for this purpose,
 - (i) “spouse” means a person who:
 - is married to the victim;
 - is living and cohabiting with the victim in a marriage-like relationship; or
 - was qualified as a spouse under law or was entitled to maintenance/alimony/support when the incident occurred
 - (ii) “child” includes:
 - a child to whom the victim stands in the place of a parent;
 - a child who is eligible for child support under another enactment;
 - a child of the victim born after the death of the victim; or
 - an adult to whom the victim stood in the place of a parent when the adult was a child, and
 - (iii) “parent” includes:
 - a person who stands in the place of a parent to the victim; or
 - a person who stood in the place of a parent to the victim when the victim was a child.
2. if dependent in whole or in part on the victim for financial support, a grandparent or grandchild of the victim.

Immediate family members may be eligible for the following benefits:

- counselling services or expenses;
- vocational services or expenses;
- income support for dependent family members of a deceased victim;
- prescription drug expenses (related to psychological trauma);
- funeral expenses;
- transportation and related expenses;
- earnings loss due to bereavement leave;
- homemaker and child care expenses; and/or
- crime scene cleaning.

c) Witnesses

“Witness” is a person who, although not necessarily related to a victim, has a strong emotional attachment to the victim and who:

- (i) witnesses in close proximity:
 - a prescribed offence that causes a life-threatening injury to, or the death of, the victim; or
 - the immediate aftermath of a prescribed offence that causes the death of the victim, in circumstances that are sufficient to alarm, shock, and frighten a reasonable person with that emotional attachment to the victim, and
- (ii) suffers psychological harm that:

- is diagnosed by a registered psychologist or a medical or nurse practitioner as a recognized psychological or psychiatric condition; and
- in the opinion of the person who makes the diagnosis, is the result of the circumstances in subparagraph (i).

Witnesses may be eligible for counselling, and related prescription drug expenses, transportation expenses to attend counselling and crime scene cleaning expenses.

3. Application for Benefits

The application forms are available from the Crime Victim Assistance Program (contact information is at the beginning of the chapter under **Resources**) or from any police department, victim service program, and many community agencies. They are also available on the Victim Services page of the Ministry of Justice website.

www.pssg.gov.bc.ca/victimservices/financial/index.htm

The Crime Victim Assistance Program staff will then obtain a police report of the incident (if the matter was reported to the police) and other supporting documents. When describing what happened on the application form, an applicant should give a general but clear statement of the event, and then make reference to the police report for additional details. She or he should include on the application:

- the date the report was made to the police as well as the police report number if a police report has been made (although a police report is highly advisable it is not mandatory);
- if a police report was not made, information should be provided as to why the incident was not reported and if possible, names of any witnesses, persons to whom a disclosure was made or to whom the incident was reported should be provided;
- information about what occurred;
- information about any physical or psychological injuries he or she may have received;
- names of any doctors, counsellors, or anyone else that has been seen as a result of the injuries, and
- original receipts for expenses incurred as a result of the injuries. If the applicant has access to funding from other sources in relation to these expenses (e.g. extended health coverage, personal disability insurance, etc.) the original receipts should be sent to this funding source first and then CVAP will consider paying any remaining outstanding balance.

Minors can submit an application on their own and do **not** require a parent or guardian to apply on their behalf, though applications for minors can also be submitted by their parent or guardian. A parent or guardian is not required because some parents or guardians may be supportive of the offender or feel that there is a stigma associated with the victimization. In addition, some children do not want to have their parents know of the offence. In cases where the offender is the client's parent, the Ministry of Children and Family Development may have apprehended the client. In this case, a representative of the Ministry can make an application on behalf of the child.

Depending on the case, the applicant may be interviewed by the adjudicator, and in rare circumstances may be examined by the Program's consulting medical practitioner if there are questions about the long term nature of the physical injuries sustained.

The Program will gather additional supporting information from a variety of sources such as medical, hospital, dental, employer reports and information from CPP, Ministry of Social Development or other sources relevant to the particular claim.

The decision regarding eligibility and entitlement to benefits involves a two step process in which the adjudicator first determines whether the person is an eligible applicant and then determines what benefits, if any, will be provided. The decision will be made in writing and will set out the factors considered in making the determination.

4. Limitation Period

Generally, an application must be made within one year of the date of the offence or event. There are exceptions to the one year time limit, as follows:

- If the offence involves a sexual offence, there is no time limit for making an application (other than that the offence must have occurred on or after July 1, 1972); or
- If the applicant is a minor, they have one year from the date they turn 19 to make an application. There is no time limit for the victim if the offence is a sexual offence. However, a minor does not have to wait until they are 19 to make a claim. Minors can submit an application on their own and do not need a parent or guardian to apply on their behalf. However, a parent or guardian may also submit an application for the minor.

The Director also has discretion to extend the one year time limit if satisfied that the application could not reasonably have been made within one year from the date of the offence or one year from the date the applicant turned 19.

5. Denials or Reductions in Benefits:

Benefits can be denied if:

- The victim does not meet the eligibility criteria;
- The victim was a party to the offence that caused their injury or death; and/or
- They fail to cooperate with law enforcement authorities.

Benefits can be denied or reduced if:

- The benefits are available from another source for a same or similar purpose; and/or
- The applicant contributed to the circumstances giving rise to the injury or death.

6. Payment of Benefits

Payments can be provided directly to the service provider, such as a counsellor, or as reimbursement to the applicant for expenses that were incurred prior to the decision being completed. Some applicants are eligible for income support or lost earning capacity benefits that are provided on a monthly basis.

7. Does the Alleged Offender Have to Be Charged or Convicted?

A police report is **not** required and it is not necessary for an offender to be identified, charged or convicted in order for an applicant to be eligible for benefits. Where the victim has not reported the offence to the police, information from a witness or someone the applicant disclosed the incident to, or a report from a health care professional, counsellor, social worker or other agency may be accepted as supporting evidence of the offence.

8. Co-operation with Law Enforcement

Since the Program is part of the criminal justice system, and is a publicly funded program, there is an expectation that the victim will cooperate with the police and crown counsel in order to hold offenders accountable. There are some exceptions in relation to issues of non-

cooperation, but in general, benefits may be denied or reduced if the applicant has no reasonable basis for failing to cooperate with law enforcement.

9. **Prior Claims With the Criminal Injury Compensation Program (CICP)**

Applications received prior to June 30, 2002 will have been adjudicated under the *Criminal Injury Compensation Act*, RSBC 1996, c 85 [CICA] by the CICP. Once a final determination was made under the CICA, ongoing administration of the claim transfers to the Crime Victim Assistance Program and any further reviews for reassessment or reconsideration will be conducted in accordance with the *Crime Victim Assistance Act* [CVAA].

If a person was receiving a pension from the CICP, they will remain eligible for an ongoing pension, subject to the same conditions and limitations, except where there is a change in circumstance such that their injury improves or worsens. In cases where there is a change in their condition, their claim will be reviewed under the provisions of the CVAA.

10. **Types of Reviews**

Once an original adjudication is completed, there are two types of reviews available. Under s 12 of the CVAA, if there is new information available or there has been a change of circumstance that could affect the applicant's eligibility for benefits, a **reassessment** decision can be completed.

Under s 13 of the CVAA an applicant or their legal representative may request the Director to reconsider a decision. This request must be made in writing, identifying the error made in the decision to be **reconsidered** and be delivered to the Director **within 60 days** from the date the decision was made.

The Director may extend the time limit for making the request for reconsideration if satisfied that a request for reconsideration could not reasonably have been **delivered** within the limitation period. Note that since the legislation restricts consideration to whether or not the request could have been "delivered" within the requisite time period, there are limited grounds for an extension (e.g. interruption of mail service, applicant moved and the decision was returned to the program for re-direction, etc.).

A reconsideration decision is considered final and conclusive and is not subject to further review except by way of a judicial review. The legislation provides that an application for **judicial review** on a question of law or excess of jurisdiction must be brought not later than **60 days** after the decision is made.

11. **Criminal Injuries Outside British Columbia**

National Office for Victims

Telephone: 1-866-525-0554

Website: www.publicsafety.gc.ca/prg/cor/nov/nov-bnv-eng.aspx

- Provides general information for victims and the public, referrals to the Correctional Service of Canada (CSC) and the Parole Board of Canada (PBC) for specific enquiries, and works to incorporate a victim's perspective in national policy development.

Federal Ombudsman for Victims of Crime

Website: www.victimfirst.gc.ca/index.html

Directory of International Crime Victim Compensation Programs

Website: www.ncjrs.gov/ovc_archives/reports/intdir2005/canada.html

The following is a list of criminal injury compensation legislation and program contact information for all Canadian provinces. A person who was the victim of a crime of violence that occurred in another province can contact the relevant program to determine whether he or she qualifies for any form of compensation.

a) Other Canadian Provinces and Territories

Alberta: *Victims of Crime Act*, RSA 2000, c V-3.

Website: www.canlii.org/en/ab/laws/stat/rsa-2000-c-v-3/latest/rsa-2000-c-v-3.html

Victims of Crime Financial Benefits Program

Alberta Solicitor General and Ministry of Public Security
9th Floor, John E. Brownlee Building

Telephone: (780) 427-3441
Toll-free in Alberta: 310-0000
Outside Alberta: (780) 427-2711

10365 – 97 Street

Edmonton, AB T5J 3W7

www.solgps.alberta.ca/programs_and_services/victim_services/help_for_victims/Pages/default.aspx#benefits

Manitoba: *Victims' Bill of Rights*, CCSM c V55.

Website: web2.gov.mb.ca/laws/statutes/ccsm/v055e.php

Compensation for Victims of Crime Program

1410-405 Broadway
Winnipeg, MB R3C 3L6

Telephone: (204) 945-0899
Toll-Free: 1-800-262-9344

Website: <http://www.gov.mb.ca/justice/victims/services/compensation.html>

New Brunswick: *Victims Services Act*, SNB 1987, c V-2.1.

Website: www.canlii.org/en/nb/laws/stat/snb-1987-c-v-2.1/latest/snb-1987-c-v-2.1.html

Victim Services Program

Argyle Place
P.O. Box 6000
Fredericton, NB E3B 5H1

Telephone: (506) 453-3992

Website:

http://www2.gnb.ca/content/gnb/en/departments/public_safety/safety_protection/content/victim_services.html

Email: DPS-MSP.Information@gnb.ca

Newfoundland: *Victims of Crime Services Act*, RSNL 1990, c V-5.

Website: www.assembly.nl.ca/Legislation/sr/statutes/v05.htm

Victim Services Program, Provincial Headquarters

Department of Justice
Victim Services Program
4th Floor, East Block
Confederation Building
P.O. Box 8700

Telephone: (709) 729-7970

St. John's, NL A1B 4J6

Website: www.justice.gov.nl.ca/just/victim_services/victim_services_program.html

Email: victimservices@gov.nl.ca

Northwest Territories: *Victims of Crime Act*, RSNWT 1988, c 9.

Website:
www.justice.gov.nt.ca/Legislation/..%5CPDF%5CACTS%5CVictims_of_Crime.pdf

Government of the Northwest Territories

Department of Justice
c/o Public Trustee Office
P.O. Box 1320
Yellowknife, NWT X1A 2L9
Website: www.gov.nt.ca

Telephone: (867) 873-7500

Nova Scotia: *Victims' Rights and Services Act*, SNS 1989, c 14.

Website: nslegislature.ca/legc/statutes/victims.htm

Criminal Injuries Compensation Board

Victim Services Division
5151 Terminal Road, 3rd Floor
P.O. Box 7
Halifax, NS B3J 2L6
Email: justweb@gov.ns.ca

Telephone: (902) 424-4030

Ontario: *Victims' Bill of Rights*, SO 1995, c 6.

Website: www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_95v06_e.htm

The Criminal Injuries Compensation Board

4th Floor, 439 University Avenue
Toronto, ON M5G 1Y8
Website: www.cicb.gov.on.ca/en/index.htm
Email: info.cicb@ontario.ca

Telephone: (416) 326-2900

Toll-Free: 1-800-372-7463

Fax: (416) 326-2883

Victim Notification System (VNS), Ontario Ministry of the Attorney General

Telephone: (416) 314-2447
Toll-Free: 1-888-579-2888

Prince Edward Island: *Victims of Crime Act*, RSPEI 1988, c V-3.1.

Website: www.gov.pe.ca/law/statutes/pdf/v-03_1.pdf

Victim Services

Website : <http://www.gov.pe.ca/jps/index.php3?number=1000822&lang=E>

Queens and Kings Counties:

Honourable C.R. McQuaid Family Law Centre
1 Harbourside Access Road
P. O. Box 2000
Charlottetown, PE C1A 7N8
Tel: (902) 368-4582
Fax:(902) 368-4514

Prince County:

263 Harbour Drive
Suite 19, 2nd Floor
Summerside, PE C1N 5P1
Tel: (902) 888-8217 or (902) 888-8218
Fax: 902) 888-8410

Quebec: *Crime Victims Compensation Act*, LRQ c. I-6.

Website: www.canlii.org/en/qc/laws/stat/rsq-c-i-6/latest/rsq-c-i-6.html

**Commission de la sante et de la sécurité du travail,
Dir. l'indemnisation des Victimes d'actes criminels**

1199, Rue Bleury
C.P. 6056, succursale Centre-ville
Montreal, QC H3C 4E1
Website: www.ivac.qc.ca
Email: renseignements_generaux_ivac@csst.qc.ca

Telephone: (514) 906-3019
Toll-Free: 1-800- 561-4822
Fax: (514) 906-3029

Saskatchewan: *Victims of Crime Act*, SS 1995, c V-6.011.

Website: www.qp.gov.sk.ca/documents/English/Statutes/Statutes/V6-011.pdf

Victim Services

610 - 1874 Scarth Street
Regina, SK, S4P 4B3
Website: www.justice.gov.sk.ca/victimservices
E-mail: victimsservices@gov.sk.ca

Telephone: (306) 787-3500
Toll-Free: 1-888-286-6664
Fax: (306) 787-0081

Yukon: *Crime Prevention and Victim Services Trust Act*, RSY 2002, c 49.

Website: www.gov.yk.ca/legislation/acts/cpvst.pdf

Victim Services

Website: www.justice.gov.yk.ca/prog/cor/vs/index.html
E-mail: victim.services@gov.yk.ca

Whitehorse

Phone: (867) 667-8500
Toll free (In Yukon): 1-800-661-0408, local 8500
Fax: (867) 393-6240
Street address: 301 Jarvis Street, 2nd floor, Whitehorse Yukon
Mailing address: Victim Services, Dept. of Justice, Government of Yukon, Box 2703,
Whitehorse, Yukon Y1A 2C6

Dawson City

Phone: (867) 993-5831
Fax: (867) 993-6380
Street address: 705B Church Street, Dawson City, Yukon
Mailing address: Box 1312, Dawson City, Yukon Y0B 1G0

Watson Lake

Phone: (867) 536-2541
Fax: (867) 536-2684
Street address: 820 Adela Trail, Watson Lake, Yukon
Mailing address: Box 622, Watson Lake, Yukon Y0A 1C0

C. Pursuing the Matter in a Civil (Tort) Action

Criminal court determines whether or not the accused is guilty, and if so, what would be appropriate punishment. However, the criminal court will do little in the way of providing compensation for the victim, other than possibly making a restitution order. Receiving financial compensation from the offender for the damages caused is one of the reasons why survivors of violence sue in civil court.

Examples of applicable torts: assault; battery; trespass to the person; breach of privacy; intentional or negligent infliction of nervous shock or emotional distress; false imprisonment; trespass to land; intimidation (usually a business tort, but applicable in some cases), and defamation.

MacKay v. Buelow (1995), 11 RFL (4th) 403 provides a helpful illustration of the applicability of tort law in this area. The defendant (the plaintiff's ex-husband) harassed and intimidated the plaintiff by continuously calling her, leaving notes at her home, threatening to kidnap their daughter, throwing things at the plaintiff, hanging a used condom in her home, stalking her, directly and indirectly threatening to kill her, videotaping her through her bathroom window, advising third parties about nude movies of the plaintiff, and continuously harassing her friends and colleagues. The court held that the conduct of the defendant was exceptionally outrageous and awarded the plaintiff damages based on the torts of trespass to the person, breach of privacy, and intentional infliction of emotional distress. Pursuing the matter through the criminal justice system is best done before any civil action is taken, given that:

- in a criminal case, the investigation is conducted by the police who are public servants, which saves the victim both time and expense in gathering witnesses and other evidence;
- a criminal conviction is convincing evidence in itself; and
- in a civil suit, the other side has more access to the victim's personal history. If the civil suit is pursued concurrently or before the criminal trial, the information brought up in the former may leak into the latter. Furthermore, the accused could try to argue that the victim is pursuing the criminal trial only because they want to gain as much as possible in the civil action.

The burden of proof in a civil trial is lower than in a criminal trial, but the evidence must still be clear and convincing. As a plaintiff in a civil action, a survivor of physical or sexual assault must prove on a **balance of probabilities** that the assault was perpetrated by the defendant named in the action, and that this assault resulted in damages. This is a less stringent test than that placed upon the Crown in criminal proceedings, where the case must be established beyond a reasonable doubt. Thus, it is possible for a victim to win a civil suit even in the event there has been a previous acquittal in criminal proceedings.

A civil suit may also give the victim access to compensation from third parties and institutional defendants (e.g. government institutions, foster homes, and residential schools) upon whom liability may be imposed. This is beneficial where the individual perpetrator has few assets or none at all.

Pursuant to the *Limitation Act*, RSBC, c 266, in most cases, there is a **two year limitation** on initiating a claim in tort (section 6). However, there are **exceptions** to this rule. In B.C., there is an exemption to the two year time limit for cases of sexual assault (section 3(1)(j)). The *Limitation Act* was also recently amended to also allow for an exemption for physical assault claims for minors and for adults who were living in a personal or dependent relationship with their abuser (section 3(1)(k)). The rationale for these exemptions are that those victims may not be expected to recognize the wrongness of what has happened to them and have the ability to bring a claim within a limitation period.

Bringing a civil action may be a long process and the plaintiff should consider the personal toll it may impose on them. Some victims who go through this process feel as though their life is on hold, and are unable to get on with other parts of their life. Remember, however, that in many cases the parties will settle, although the outcomes of negotiations are extremely difficult to predict. Some people may benefit from counselling while pursuing a civil action.

Students should refer the victim to a lawyer who is experienced with this area of law. There may be issues and circumstances in each particular case that make it difficult to assess the probability of success. It is very important that students not jump to conclusions as to whether or not it is "worth it" to take this route. Some lawyers may be willing to take on a case on a contingency fee basis, which means that they will get a certain percentage of any damages, if they are awarded.

NOTE: Students must not take control of the client's decisions. Clients, especially those who have been victimized, may want clinicians to direct their decision-making. A client should be informed of his or her options and the potential consequences of each course of action in order to allow him or her to give informed instructions to counsel.

IV. VICTIMS OF VIOLENCE IN RELATIONSHIPS

A. *BC Government Policy*

The BC Government has developed a policy for police, crown, corrections, child welfare workers and other service providers who deal with people experiencing violence in relationships. All LSLAP students should read and understand the *Violence Against Women in Relationships Policy* (**See section I.A.2**). Be aware that, although the Policy is in place, it is not followed uniformly in all communities or by all individuals. The Policy can be accessed online at:

<http://www.pssg.gov.bc.ca/victimservices/legislation/index.htm>

1. **Arrest and Charge**

All calls to the police relating to violence within a relationship/domestic violence are to be given priority for assessment and response. This includes all reported breaches of No Contact Orders, Peace Bonds, or civil protection orders. This is to ensure the safety of a victim who may be at risk.

If the officer has grounds to believe that an offence has occurred, especially if there is a possibility that the offence may reoccur, the officer is to arrest the alleged offender. If the alleged offender left the scene before the police arrived, they must find out if he or she is likely to return and take steps to ensure the victim's safety. Police will make immediate efforts to locate and arrest the suspect where grounds exist. They will also complete a Report to Crown Counsel with a request for an arrest warrant.

Police will assess the risk of violence the alleged offender presents and determine whether to release the alleged offender immediately, under conditions, or to hold the alleged offender in custody in order to have a bail hearing. At a minimum, some conditions are usually imposed on the alleged offender.

If the alleged offender is arrested and subsequently released from custody, the police should make every effort to notify the victim and explain any conditions prior to the accused's release.

Where there is evidence that an offence occurred, the police should submit a Report to Crown Counsel recommending a charge even if no injury has occurred and regardless of the victim's desire or unwillingness to testify. It is Crown Counsel's and the police's responsibility to pursue criminal charges, not the victim's. The victim need not provide a written statement immediately, though he or she should be encouraged to do so when the officer follows up.

If the officer exercises his or her discretion and does not recommend a charge, the decision should be documented on the case file and affirmed by the supervisor.

Police are also supposed to refer victims to victim services and arrange safe transportation to transition homes or safe shelters. In power-based crimes, such as sexual assault, police should refer to a community-based victim services worker or program, rather than a police-based victim services program, if the program exists in the community. Not all communities in British Columbia have a community-based victim service program. Please see the Victim Services Directory referred to in this chapter for a list of programs in British Columbia.

2. **Requirements of Offender Diversion**

The court is aware that the accused may exert influence upon the victim that affects the court process. For example, charges are not to be stayed before trial where there are threats

that may affect the victim's willingness to testify, there is a history of violence, or where the victim refused to meet with Crown Counsel, making it impossible to assess the situation. Similarly, diversion in cases of violence in relationships is generally considered inappropriate. In exceptional circumstances, diversion may be considered, but only if there is no significant physical injury, there is no history of spousal violence, and there is no reason to conclude that there is a significant risk of further offences. The use of alternative measures must not be inconsistent with the protection of society.

B. Court Orders

There are various orders available to protect a victim of violence in a relationship. Guides on both peace bonds and protection orders in English, French, Punjabi and Chinese can be found at:

<http://www.pssg.gov.bc.ca/protection-order-registry/#protectionorder>

1. Criminal Court Order

A peace bond, which is available under s 810 of the *Criminal Code*, is an order made by a judge that requires the defendant to keep the peace. This is a limited remedy that protects a victim for a period of up to 12 months. A client seeking a peace bond should go to the Justice of the Peace at the Provincial Court Office with the police report (or at least, the report number) and lay an Information. The client can go without a police report, but the Justice of the Peace will most likely ask for one. The client need not show that they have been injured, only that they have a reasonable fear of injury at the hands of the defendant. Previous threats or assaults should be brought up.

A client should be advised to ask for a no-contact order as a condition of the peace bond. The Justice of the Peace should also be informed if the defendant possesses or has access to firearms. Note that the police, and anyone else concerned, may also apply for a peace bond.

If the Information is accepted, a hearing date is set, usually about two weeks later. The client will probably be subpoenaed as a witness for the Crown. Failure to appear is an offence. If the client does not want to proceed with the peace bond but Crown Counsel does, they may have to show up to explain their decision to the judge.

A breach of the peace bond is a punishable crime, with a maximum penalty of \$5,000 and/or six months in jail on summary conviction, or incarceration for two years on indictment. The actual peace bond, however, is not considered a criminal charge.

2. Civil or Family Court Orders

A number of orders are available pursuant to the *Family Law Act*, SBC 2011, c 25 [FLA]. A client or his or her representative can bring an application in Provincial (Family) Court or in the British Columbia Supreme Court. Orders involving property such as exclusive use of family home can only be obtained in Supreme Court.

a) Protection Orders (FLA Part 9):

A protection order limits contact and communication between family members where there is a safety risk. It is designed to protect "at-risk family members," defined as people whose safety and security is or is likely at risk from family violence carried out by a family member. An application for a protection order may be made by a person claiming to be an at-risk family member, by a person on

behalf of an at-risk family member, or on the court's own initiative. A protection order may restrain a family member from contacting or communicating with an at-risk family member and from attending at or entering a place regularly attended by the at-risk family member (FLA, s 183). An application for a protection order may be made without notice, but in this case the court may set aside the order or change it in some respect on application by the party against whom the order is made (FLA, s 186). Unless otherwise stated, a protection order expires one year after the date it is made. Breach of a protection order under the FLA is a criminal offence.

b) Temporary Orders Respecting Family Residence (FLA s 90):

This order is only available from the B.C. Supreme Court. It gives the client the legal right to occupy the home exclusive of the other party, or to possess and use specified personal property stored at the family residence, including to the exclusion of the other party. The client and the other party must be spouses, meaning they must be married or have been living in a marriage-like relationship and have done so for a continuous period of at least two years, or have a child together. This order lasts as long as they **both** have a legal right to be on the property. A court does not have jurisdiction to grant this order where the family home is situated on an Indian reserve.

C. Victim Notification and Safety Planning

1. Victim Link BC

Victim Link BC provides assistance in connecting to a victim service worker in any area of BC. The service is toll free, confidential and anonymous.

Victim Link BC

Toll Free: 1-800-563-0808

2. Victim Safety Unit (VSU)

Victims, civil protected parties, and victim service workers (on behalf of their clients) may call the Victim Safety Unit to request specific information including B.C. Corrections custody status, court updates, and copies of protection orders. These parties may also register with VSU to receive updates automatically. If the offender is under federal jurisdiction (under the supervision of the Correctional Service of Canada or the Parole Board of Canada), the VSU will, upon request, forward the registration form to CSC/PBC. The CSC/PBC will provide victim notification to registered victims directly.

Victim Safety Unit

Telephone: (604) 660-0316

Toll-Free: 1-877-315-8822

Website: www.victiminfo.ca/en/services/victim-safety-unit

3. Crime Victim Assistance Program (CVAP)

The Crime Victim Assistance Program offers a variety of benefits to assist victims in dealing with the aftermath of violence in relationships. In situations where the offender represents an ongoing significant risk to the victim's safety, protective measures such as home alarm systems, security devices and equipment and other safety measures may be available. In cases involving high risk victims, the victim and his or her family may be eligible for relocation expenses where all other safety measures are considered insufficient to address the victim's safety needs. For a complete list of benefits available, see the CVAP website, below.

Crime Victim Assistance Program

Telephone: (604) 660-3888

Toll-Free: 1-866-660-3888

Website: www.pssg.gov.bc.ca/victimservices/financial/index.htm

D. Finding Funding for Counselling

1. Crime Victim Assistance Program funding for counselling

The *Crime Victim Assistance Act* establishes counselling services or expenses as a benefit that may be available to victims, immediate family members of injured or deceased victims and some witnesses. The Crime Victim Assistance (General) Regulation sets out the conditions or limitations for providing counselling benefits and also establishes the approved fee rate for reimbursement of counselling services. The Counselling Guidelines provide further information and clarification regarding expectations for the provision of counselling services, reporting requirements and limitations applicable to service providers requesting reimbursement for counselling services on accepted claims with the Crime Victim Assistance Program. For detailed information see 'Counselling Guidelines' on the CVAP website at www.pssg.gov.bc.ca/victimservices/financial/index.htm.

2. Children's Counselling Services (formerly Children's Sexual Abuse Intervention Program)

This service helps children deal with the effects of trauma at each developmental level. Parents and professionals can call the Ministry of Child and Family Development at 1-877-387-7027 to request referrals to the program, which is free and confidential

Children's Counselling Service

Sunshine Coast Community Services Society

Telephone: (604) 885-5881 ext. 228

3. Stopping the Violence Counselling (Ministry of Justice)

There are a number of community-based counselling programs that provide counselling services to women who have experienced sexual assault, relationship violence or childhood abuse. The range of individual and group counselling services are based on the needs of the individual women and delivered in an accessible, safe and supportive environment.

A list outlining the available programs is available at the following website:

www.pssg.gov.bc.ca/victimservices/directory/index.htm

4. Children Who Witness Abuse Programs (Ministry of Justice)

This community based program provides individual and group counselling services for children who witness abuse of a parent, most often a mother. Designed to help break the intergenerational cycle of violence against women, this program helps children cope with, and heal from, the trauma of living in an abusive situation. Support is also provided to the non-offending caregiver who has been abused by their partner. For a detailed, area specific contact list, see: www.pssg.gov.bc.ca/victimservices/directory/index.htm

5. Residential Historical Abuse Program

This option is available to the client if he or she was abused or assaulted while in foster care or in a provincially funded institution. The client can acquire the forms from the Ministry of Health, Victim Assistance, Mental Health Centres, or by calling the toll-free VictimLINK information line at 1-800-563-0808.

The Residential Historical Abuse Program provides professional counselling services (a counsellor who meets provincial standards, with whom the client will develop a personal treatment plan that may include individual, group, or family counselling) for B.C. residents who were abused while under the age of 19 and while living in a home or residential program operated or funded by the province.

The client does not have to prove that she or he was sexually, physically, or mentally abused to receive counselling services, nor does she or he have to name the person(s) who abused her or him. The Ministry will simply verify that he or she was in that particular residential program at the time of the offence(s). No police complaint is necessary, but there is a legal obligation to report abuses to appropriate authorities if children are still at risk of being sexually abused. The government or the police may contact the client for information. The contents of the application are otherwise confidential.

The application process is simple and generally does not impede any legal action or application to the CVAP – although if the applicant is eligible for funding from another source for a same or similar purpose, the CVAP must deduct that funding (or those counselling sessions) when considering the application.

6. A Note on Services That May Be Harmful to Victims' Interests

Not all services that claim to be helpful or protective of victims' interests really are. For example, some advocacy organizations have noted that some services are not healthy for women experiencing violence. For example, marriage counselling, couples therapy, and mediation promote reconciliation, but may not address underlying issues such as power imbalance and disrespect towards women. Some programs for offenders may not challenge the man's beliefs and attitudes towards women.

The client who is a victim of violence should also be advised that with regard to Compulsory Family Mediation, they can apply to not participate. The client should be advised to consult a lawyer.

V. SEXUAL HARASSMENT IN THE WORKPLACE

Sexual harassment is considered a form of sex discrimination under human rights legislation. Canadian human rights law imposes a statutory duty on employers to provide a safe and healthy work environment. Corporate employers are also liable for sexual harassment.

For more information, consult **Chapter 6: Human Rights**; and **Chapter 9: Employment Law**.

VI. ABUSE AND NEGLECT OF SENIORS AND OTHERS WITH DISABILITIES

Abuse and neglect of seniors and adults with disabilities occurs when a caregiver or other person financially, physically, or emotionally abuses or neglects such an individual. Elder Abuse and abuse of adults with disabilities includes physical, mental or emotional harm, or damage or loss in respect of financial affairs (i.e., financial abuse). Examples include intimidation, humiliation, physical assault, sexual assault, over medication, withholding needed medication, censoring mail, invasion or denial of privacy or denial of access to visitors, neglect and self-neglect. Many types of abuse, and some types of neglect, are criminal offences. All types of abuse and neglect are harmful. Such abuse can occur because a caregiver cannot deal with the stress of caring for the disabled or older person,

because of alcohol or substance abuse or for more complex psychosocial reasons. Further, individuals who have suffered years of spousal abuse may also be susceptible to further neglect and abuse, such as financial abuse, by others.

Abuse or neglect of seniors and adults with disabilities is often hidden behind inquiries about benefits, services, and wills and estates. For instance, such an individual may inquire about housing benefits available to them. A little probing may uncover that the reason for wanting housing benefits is to escape an abusive relative who has taken control of their house. LSLAP clinicians should watch for subtle indications of abuse and neglect.

Some older adults may be embarrassed to reveal abuse or neglect, particularly if a family member is involved. Some may not know how to get help, or be unsure if what they are experiencing is considered abuse or neglect. Some may worry about repercussions on their family member or caregiver. They may also fear retaliation from the person who harmed them. Or they may fear losing services they need, losing their money, having to move, or breaking up the family. They may worry about not being believed.

A. Ending the Abuse or Neglect

Upon discovering a case of abuse or neglect of a senior or individual with disabilities, clinicians should provide information about what kind of help is available. Police respond to reports of persons in immediate danger or possible criminal offences. They investigate offences and provide information about other agencies that may be able to help. Victim Service programs are located in community agencies or police stations. They provide emotional support, justice system information, safety planning, referrals to counselling and other services, help in accessing crime victim assistance benefits, and support to victims going to court.

VictimLink BC provides information and referrals to all victims of crime, and immediate crisis support to victims of family and sexual violence. Call 1-800-563-0808 or go to www.victimlinkbc.ca. The Seniors Abuse and Information Line (SAIL) is a toll free telephone line which is staffed 7 days a week (excluding holidays), 8 a.m. – 8 p.m. SAIL is a safe place for older adults, and those who care about them, to talk to someone about situations where they feel they are being abused or mistreated, or to receive information about elder abuse prevention. Call 604-437-1940 or toll free 1-866-437-1940.

The *Adult Guardianship Act*, RSBC 1996, c 6, has special provisions on abuse and neglect (including physical, sexual, emotional and financial forms of abuse/neglect). These provisions are aimed at adults unable to get help because of a physical restraint, a physical disability, or a condition that affects their ability to make decisions about the abuse or neglect. The Public Guardian and Trustee investigates reports of financial abuse and may provide financial management services for adults incapable of managing their own affairs. It makes referrals to designated agencies if there are concerns about physical risk or harm to the vulnerable adult.

Designated agencies respond to reports of abuse or neglect involving adults in these circumstances and notify police if it appears a criminal offence was committed. Designated Agencies under the *Adult Guardianship Act* include Regional Health Authorities, Providence Health Care Society, and Community Living BC. The agencies respond to reports of abuse or neglect of adults who cannot obtain help on their own because of certain physical or mental conditions. They can address a range of health and safety issues and help in informal or formal ways.

Other B.C. laws aiming to protect adults in financial and health-care matters include: the *Public Guardian and Trustee Act*, the *Representation Agreement Act*, and the *Health Care (Consent) and Care Facility (Admission) Act*.

Remember that the client may depend on his or her abuser for financial or physical assistance. If the client wants to make a report that may lead to the laying of information, move to a transition house, or getting a protection order (see **Section VI.B.3: Protection Order**, below), he or she may need to find alternate arrangements for financial or physical support that the abuser may have been providing. Some of the financial and social services available to the client are listed below.

B. Legal Remedies

1. Criminal Charges

No B.C. legislation specifically addresses abuse of elders and adults with disabilities but the following *Criminal Code* sections may apply:

- s 265: assault;
- s 215(1)(c): duty of persons to provide necessities to a person under his or her charge;

Financial abuse offences:

- s 322: theft;
- s 331: theft by person holding power of attorney; and
- s 332: misappropriation of money held under direction.

Remember that a client may be reluctant to make a report that may lead to the laying of an Information against a family member.

2. Peace Bond

Pursuant to s 810 – 811 of the *Criminal Code*, a peace bond requires that the abusive person “keep the peace” for up to 12 months or face a possible prison sentence.

3. Protection Order

A protection order (formerly referred to as a restraining order) restricts contact between the abused and abuser and is available pursuant to s 183 of the *Family Law Act*, but only if the abused is a spouse or family member that lives with the abuser. The *Family Law Act* defines “spouse” as someone who is married to another person or has lived with another person in a marriage-like relationship and has done so for a continuous period of two years or has children with another person. The Act defines a “family member,” with respect to a person, as that person’s spouse or former spouse; a person with whom the person is living, or has lived, in a marriage-like relationship; a parent or guardian of the person’s child; a person who lives with and is related to the person; or the person’s child.

A restraining order can also be obtained under s 56(3)(c) of the *Adult Guardianship Act*. It is necessary to note the defendant’s date of birth when applying for the restraining order so that it is not placed against the wrong individual. Applicants should remember to include a Police Enforcement Clause so that the police are required to act on breaches. Once the order is in place, it is registered with Protection Order Registry, which is accessible by police.

4. Conditional Release or Probation

Another way to protect the client is to contact the Crown if the abuser has been charged and, on a finding of guilt, to get conditions placed on the abuser’s release or probation order restricting contact between the abuser and the client. Keep in mind that the burden of proof is higher in criminal matters than civil matters, including when proving a breach of conditions.

C. Other Remedies

B.C. has a Minister of State for Seniors, a Seniors’ Health Promotion Directorate and the Office of Seniors Advocate.

The following list represents some non-legal solutions that may assist the abused person.

1. General Support and Intervention Strategies

The client's nearest health unit (see the telephone book's blue pages for contact information) is probably the best place to start. A trained nurse or social worker will investigate the situation, present options to the client, and place them in contact with necessary assistance.

Other resources could include:

BC Association of Community Response Networks

Sherry Baker, Executive Director

Telephone: (604) 513-9758

B.C. Centre for Elder Advocacy and Support (BCCEAS)

Martha Jane Lewis, Executive Director

Telephone: (604) 688-1927

Website: www.bcceas.ca

B.C. Coalition of People with Disabilities

Mailing Address:

#204-456 West Broadway

Vancouver, BC V5Y1R3

Website: www.bccpd.bc.ca/contacts.htm (for more contact information)

Email: feedback@bccpd.bc.ca

Telephone: (604) 872-1278

Toll-Free: 1-800-663-1278

TTY Line (hearing impaired only): (604) 875-8835

2. Shelter

If the abuser cannot be removed from the home, the client may need temporary shelter. Older and senior women at risk of violence may be admitted to women's transition houses if space is available. Ama House in South Surrey/White Rock is a specialized transition house for older and senior women at risk of violence. See **Chapter 22: Referrals** for transition house phone numbers. Try to refer to those houses that do not have a one-week maximum stay, although be aware that all stays at transition houses are typically no longer than 30 days. If all of the local transition houses are full, Battered Women's Support Services (telephone: (604) 687-1867) can sometimes locate alternative shelter. After Hours Services (see **Chapter 22: Referrals**) can also provide assistance and can refer elderly men to temporary shelter or housing.

3. Home Support

The client may depend on the abuser for help in the home and may be reluctant to act because he or she fears being placed in a nursing home. In fact, the client may only need a little extra help to live alone. Phone the B.C. Ministry of Health Services Long-Term Care Program to determine whether the client is eligible to receive home support services (cleaning, handyman services, etc.). Moreover, home support services may also have the benefit of relieving the stress a caregiver/abuser may experience, stress that sometimes causes the abuse.

Also phone Meals-On-Wheels, if necessary:

Vancouver, Richmond

Burnaby

Chilliwack

Langley

New Westminster

North Shore, West Vancouver

Surrey

White Rock / South Surrey

Port Coquitlam

(604) 732-7638 or (604) 733-6615 (Cantonese)

(604) 299-5754 ext. 23

(604) 793-7242

(604) 533-1679

(604) 520-6621

(604) 922-3414

(604) 588-6325

(604) 541-6325

(604) 942-7506

4. Seniors' Benefits

The client may not be receiving all of the financial benefits he or she is entitled to. These benefits (Old Age Security Pension, Guaranteed Income Supplement, CPP, Shelter Aid for Elderly Renters, and others) may give the client more freedom to change his or her situation. Phone a local seniors' centre for more information.

5. Emotional Support, Counselling

Vancouver Health Department, Local Health Units (see telephone book for the nearest one) will investigate situations, present options to the abused person and place him or her in contact with local agencies and assistance. Health Department nurses will not forcibly intervene to remove a disabled or senior individual from an abusive situation. They will act only as instructed by the older person.

Under the *Public Guardian and Trustee Act*, RSBC 1996, c 383, the Public Guardian and Trustee of B.C. has the ability to access information and investigate suspected abuse and neglect (see contact information at **Section I.A.3: Resources**).

6. Links to the Community

The client may feel isolated and lonely. Ask the client if they would like a referral to a community organization. Community organisations such as a social or volunteer organisation can give them a sense of belonging and self-esteem.

VII. VICTIMS OF HUMAN TRAFFICKING

Human trafficking is a complex and multifaceted crime that can occur both domestically and internationally. The victims of human trafficking are deprived of their basic rights to freedom and movement. As such, human trafficking is often described as modern day slavery.

Although each human trafficking case is different, a person may be trafficked if they:

- Cannot leave their job to find another one;
- Do not have control over their wages or money;
- Work but do not get paid normal wages;
- Have no choice about hours worked or other working conditions;
- Work long hours, live at a work site, or is picked up and driven to and from work;
- Shows signs of physical abuse or injury;
- Are accompanied everywhere by someone who speaks for him or her;
- Appear to be fearful or and or under the control of another person;
- Owe money to their employer or another person who they feel honour bound to pay;
- Are unfamiliar with the neighbourhood where they live or work;
- Are not working in the job originally promised to them;
- Are travelling with minimal or inappropriate luggage/belongings;
- Lack Identification, passport or other travel documents;
- Are forced to provide sexual services in a strip club, massage parlour, brothel or other location.¹

The following publication from the United Nations Office on Drugs and Crime provides a comprehensive list of indicators that a person may be trafficked:

http://www.unodc.org/documents/human-trafficking/HT_indicators_E_LOWRES.pdf

Despite the severity of the offence, human trafficking convictions are rare. This may be in part due to the complexity and subtleties of trafficking operations as well as reluctance on the part of victims to come forward. Victims may not come forward because they may:

- Fear for their own lives;
- Not understand that they are victims of human trafficking;
- Be taught to distrust outsiders, especially law enforcement and other government authorities; Foreign victims may be afraid they will be detained and deported, or they may have limited language skills;
- Be completely unaware of their rights or may have been intentionally misinformed about their rights in Canada;
- Fear for their families and/or loved ones;
- Feel threatened that traffickers will harm their families if they report their situation to, or cooperate with, law enforcement.²

In 2007, B.C. established the Office to Combat Trafficking in Persons (“OCTIP”). Since 2011, OCTIP has been part of the Community Safety and Crime Prevention Branch, Ministry of Justice. OCTIP is part of the Victim Services and Crime Prevention Division of the Ministry of Justice located in Vancouver, BC. The OCTIP develops and coordinates strategies to address human trafficking within the province. The OCTIP takes a human rights approach that focuses on the rights and needs of trafficked persons. This approach gives back control to the trafficked person by offering information, referrals, support and assistance but allows the trafficked person to make decisions and choices for themselves. OCTIP also works with and provides support to law enforcement and Crown Counsel with the prosecution of human trafficking cases. See the **Resources** section below for more information on the OCTIP and their contact information.

A. Governing Legislation and Resources

1. Legislation

Human trafficking is defined in the UN Trafficking in Persons Protocol as “the act of recruitment, transportation, transfer, harbouring or receipt of persons ... by means of threat or use of force or other forms of coercion, of abduction, fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person ... for the purpose of exploitation. Exploitation shall include, at a minimum:

- the exploitation of the prostitution of others or other forms of sexual exploitation,
- forced labour or services,
- slavery or practices similar to slavery,
- servitude,
- or the removal of organs.”

Human trafficking is an offence under both the *Criminal Code* (ss 279.01-279.04), and the *Immigration and Refugee Protection Act [IRPA]* (Part 3).

Sections 279.01-279.04 of the *Criminal Code* make it an offence to:

1. Recruit, transport, transfer, receive, hold or hide a person, or exercise control, direction or influence over an adult or a minor’s movement for the purpose of exploiting or facilitating the exploitation of that person.

² *National Action Plan to Combat Human Trafficking*, Government of Canada, 2012.

2. Benefit materially from human trafficking.
3. Withhold or destroy a person's travel or identification documents, such as a passport or visa, for the purpose of trafficking, or helping to traffic, that person.

Exploitation is defined in s 279.04(1) of the *CC* in the following terms:

“a person exploits another person if they cause them to provide, or offer to provide labour or a service by engaging in conduct that, in all the circumstances, could reasonably be expected to cause the other person to believe that their safety or the safety of a person known to them would be threatened if they failed to provide, or offer to provide, the labour or service”.

In order to determine whether an accused exploits another person, the court may consider whether the accused (a) used or threatened to use force or coercion; (b) used deception; or (c) abused a position of trust, power or authority (s 279.04(2)).

Because of the high stigma and severe penalties that result from a human trafficking conviction, the *Mens Rea* for the human trafficking offences is subjective fault. Crown Counsel must prove that the accused acted “for the purpose” of exploiting the victim. In *R. v. Beckford*, 2013 ONSC 653, Justice Miller confirms at paras. 38-40 that “for the purpose” of exploitation requires both intent and knowledge. It is also important to note that consent is not a defence to human trafficking (s 279.01(2)).

Part 3 of *IRPA* applies to smuggling and trafficking of persons from another country into Canada. Sections 117 and 118 make it an offence to:

1. Organize, induce, aid or abet the coming into Canada of one or more persons knowing that, or being reckless as to whether, their coming into Canada is or would be in contravention of *IRPA* (s 117(1)).
2. Knowingly organize the coming into Canada of one or more persons by means of abduction, fraud, deception or use of threat of force or coercion (s 118(1)).

The penalties for the offences in Part 3 of *IRPA* include fines of up to \$1,000,000 and imprisonment of up to 14 years (where fewer than 10 persons are being smuggled or trafficked) or up to life. Mandatory minimum sentences apply where the person, in committing the offence, endangered the life or safety, or caused bodily harm or death to the persons with respect to whom the offence was committed, and/or if the commission of the offence was for profit or in association with a criminal organization or terrorist group (See *IRPA* sections 117(2)-(3)).

R. v. Franco Orr, 2013 BCSC 1883, was the first conviction for human trafficking under *IRPA* in BC. In that case, a jury found Mr. Orr guilty of the following:

1. Knowingly organizing the coming into Canada of the complainant, by means of abduction, fraud, deception or use of the threat of force or coercion, contrary to s. 118(1) of *IRPA*;
2. Employing a foreign national, in the capacity to which she was not authorized to be employed, contrary to s. 124(1)(c) of *IRPA*; and

3. Misrepresenting or withholding material facts relating to a relevant matter that induced or could induce an error in the administration of the Act by providing false information to the Consulate General of Canada in support of the application for temporary resident visa for entry to Canada for the complainant, contrary for s. 127(a) of *IRPA*.

The complainant in the case was originally from the Philippines but worked for the Orr family as a domestic helper in Hong Kong. The complainant agreed to move to Canada under false pretences and was employed by Mr. Orr despite his knowledge that she did not have the required visa. While Mr. Orr was convicted, his wife, Ms. Huen, was acquitted of all the charges she faced.

At trial, Mr. Orr received a global sentence of 18 months jail. In 2015, however, the case was successfully appealed. In *R. v. Orr*, 2015 BCCA 88, the Court of Appeal for British Columbia set the convictions aside and sent the matter back for trial. The court found certain expert evidence should not have been admitted, as the expert's qualifications were not properly tested.

In 2014, several changes were made to increase the penalties for the human trafficking in the *CC*. The changes were made as part of Bill C-36: *Protection of Communities and Exploited Persons Act* [PCEPA] which was enacted in response to the 2014 Supreme Court ruling *Canada (Attorney General) v Bedford* [*Bedford*], 2013 SCC 72. In *Bedford*, the Supreme Court of Canada found certain prostitution related offences to be unconstitutional. The PCEPA posits sex workers as a vulnerable group and prostitution as a form of sexual exploitation. It also attempts to address the constitutional concerns highlighted in *Bedford* by including exceptions to criminal liability in order to protect prostitutes and ensure they are able to report abusive or dangerous behaviour without fear of being prosecuted. The constitutionality of the PCEPA has yet to be challenged in front of the Supreme Court of Canada, although various groups including the Canadian Bar Association have expressed concerns that certain aspects of the new law remain unconstitutional.³

Bill C-36 made three significant sentencing changes to the human trafficking provisions in sections 279.01 to 279.03 of the *CC*. First, the new provisions include a mandatory minimum sentence of 5 years where a trafficker is convicted of human trafficking and also kidnaps, commits aggravated assault or aggravated sexual assault against or causes the death of the victim and a mandatory minimum sentence of 4 years in other cases (s. 279.01). Second, s 279.02(2), receiving a material benefit from trafficking of minors, now carries a mandatory minimum sentence of 2 years, and the maximum sentence available for the offence has been extended from 10 to 14 years. Third, the maximum sentence for withholding or destroying documents to facilitate trafficking of minors has been extended from a maximum of 5 years to a maximum of 10 years, with a mandatory minimum sentence of 1 year.

In 2014, B.C. saw its first human trafficking conviction under the *CC* provisions. In *R. v. Moazami*, 2014, BCSC 1727, Reza Moazami was charged with 36 counts including human trafficking, living on the avails of a juvenile and sexual assault. Two of the 36 charges were for trafficking in persons, and Moazami was convicted on one of the counts. Justice Bruce found beyond a reasonable doubt that Moazami transported and controlled the victim's movements for the purpose of exploitation. The evidence showed Moazami intimidated the victim, J.C., with actual violence and threats of violence towards J.C.'s dog. Moazami also provided the victim with free illicit drugs to keep her addicted and dependant on him, and

³ "Bill C-36, *Protection of Communities and Exploited Persons Act*", National Criminal Justice Section and Municipal Law Section of the Canadian Bar Association, October 2014, <http://www.cba.org/CBA/submissions/pdf/14-57-eng.pdf>.

counseled her to distrust the police. Moazami was acquitted on the second human trafficking charge. Although it was clear Moazami abused the victim H.W., the court was in reasonable doubt as to whether Moazami's behaviour caused H.W. to fear that her safety or the safety of another person was threatened. Moazami is due to be sentenced in September 2015.

2. Temporary Resident Permit for Victims of Human Trafficking

Many victims of human trafficking find themselves in Canada without proper documentation and at risk of deportation. To address this issue, Citizenship and Immigration Canada ("CIC") can issue a special temporary resident permit to victims of human trafficking (This is referred to as the VTIP TRP – Victims of Trafficking in Persons, Temporary Resident Permit). The VTIP TRP gives presumed trafficked persons legal status in Canada and is valid for up to 180 days. Depending on the circumstances of the individual, CIC can even reissue the TRP at the end of the 180-day period. The benefits of the VTIP TRP include access to health care benefits and trauma counseling through the Interim Federal Health Program. A work permit is also issued and in BC, social assistance benefits may be available. A presumed trafficked person with a VTIP-TRP is eligible to apply for social assistance benefits. Victims of human trafficking need not testify against their trafficker in order to be eligible for an initial TRP. However, immigration officers will interview an individual in order to decide whether they are eligible for the TRP.

For more information about obtaining a VTIP TRP, call CIC at 1(888) 242 2100.

3. Resources

For information on the signs that a person may have been trafficked, services available to victims of human trafficking, including legal services, health care, shelter, interpretation and counseling, and links to resources, see BC's Office to Combat Trafficking in Persons, Ministry of Justice website at:

<http://www.pssg.gov.bc.ca/octip/>

BC's Office to Combat Trafficking in Persons, Ministry of Justice

Victim Services and Crime Prevention Division
#302 – 815 Hornby Street
Vancouver, BC V6Z 2E6
Main Office Phone: 604 660-5199
E-mail: octip@gov.bc.ca
Toll Free 24 Hour Line: 1 888 712-7974

The Office to Combat Trafficking in Persons offers a free online training course on human trafficking aimed at service providers in both English and French. The online training is called "*Human Trafficking: Canada is Not Immune*".

"*Communities Taking Action: A Toolkit to Address Human Trafficking*" supports communities to take action at the local level to raise awareness and prevent human trafficking. It provides practical information and specific examples of how B.C. communities are addressing this issue.

The online training course and toolkit are available through the following website:
<http://www.pssg.gov.bc.ca/octiptraining/index.html>