

CHAPTER FOUR: VICTIMS

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CHAPTER FOUR: VICTIMS

This Manual is intended for informational purposes only and does not constitute legal advice or an opinion on any issue. Nothing herein creates a solicitor-client relationship. All information in this Manual is of a general and summary nature that is subject to exceptions, different interpretations of the law by courts, and changes to the law from time to time. LSLAP and all persons involved in writing and editing this Manual provide no representations or warranties whatsoever as to the accuracy of, and disclaim all liability and responsibility for, the contents of this Manual. **Persons reading this Manual should always seek independent legal advice particular to their circumstances.**

I. INTRODUCTION

Victims of crime require a wide variety of assistance depending on their needs. This chapter will outline the avenues an individual can take to address being a victim of crime.¹

In 2015, Parliament enacted the *Canadian Victims Bill of Rights*, SC 2015, c 13, s 2 [CVBR], which came into force on July 23, 2015. The CVBR recognizes that 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 that 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 is found to be 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
- 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 believe 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.

II. GOVERNING LEGISLATION

A. *Legislation and Regulations*

¹ Sexual harassment is considered a form of gender 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 information concerning sexual harassment, consult **Chapter 6: Human Rights**; and **Chapter 9: Employment Law**.

[Canadian Victims Bill of Rights, SC 2015, c 13, s 2](#)

[Victims of Crime Act, RSBC 1996, c 478](#)

[Crime Victim Assistance Act, SBC 2001, c 38](#)

[Crime Victim Assistance \(General\) Regulation, BC Reg 161/2002](#)

[Crime Victim Assistance \(Income Support and Vocational Services and Expenses\) Regulation, BC Reg 162/2002](#)

Criminal Code, RSC 1985, c C-46

Adult Guardianship Act, RSBC 1996, c 6

Immigration and Refugee Protection Act, SC 2001, c 27

Family Law Act, SBC 2011, c 25

Missing Persons Act, SBC 2014, c 2

B. 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 March 1, 2018](#)

[Criminal Justice Branch, Ministry of Justice Crown Counsel Policy Manual, Victims of Crime – Providing Assistance and Information to \(1\), Effective March 1, 2018](#)

[Criminal Justice Branch, Ministry of Justice Crown Counsel Policy Manual, Victim Services Programs – Providing Information to \(2\), Effective March 1, 2018](#)

[Criminal Justice Branch, Ministry of Justice Crown Counsel Policy Manual, Sexual Services: Purchase of and Related Offences, Effective March 1, 2018](#)

III. 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*, RSBC 1996, c 85 [CICA] are both in force, it is expected that the CICA 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 Public Safety and Solicitor General 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, 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 their own
- make a claim under the Act

If a victim 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)). 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 as 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.

A. *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 *CICA* 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. For resources for those outside of British Columbia, please refer to the resources listed on page 4-12.

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

B. *Who is Eligible and What They May Receive*

1. *Victims*

Under this Act, "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
- crime scene cleaning

2. *Immediate Family Members*

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
- crime scene cleaning

Under this Act, “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
- 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.

3. *Witnesses*

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

- i. is a witness in close proximity to:
- 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, related prescription drug expenses, transportation expenses to attend counselling, and crime scene cleaning expenses.

C. *Application for Benefits*

The application forms are available from the CVAP (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](#).

The CVAP 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. They 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 they may have received
- names of any doctors, counsellors, or anyone else that has been seen as a result of the injuries
- 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. However, applications for minors may 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 victim's parent, the Ministry of Children and Family Development may take custody of the victim. 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. In rare circumstances, the applicant 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.

D. 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).
- 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. 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.

E. 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.

F. 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.

G. 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.

H. 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.

I. Prior Claims with the Criminal Injury Compensation Program (CICP)

Applications received prior to June 30, 2002 will have been adjudicated under the *CICA* by the CICP. Once a final determination was made under the *CICA*, ongoing administration of the claim transfers to the CVAP and any further reviews for reassessment or reconsideration will be conducted in accordance with the 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.

J. 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, the 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. The application is made to the provincial or territorial Superior Court (e.g., Supreme Court of British Columbia). Once the application is accepted, the Superior Court decides whether to set aside the adjudicator’s decision and to order for a re-hearing. Winning at the judicial review hearing is not a guaranteed win at the new adjudicative hearing. For more information, consult [this](#).

IV. 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 criminal 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 substantial likelihood of conviction and that it is in the public interest to prosecute, a **charge** is laid. However, if the police decide not to recommend charges and if the explanation is unsatisfactory, the victim may want to discuss the situation with a superior officer. In BC, the police are not responsible for laying charges; they are responsible for completing an incident report or a Report to Crown Counsel 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 victim may wish to discuss the matter with a more senior Crown Counsel. If still not satisfied, the victim may write to Regional Crown Counsel. Finally, it may be appropriate to write to the BC Attorney General in Victoria.

A factsheet outlining complaints processes for justice agencies has been developed for victims and is available [here](#).

For individuals in situations which they believe are dangerous, but are not assaults, sexual assault, or other more common types of violent offences, there are various sections of the *Criminal Code* that may be relevant. If an individual 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): Criminal Harassment; 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. Restitution amounts must be easily calculable and not in great dispute.

Restitution will not be ordered in all cases where there is monetary loss or damages. The judge must consider whether a restitution order should be included in the sentence and whether all aspects of the sentence reflect the purposes and principles of sentencing and are appropriate given the circumstances of the offence and the particular offender. The ability of the offender to pay a restitution order will be a consideration. Restitution cannot be ordered for pain and suffering or other damages which can only be assessed in the civil courts.

The only aspects of physical injury or psychological harm that can be covered by restitution are those that are quantifiable from a cost perspective and that take place prior to sentencing. For example, these may be:

- medications not covered by insurance
- costs related to medical treatment
- counselling expenses

This makes it distinct from the more general and less quantifiable “pain and suffering.”

Although the restitution order is made by a criminal court as part of an offender’s sentence, it is similar to a civil order in some respects. If the offender does not pay the amount ordered, the victim can file the order in the civil court and use civil enforcement methods to collect the money. For example, bank accounts may be seized or liens may be placed on property.

1. *The Canadian Victims Bill of Rights*

This Act recognizes that crime has a harmful impact on victims and on society. This Act lists out the rights of victims, as well as those who are authorized to act on their behalf. Section 3 provides that if the victim has passed away or is otherwise incapable of acting on their own behalf, another person may be able to act on their behalf.

A victim is defined as a person who has suffered physical or emotional harm, property damage, or economic loss as a result of a crime. However, if a person is charged with or convicted of the offence that resulted in the victimization, they are not defined as a victim. The same applies if a person that suffers the harm or loss is found not criminally responsible for the offence that resulted in the victimization due to a mental disorder. Furthermore, s 19(2) stipulates that a victim is entitled to exercise their rights under this Act only if they are present in Canada or if they are a Canadian citizen or permanent resident.

Adhering to this definition, victims of crime are able to exercise their rights under this Act while an offence is being investigated or prosecuted and while the offender is going through the corrections or conditional release process. The offence committed against the victim must fall under the *Criminal Code*, the *Youth Criminal Justice Act*, or the *Crimes Against Humanity and War Crimes Act*. The rights also apply to some offences under the *Controlled Drugs and Substances Act* and parts of the *Immigration and Refugee Protection Act*.

The rights apply to offences which occur in Canada. They also apply if the offence is investigated and prosecuted in Canada or if the offender is serving a sentence or conditional release in Canada.

Victims have the right to:

- request information
- have their security and privacy considered by the appropriate authorities, be protected by the criminal justice system
- participate by presenting victim impact statements
- request that their identity be protected
- have the court consider making a restitution order against the offender
- have a restitution order entered as a civil court judgment that is enforceable against the offender

A judge can order restitution for financial losses related to:

- damaged or lost property due to the crime
- physical injury or psychological harm due to the crime
- physical injury due to the arrest or attempted arrest of the offender
- costs for temporary housing, food, childcare and transportation due to moving out of the offender's household (this only applies if a victim has moved because they had been physically harmed or threatened with physical harm due to the offence, arrest, or attempted arrest of the offender)
- costs that victims of identity theft had to pay to re-establish their identity, and to correct their credit history and their credit rating

No cause of action, right to damages, or right to appeal any decision or order arises from an infringement or denial of a right under this Act.

If not satisfied by the response of the federal department, agency, or body, victims have the right to file a complaint with the relevant authority. Victims also have the right to file a complaint if they are of the opinion that their rights under this Act have been infringed or denied by a provincial or territorial department. All federal departments and agencies that have responsibilities under this Act need to provide a way for victims to file complaints. Complaints against a provincial or territorial agency, like police or victim services, will be addressed through the appropriate provincial or territorial laws.

Additional information can be found [here](#).

2. *Court Orientation, Preparation and Accompaniment*

If a charge is laid, the victim may be asked to testify as a witness, or the victim may 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 CVAP 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. Victim impact statements allow the judge to determine whether a restitution order is required if the victim experiences a financial loss and any information on the statement may be used to impact the sentencing process for the offender. For more information, including guides for both child and adult witnesses, and on victim impact statements, click [here](#).

Under s 486 of the *Criminal Code*, witnesses can receive testimonial accommodations such

as testifying behind a screen, on video camera so as to not see the offender or in a closed court upon application. The Crown counsel in charge of prosecuting the offence will generally ask the victim whether or not they would like testimonial accommodation, but victims can also speak with the Crown counsel to discuss the matter.

Victims can also request language assistance, including visual language assistance, if they are required to testify in court. The Ministry of Justice provides court interpreters to translate criminal and family law court proceedings in a variety of different languages. Additional language support for other court-related activities is available through outside organizations. Individuals can find a full list of language assistance services available [here](#).

3. ***Things you should know about being a witness***

Although as stated above there are many resources available to witnesses to assist them and to make the process of giving evidence in court less stressful it is important that before a person decides to be a witness in a criminal case, they understand the possibly intrusive and uncomfortable experience that they may be put through by agreeing to give evidence. This is particularly important for victims as the process may make them feel as if they are being revictimized.

All witnesses are generally compellable

It is also important to understand that a competent witness is generally a compellable witness. Therefore, once you agree to give evidence or clearly make it known that you are a witness to a crime, a subpoena can be issued which compels you to attend court on a specific date to give evidence. If you have been served with a subpoena and you then fail to show up for the trial or later refuse to give evidence at trial, you can be charged with contempt. Also, if you lie while giving evidence in court, you can be charged with perjury.

Cross-examination can be stressful

Cross-examination can be a stressful experience for a witness. Defence counsel will likely challenge a witness' evidence in an attempt to show that they are not a credible witness or that the evidence they are giving is unreliable.² Defence counsel will generally do this by showing: the witness's testimony is inconsistent with other independent evidence; they have made prior inconsistent statements; or their testimony has changed during direct examination and cross-examination.³ Defence counsel may also attempt to show that the witness has a motive to lie or mislead the court, which may include cross-examining them on any bias or prejudice they have towards the accused.⁴ Even if a witness appears credible, the defence may attempt to show that their evidence is unreliable because they are mistaken about what they saw.

Discreditable conduct of a witness can be used to challenge their credibility

S 12 of the *Canadian Evidence Act* states "a witness may be questioned as to whether the witness has been convicted of any offence, excluding any offence designated as a contravention under the *Contraventions Act*, but including such an offence where the conviction was entered after a trial on an indictment." In [R v Cullen, 52 CCC \(3d\) 459](#) the Ontario Court of Appeal stated at para 9 that, "for the purpose of challenging a witness' credibility, cross-examination is permissible to demonstrate that a witness has been

² [R v Parent, 2000 BCPC 11](#).

³ *ibid* at para 5.

⁴ *ibid*.

involved in discreditable conduct.” Therefore, with the exception of the accused a witness can not only be cross-examined on any criminal record that they have, but they can also be cross-examined on the details of those convictions, any pending charges, acquittals, or any other discreditable conduct which they may not have been charged with. So, for example, the defence could hire a private investigator to follow a witness and if they gather evidence of discreditable conduct that the witness has been involved in, they could cross-examine that witness on that conduct for the purpose of discrediting the witness in court.

An accused can make an application to have third-party records of witnesses such as counselling records disclosed

It is unlikely that many victims would want the records of the discussions that they have had with their counsellor or therapist disclosed, particularly if they have been the victim of a sexual offence. The disclosure of such records can be traumatizing for a witness. However, the defence can make an application to a trial judge for the disclosure of third-party records, which include medical, psychiatric, therapeutic, and counselling records.⁵ Although the burden is higher for sexual offences, under s 278.3 of the *Criminal Code*, the defence can make an application to a trial judge for the disclosure of such records which also includes personal records such as a victim’s journal or diary.

The process the court undergoes when deciding whether to admit the records involves “the balancing of the rights of the accused under ss 7 and 11 of the *Charter* with the privacy rights of the complainant.”⁶ Unlike documents which the prosecution has in their possession, the burden is on the accused to prove that third-party records should be disclosed because the information is not part of the prosecution’s case, and third-parties have no obligation to assist the defence.⁷ However, under s 278.5 if the trial judge is satisfied that the defence’s application is made in accordance with s 278.3, and that they have established that the record is likely relevant to an issue at trial or to the competence of the witness to testify, and production of the record is necessary in the interests of justice, then they may order the third-party to produce the records. The trial judge will then review the records and may order their disclosure to the accused under s 278.7.

Legal representation for witnesses if an application is made to see their personal records

The Legal Services Society (LSS) provides free legal representation for victims of, or witnesses to, a crime “if an application is made to see their personal records, such as counselling records. The Attorney General authorizes LSS to provide a lawyer to represent a victim/witness at a hearing where a judge decides if the defence can access these records. The victim/witness does not have to be financially eligible to qualify for this kind of representation.” Therefore, it is recommended that any witness who does not have their own legal representation applies to the LSS for representation if they are made aware of an application made by the accused for their personal records.

More information on the Legal Services Society is available [here](#) or by calling 1-866-577-2525 or 604-408-2172 (Greater Vancouver).

The Legal Services Society manual can be accessed [here](#).

⁵ [O’Connor v The Queen, \(1995\), 103 CCC \(3d\) 1 \(SCC\); R v Mills, \[1999\] 3 SCR 668, 139 CCC \(3d\) 321.](#)

⁶ Brian Newton, Q.C. “Third Party Records Disclosure Applications s278 Criminal Code,” Criminal Law Conference 2004: full disclosure: emerging & complex issues in the rules of evidence, at 1.

⁷ [O’Connor v The Queen, \(1995\), 103 CCC \(3d\) 1 \(SCC\)](#) at para 19.

4. *Victim Travel Fund*

The Victim Travel Fund provides funding to a maximum of \$3 000 per family/victim to help attend and participate in interviews, hearings, and other justice-related proceedings. Funding is available to victims who have suffered significant physical or emotional trauma as a result of a serious criminal offence, and victims who require a support person to attend a proceeding. 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:

- make the applications 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 must take place in BC 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 covered by Crown counsel, the CVAP, or any other source

5. *Parole Board of Canada Hearings*

If a conviction occurs, victims may still be affected later on by decisions to release the offender(s). **Victims who wish to attend Parole Board of Canada (PBC) 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 (CSC). For information on registering, see [here](#).

Support persons may also be eligible for funding. An eligible support person must be an adult over the age of 18 years of age who is chosen by the registered victim. Support persons may include relatives, friends or victim service workers. Support persons who wish to attend a PBC hearing with a registered victim must submit a written request to the office of the PBC in the region where the hearing will take place, once the victim has received notice from CSC/PBC of potential hearing dates. A security screening will be conducted for all visitors before they are allowed into a penitentiary. If the support person is accompanying the victim to the hearing, but does not intend to go to the hearing, then a security screening is not required. Please note, however, that if the support person should need to enter the penitentiary, the security screening would be required.

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](#).

B. *Pursuing the Matter in a Civil (Tort) Action*

Criminal courts determine whether or not the accused is guilty, and if so, what would be the 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. In this regard, a victim may sue an alleged offender regardless of the offender's verdict at a criminal trial. 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 include 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 opposing 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.

Previous criminal convictions are admissible in subsequent civil proceedings. While a verdict on a criminal trial has no impact on a verdict on the civil trial of the same matter, it is inevitable that a conviction gives rise to a legal presumption of wrongdoing. Moreover, the material facts underlying the conviction are presumed correct unless proven otherwise. In this sense, a defendant's criminal conviction renders the plaintiff's case in a civil litigation much stronger. Even if the accused was acquitted in a criminal matter, the plaintiff's case would be unaffected because the burden of proof in a civil case is lower than a criminal case.

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 (s 6). However, there are **exceptions** to this rule. In BC, there is an exemption to the two-year time limit for cases of sexual assault (s 3(1)(j)). The *Limitation Act* also allows for an exemption for physical assault claims for minors and for adults who were living in a personal or dependent relationship with their abuser (s 3(1)(k)). The rationale for these exemptions is 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 lives are on hold and

are unable to get on with other parts of their lives. 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: Others must not take control of the victim’s decisions. A victim should be informed of their options and the potential consequences of each course of action in order to allow them to give informed instructions to counsel.

V. VICTIMS OF SEXUAL ASSAULT

A. *What is Sexual Assault?*

Any sexual contact which occurs without the consent of all the people involved is sexual assault. Sexual assault ranges from unwanted touching of a sexual nature to forced sexual intercourse. It can occur anywhere – at school, at work, in a public place or at home. Sexual assault can occur between strangers or those who know each other well, including those who are married. Sexual assault is most often committed by those known to the victim, such as family members, acquaintances or people in positions of trust or authority over the victim.

If you have been in any of the following situations, you may have been a victim of sexual assault:

- you have been physically touched in a sexual manner by another person which was not wanted
- your words or actions indicated that you did not want to have or continue sexual contact, but the sexual contact continued
- you submitted to sexual contact because someone threatened or used force on you
- you were not able to give consent to sexual contact (for example, you were drugged, impaired or have a disability)
- someone persuaded you to have sexual contact by using their position of authority or power over you

Legal age of consent

The legal age of consent to sexual activity is 16. However, there are “close in age” exceptions for youth as young as 12 years old. A 12 or 13-year-old may consent to sexual activity with a partner who is less than **two years** older than them given that there is no relationship of trust, authority, dependency, or other exploitation. Similarly, a 14 or 15-year-old may consent to sexual activity with a partner who is less than **five years** older than them if there is no relationship of trust, authority, dependency, or other exploitation. Then, the following table can be tabulated:

Legal Age of Consent

	Youth's Age					
	12	13	14	15	16	
Partner's Age	12	√	√	√	X	X
	13	√	√	√	√	X
	14	√	√	√	√	√
	15	X	√	√	√	√
	16	X	X	√	√	√
	17	X	X	√	√	√
	18	X	X	√	√	√
	19	X	X	√	√	√
	20	X	X	X	√	√
	21	X	X	X	X	√
	22	X	X	X	X	√

When a child is at risk or is being sexually assaulted, it is your legal duty to report the crime.

B. Help for Victims of Sexual Assault

If you believe you or someone you know may have been the victim of a sexual assault once you are in a safe place, you should call the police. If you need emergency medical attention or you are in immediate danger, call 911.

If you do not want to call the police there are other people you can talk to such as VictimLink BC available at 1-800-563-0808, or Healthlink BC available at 811. The Surrey Women's centre has a mobile assault response team that provides services over the phone and in-person to anyone who has experienced a physical or sexual assault. They are available 24-hours a day, 7 days a week, 365 days a year. You do not have to go to the hospital or make a police report to use their services. The Surrey Women's centre can be reached at 604-583-1295. More information is available [here](#). Similarly, consult Battered Women's Support Services [here](#) or at 1-855-687-1868. WAVAW provides support services to survivors of sexualized violence who have shared experiences of gender marginalization: cis and trans women, Two-Spirit, trans and/or non-binary people. They advocate for social and systemic change through education, outreach and activism. WAVAW can be reached at 604-255-6344 and 1-877-392-7583 outside the lower mainland. More information on WAVAW is available [here](#).

If the sexual assault involves a child, you should call the Ministry of Children and Family Development's 24-hour emergency abuse line at 1-800-663-9122.

Even if you do not think that you need immediate medical attention, you should go to the hospital. If you have been assaulted within the last 7 days, there is a special team of nurses and/or doctors at the hospital who can help you. You may need medical attention, even if you do not have visible signs of injury.

Further information on sexual assault and the steps to take if you need help is available [here](#).

C. Help for Students, Faculty and Staff at the University of British Columbia

The Sexual Violence Prevention and Response Office (SVPRO) is available to help all UBC students, faculty and staff. The SVPRO states they “are a safe place for students, faculty, staff who have experienced sexual violence, regardless of where or when it took place. This includes any attempt or act of a sexual nature without your consent. All gender identities, expressions and sexualities are welcome.” **You do not need to make a police report or go to the hospital to get help from SVPRO.**

Further information is available [here](#) or by calling 604-822-1588.

VI. 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. This is the *Violence Against Women in Relationships Policy (See section II.2)*. The Policy can be accessed online [here](#).

1. *Arrest and Charge*

It is police policy that calls 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 victims who may be at risk.

It is also police policy that 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 the 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 will normally 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 will 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 the responsibility of Crown Counsel and the police to pursue criminal charges, not the victims. **Victims do not need not provide a written statement**, however, the police may encourage the victim to do so.

Police should also refer all victims to victim services and arrange safe transportation to transition homes or safe shelters. In power-based crimes, such as sexual assault, police will refer victims 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 will not 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 from the criminal justice system (known as alternative measures) 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 Crown's policy is that 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 [here](#).

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 victim 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 victim can go without a police report, but the Justice of the Peace will most likely ask for one. The victim does not need to show that they have been injured, only that they have a reasonable fear of injury to themselves or damage to their property at the hands of the defendant. This reasonable fear should be present or ongoing. Previous threats or assaults should be brought up.

A victim should be advised to ask for a no-contact order as a condition of the peace bond. A no-contact order can be varied to be permissible contact, such that a defendant and a victim can have contact up until the victim withdraws consent. Contact in this context means both direct and indirect communication, such as phone calls, emails, messages, and visits to the victim's workplace. 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. Consult [this](#) for more information on no-contact orders.

If the Information is accepted, a hearing date is set, usually about two weeks later. The victim will most likely be subpoenaed as a witness for the Crown. Victims should be aware that failure to appear is an offence. If the victim does not want to proceed with the Peace Bond and Crown Counsel does, the victim 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 up to four 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 victim or their representative can bring an application in Provincial (Family) Court or in the British Columbia Supreme Court. Orders involving property such as exclusive use of the family home can only be obtained in Supreme Court. **However, in cases where there are urgent safety concerns, you should contact the police before pursuing the matter in Family Court as the police will respond immediately, and the family court process takes time.**

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 such applications, the court still has the option to 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 BC Supreme Court. It gives the victim 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 victim 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. *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 instance, some advocacy organizations have noted that some services are not healthy for women experiencing violence. 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.

However, it must also be noted that an abuser may be any gender and that the victim may also be any gender. Victims and their advocates should always make sure that the resources and services that they are considering will be beneficial to victims’ interests.

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

VII. ABUSE AND NEGLECT OF SENIORS AND OTHERS WITH DISABILITIES

Abuse and neglect of seniors and adults with disabilities occur when a family member, friend, caregiver or other person financially, physically, or emotionally abuses or neglects such an individual. Elder Abuse and abuse of adults with disabilities include physical, mental or emotional harm, and damage or loss in respect of financial affairs (i.e., financial abuse). Examples include intimidation, humiliation, physical assault, sexual assault, overmedication, withholding needed medication, censoring mail, invasion or denial of privacy, denial of access to visitors, and 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 of lack of knowledge or understanding by a caregiver of an adult's situation, or it can be very deliberate. The person causing the harm may have mental health difficulties, alcohol or substance use, or more complex psychosocial issues. 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. Individuals 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 may 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.

The information below pertains to the many avenues victims or those acting in their best interests may choose to pursue, as well as lists available resources. Further information on how to address seniors' abuse may also be found in **Chapter 15: Adult Guardianship and Substitute Decision-Making**.

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 can 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.

Please see the end of the chapter for resources.

Part 3 of the *Adult Guardianship Act*, RSBC 1996, c 6 [AGA], has special provisions on abuse and neglect. These include 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.

Under Part 3 of the Act, Designated Agencies respond to reports of abuse or neglect involving adults in these circumstances and notify police if a criminal offence appears to have been committed. Designated Agencies under the *Adult Guardianship Act* include the five Regional Health Authorities, Providence Health Care Society, and Community Living BC. They can address a range of health and

safety issues and help in informal or formal ways. Formal tools include gaining access to the adult in emergencies, obtaining orders or warrants, obtaining short and long-term restraining orders, and on occasion obtaining support and assistance court orders.

Designated Agencies often work with the Public Guardian and Trustee (PGT) in responding to abuse/neglect situations. Under the *Public Guardian and Trustee Act*, the PGT investigates reports of financial abuse or neglect, can restrict access to assets in emergencies where there is concern an adult may be mentally incapable, and may provide financial management services for adults incapable of managing their own affairs. The PGT makes referrals to Designated Agencies if there are concerns about physical risk or harm to the vulnerable adult. The link to the PGT's Decision Tree can be found [here](#).

For further information on supporting victims of elder abuse, see the Understanding and Responding to Elder Abuse E-Book [here](#).

Other BC laws aiming to protect adults in financial and health-care matters include the *Power of Attorney Act*, the *Representation Agreement Act*, and the *Health Care (Consent) and Care Facility (Admission) Act*.

Remember that the victim may depend on their alleged abuser for financial or physical assistance. If the victim wants to make a report that may lead to the laying of information, moving to a transition house, or getting a protection order (see **Section V.B.3: Protection Order**, below), they 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 victim are listed below.

B. Legal Remedies

1. Criminal Charges

No BC 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 their 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 victim 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 ss 810 and 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 *FLA*, but only if the abused is a

spouse or family member that lives with the abuser. The *FLA* 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 *AGA*. 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 victim 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 victim. Keep in mind that the burden of proof is higher in criminal matters (i.e., beyond a reasonable doubt) than civil matters (i.e., on a balance of probabilities), including when proving a breach of conditions.

VIII. 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. Thus, 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 worksite, 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 them
- 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

[This publication](#) from the United Nations Office on Drugs and Crime provides a comprehensive list of indicators that a person may be trafficked.

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
- have been taught to distrust outsiders, especially law enforcement and other government authorities
- be afraid they will be detained and deported
- 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 enforcement⁸

In 2007, BC established the Office to Combat Trafficking in Persons (OCTIP). OCTIP is part of the Victim Services and Crime Prevention Division of the Ministry of Public Safety and Solicitor General. OCTIP develops and coordinates strategies to address human trafficking within the province. 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. Law enforcement and Crown Counsel prosecute human trafficking cases in BC. See the **Resources** section below for more information on OCTIP.

A. *Governing Legislation and Resources*

1. *Legislation*

Human trafficking is defined by the United Nations 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” (*United Nations Convention against Transnational Organized Crime; Annex II: The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime*, 15 November 2000, UNGA A/RES/55/25 (entered into force 25 December 2003)). 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. Benefit materially from human trafficking.

⁸ *National Action Plan to Combat Human Trafficking*, Government of Canada, 2012.

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 *Criminal Code* 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 exploited 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* ss 117(2)-(3)).

a) *BC's First Human Trafficking Conviction under IRPA*

[*R v Orr*, 2013 BCSC 1883](#), was the first conviction for human trafficking under *IRPA* in Canada. 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 to 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 of 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. A new trial was held in June 2016 ([R v Orr, 2016 BCSC 2064](#)). He was ultimately acquitted for human trafficking and providing false information to the Consulate General of Canada but was convicted of employing an unauthorized foreign national.

b) *Bill C-36 and Human Trafficking*

In 2014, several changes were made to increase the penalties for the human trafficking in the *Criminal Code*. 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.⁹

Bill C-36 made several significant sentencing changes to the human trafficking provisions in ss 279.01 to 279.03 of the *Criminal Code*. First, the new provisions include a mandatory minimum sentence of 5 years where a trafficker is convicted of human trafficking (s 279.01 of the *Criminal Code*) and also kidnaps, commits aggravated assault or aggravated sexual assault against, or causes the death of the victim. In such cases, the maximum sentence is life. In other cases of trafficking of adults, the mandatory minimum sentence of 4 years (s 279.01). The maximum is 14 years. 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 mandatory minimum sentence for

⁹ [“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

withholding or destroying documents to facilitate trafficking of minors is 1 year. The maximum sentence has been extended from 5 years to 10 years.

Bill C-36 made a number of other changes. First, offences under the *Criminal Code* apply generally only to acts committed within Canadian territory. However, exceptions to this principle of territoriality are provided in s 7 of the *Criminal Code*. These include terrorism offences, human trafficking, and sexual offences against children. In this last example, the bill provides that anyone who obtains for consideration the sexual services of a minor outside Canada will face the new minimum (6 months or 1 year) and maximum (10 years) penalties.

Second, the offence of luring a child consists in communicating, by any means of telecommunication, with a person under 18 years of age for the purpose of facilitating the commission of one of the offences with respect to that person – generally a sexual offence – listed in s 172.1 of the *Criminal Code*. The Bill adds the three existing offences pertaining to trafficking of minors (ss 279.011, 279.02 and 279.03 of the *Criminal Code*) to the list of offences. Consequently, an accused person convicted of having lured a person under 18 years of age for the purpose of facilitating the commission of a trafficking-related offence against that person shall be liable to the following penalties:

- upon indictment: imprisonment for a term of between one year and 10 years
- upon summary conviction: imprisonment for a term of between 90 days and 18 months

Third, Bill C-10 makes it an offence to agree or arrange with another person, by any means of telecommunication, to commit one of the offences – generally of a sexual nature – mentioned in s 172.2 of the *Criminal Code*. Bill C-36 adds to the list of offences the three existing offences pertaining to trafficking of minors (ss 279.011, 279.02 and 279.03 of the *Criminal Code*). An accused person convicted of having made an agreement or arrangement with another person over the Internet to commit a human trafficking offence in respect of a person under 18 years of age shall be liable to the same minimum and maximum sentences as those provided for luring (i.e., a term of one year to 10 years upon indictment or of 90 days to 18 months upon summary conviction).

Additional information concerning Bill C-36 may be obtained [here](#).

c) *BC's First Human Trafficking Conviction under the Criminal Code*

In 2014, BC saw its first human trafficking conviction under the *Criminal Code* 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 dependent on him, and counselled 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.

Sentencing was discussed in [R v Moazami, 2015 BCSC 2055](#). Because eight of the 11 complainants were under the age of 18 years at the time of the offences, s 718.01 of the *Criminal Code* requires the Court to give primary consideration to the objectives of denunciation and deterrence when sentencing.

Further, s 718.1 stipulates that a sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender. Section 718.2 also mandates a consideration of the relevant mitigating and aggravating circumstances. Lastly, s 718.2(b) enshrines the principle that similar offences committed by similar offenders should be accorded similar sentences.

Where the offender has been convicted of multiple offences involving multiple complainants, the Court must decide whether the sentence for each offence should be served concurrently or consecutively to each other. The proper approach is to first determine the appropriate sentence for each offence and then decide if the sentences should be served concurrently or consecutively.

When using the applicable statutory minimum and maximum sentences as a benchmark and applying the factors relevant to the application of the totality principle, Justice Bruce found that a sentence of 23 years is the minimum necessary to achieve the fundamental objectives of sentencing on the facts of this case. Justice Bruce stated that the aggregate of the minimum sentences informs the Court with regard to the length of sentence necessary to adequately reflect the serious nature of the offences, the multiple complainants, the many aggravating factors, and Moazami's moral blameworthiness in light of the few mitigating circumstances.

To achieve the length of sentence of 23 years, Justice Bruce decided that the sentences imposed with respect to the offences against individual complainants will be served concurrently with each other, but consecutively in regard to each of the other complainants with some exceptions.

Justice Bruce calculated the total time served credit as 1851 days or five years and 26 days. Deducting this time from the imposed sentence of 23 years, Justice Bruce found that the remaining sentence to be served was 17 years and 339 days.

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 counselling 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.

IX. MISSING PERSONS / ABDUCTIONS

According to the National Center for Missing Persons and Unidentified Remains (NCMPUR), British Columbia records the highest number of missing persons in the country, accounting for more than 40% of the countries 29,645 cases in 2020¹⁰.

NCMPUR categorizes probable cause for missing persons into the following categories:

- Abduction by stranger
- Accident
- Wandered Off
- Parental Abduction with Custody Order
- Parental Abduction without Custody Order
- Abducted by Relative
- Runaway
- Presumed Dead
- Human Trafficking
- Unknown

In British Columbia, there is no waiting period to report someone missing and anyone can make a report. Furthermore, you do not need to be a member of the missing persons immediately family to make a report. Before contacting police, you may want to reach out family members, friends, loved ones and next of kin prior to filing a report. However, if these attempts at gaining information on an individuals whereabouts are unsuccessful, reporting to police is the best next step. You can expect the following from police when making a report¹¹:

- **Report will be taken seriously, and investigation started without delay.**
- Conducting a thorough investigation, including risk assessment, focused on the safety and wellbeing of the missing person
- Offer information about supports or resources that may be available, designate a contact person within the police force to support ongoing communication, and keep you updated on the investigation, as appropriate
- Consult with the family or reportee before releasing information or photographs of the missing person to the media, unless doing so would jeopardize the missing person or the investigation, for example by creating delays.
- When a missing person has been found, attend the location in person to confirm their identity and wellbeing. To balance respect for privacy with police duty to investigate safety concerns, this may be handled differently in some circumstances.
- Not close a file until the missing person has been located and their identity has been established.
- Not share information about the location of a found missing adult without their permission. Police may also keep this information confidential in certain cases involving minors, depending on the circumstances.
- Where appropriate, work with other agencies to promote a found missing person's ongoing safety and limit recurring reports involving the same person, or to prevent others from going missing in similar circumstances.

¹⁰ <https://www.canadasmmissing.ca/pubs/2020/index-eng.htm>

¹¹ <https://www2.gov.bc.ca/gov/content/safety/public-safety/missing>

persons#:~:text=In%20B.C.%2C%20there%20is%20no,the%20missing%20person's%20immediate%20family.

A. *Governing Legislation and Resources*

1. *Legislation*

The Missing Persons Act (the Act) came into force June 9, 2015, setting out the provisions for accessing records that will help find missing persons, including special provisions for people who are vulnerable, youth and persons at risk.

The Act allows a member of a police force to apply to the court for records to help find a missing person. When there is a risk of serious harm to a missing person or a concern that records could be destroyed, the Act authorizes officers to make an Emergency Demand for Records without going through the court. [Section 18](#) of the Act requires that a report on the use of Emergency Demands for Records must be submitted to the Minister or his or her designate on an annual basis and must be made public.

The Act defines a missing person as an individual whose whereabouts are unknown despite reasonable efforts to locate the individual and

- a) who has not been in contact with those persons who would likely be in contact with the individual, or
- b) whose safety and welfare are feared for given
 - i) the individual's age
 - ii) the individual's physical or mental capabilities, or
 - iii) the circumstance surrounding the individual's absence

2. *Resources*

a) *The National Centre for Missing Persons and Unidentified Remains (NCMPUR)*

NCMPUR is Canada's national centre that provides law enforcement, medical examiners and chief coroners with specialized investigative services in support of missing persons and unidentified remains investigations.

One of the NCMPUR's responsibilities is managing the national public website to provide information on selected cases to the public for the purposes of seeking tips on investigations.

The Canadasmissing.ca website features profiles of missing persons and unidentified remains that have been published at the request of the primary investigator from either police, coroner or medical examiner agency. Furthermore, resources are provided that instruct individuals on how to submit tips, specialized services, and fact sheets.

b) *Travel Reunification Services*

This is a program designed to assist a parent or a legal guardian who cannot afford to return the abducted child to or within Canada, once the child is located. In order to be eligible for travel assistance, the following guidelines must be met:

1. The request for transportation must come from the investigating Police Agency or the Central Authority from the child's home province:
 - o A law enforcement agency investigating a child abduction complaint;

- A representative of a Canadian Central Authority pursuant to the Hague Convention on the Civil Aspects of International Child Abduction; or
 - An agency designated by NCMPUR Operations.
2. The requesting agency is responsible for assessing the financial status of the family and determining if transportation should be provided. (For example: whether the requesting parent's financial circumstances would make paying for the child and/or parent's transportation prohibitive).
 3. Assistance will be limited to child abduction situations, including situations where the child is abducted by parent or legal guardian.
 4. Assistance will be provided to transport:
 - In the case of older abducted children, home; and
 - In the case of younger children, enable the left behind parent or legal guardian to travel to the jurisdiction where the child is and return home.
 5. In some cases, it may be appropriate for a person other than the left behind parent or legal guardian to retrieve the child and accompany the child home.
 6. If the left behind parent is travelling to retrieve the child, the requesting authority must make every reasonable effort to confirm/ensure that the parent will be able to obtain legal physical custody of the child. For example, consideration should be given to whether a return order is pending or under appeal, the child's whereabouts are known, there are legal impediments to the child's removal, etc.
 7. The requesting agency must ensure that the parent or legal guardian has all the necessary documents in order to retrieve the child. For example: child's birth certificate; custody order; passport and any other necessary travel documents.
 8. Assistance will not be provided to transport the abductor, even if he or she is the person able to accompany the child home.

X. AND RESTORATIVE JUSTICE

A. *Trauma-Informed Legal Practice*

Many legal professionals are moving toward trauma-informed practice legal practice (TIP). Trauma is best defined as an emotional response to a disturbing or distressing event. In this sense, TIP recognizes the role of trauma in the lawyer-client relationship. The practice strives to reduce re-traumatization by identifying both past and ongoing trauma in the client's life and by adjusting the lawyer-client relationship accordingly to enhance connections with clients for better legal advocacy.

What constitutes an appropriate TIP differs by client-and-lawyer. It is important for lawyers to first identify the client's trauma and then adjust their relationship accordingly. Frustration often stems from clients not being well-informed of their lawyers' choices. Then a general TIP may include, for example, making accommodations for client interviews or extensive preparations of a client prior to taking the stand to help reduce anxiety. For clients who experienced sexual assault, TIP may include active listening, emotional competency, and allowing for victim advocates to accompany in meetings. In any circumstance, the lawyer should take note of interpersonal and systemic violence as well as gender and cultural factors that could hinder a client from disclosing information. Furthermore, a client should feel comfortable asking their lawyer for additional support and resources. Also included at the bottom of this Chapter are some general and specific referrals.

This [website](#) lists out the expectations for TIP.

For more general victim guides/manuals, click [here](#) or [here](#).

B. Restorative Justice

Community Accountability Programs (CAPs) are funded by the Province of British Columbia and offer an alternative to the criminal court process pursuant to s 717 of the *Criminal Code* and Part 1 of the *Youth Criminal Justice Act*. Many of these programs accept referrals from the police, the community and those impacted by crime. CAPs practice Restorative Justice, a philosophy that tries to address the needs of the victim, the offender, and the community. Restorative Justice programs look at the harms caused by crime, which may include harms to the victim, community, family, and offender. While approaches may vary across programs, many use one-to-one facilitation, talking circles and conferences to work towards a confidential resolution that does not result in a criminal record for the person who has caused harm.

In order to participate in the Restorative Justice process, offenders must be willing to take responsibility for their actions and victims must also consent to the process and waive their ability to pursue other remedies regarding the same incident. Victims are often given a choice of whether they wish to meet with the offender face-to-face or not. Often the process only requires meetings with facilitators. The resolution can be a written acknowledgement of the impacts, a written apology, a gift, a restitution payment, and/or community service hours. CAPs also typically support each client's timely referral to counselling and support services, based on their unique and self-identified needs. Victims who feel that their needs will not be adequately addressed by the traditional criminal justice system are encouraged to learn more about the Restorative Justice programs offered in their geographic area by following this [link](#).

XI. RESOURCES FOR INDIGENOUS VICTIMS

Indigenous¹² peoples are overrepresented in Canada's criminal justice system as victims of crime. In 2014, 28% of Indigenous people (aged 15+) reported being victimized in the previous 12 months, compared to 18% of non-Indigenous Canadians¹³. The rate of violent victimization among Indigenous people was more than double that of non-Indigenous people (163 incidents per 1,000 people vs. 74 incidents per 1,000 people).

The higher rates of victimization observed among Indigenous people appear to be related to the increased presence of other risk factors—such as experiencing childhood maltreatment, perceiving social disorder in one's neighbourhood, having been homeless, using drugs, or having fair or poor mental health¹⁴. We know these risk factors are the direct result of the deep-rooted history of colonization and resulting intergenerational trauma that has victimized indigenous peoples in Canada for over a century.

¹² 'Indigenous peoples' is a collective name for the original peoples of North America and their descendants. Often, 'Aboriginal peoples' is also used

¹³ Boyce, Jillian. 2016. "Victimization of Aboriginal people in Canada, 2014." Statistics Canada.

¹⁴ Perreault, S. 2015. [Criminal victimization in Canada, 2014](#). Juristat Statistics Canada Catalogue 85-002-X.

A. **RESOURCES:**

1. ***The Native Courtworker Program***

- The native courtworker program is administered by the native courtworker and counselling association of British Columbia (NCCABC) and assists indigenous victims with access to justice when involved in the criminal justice system. They work to ensure victims obtain fair, just, equitable and culturally sensitive treatment. This program is jointly funded by the provincial Ministry of Justice and the federal department of justice.
- Here is a list of the ways they can assist victims:
 - Provide Indigenous accused with appropriate referral to legal resources (as available and where practical).
 - Refer Indigenous accused to appropriate social, education, employment, medical and other resources to enable them to address the underlying problems which contribute to their charges and where appropriate, follow-up on these referrals.
 - Liaise between Indigenous accused and criminal justice personnel to help overcome communication barriers and reduce Indigenous alienation from the criminal justice system. This may include being available to provide appropriate information to the court and/or speaking on behalf of the accused.
 - Inform justice officials about the cultural traditions, values, languages, socio-economic conditions and other concerns of the Indigenous community and the perspective of Indigenous accused. Initiate further understanding when required.
 - Promote understanding within the Indigenous community, of the existing criminal justice system and alternative justice processes.
 - Promote and facilitate community-based justice initiatives and help build community capacity to identify and address problems, which could end up in the courts or community justice system.

2. ***WAVAW Rape Crisis Centre***

- **WAVAW's Indigenous Counselling Program** provides one-to-one counselling for Indigenous people of marginalized genders, including trans and cis women, as well as trans, non-binary, and Two Spirit people seeking health, wellness, and safety.
- Counselling incorporates Aboriginal healing approaches and traditions based on the Medicine Wheel, which focus on spiritual, emotional, mental, and physical balance.
- Additionally, WAVAW provides support to the family members of Missing and Murdered Indigenous Women, Girls and Two-Spirit People through various counselling services. These services are designed to address the impacts of loss, trauma, and systemic injustice experienced within the family.
 - Contact Information:
 - 24hr Crisis and Information Line: **604-255-6344**
 - National Toll-Free: **1-877-392-7583**

3. *Aboriginal Legal Aid BC*

- This organization aims to help Aboriginal peoples in BC understand their legal rights by providing free legal information and connecting communities to legal support. They follow the lead of their Indigenous Services division, who work to meet the legal needs of Aboriginal peoples in BC through innovative and culturally informed legal aid services.
- Contact Information:
 - **604-408-2172** (Greater Vancouver)
 - **1-866-577-2525** (elsewhere in BC)

4. *Indigenous Community Legal Clinic*

- The Indigenous Community Legal Clinic (ICLC) is an educational legal clinic of the Peter A. Allard School of Law at the University of British Columbia that provides legal services to the Indigenous community.
- The ICLC may be able to provide advice, assistance and representation to eligible clients who cannot afford a lawyer and who self-identify as Indigenous persons.
- Contact Information:
 - Telephone: **604-822-1311**
 - Toll Free: **1-888-684-7874**

XII. REFERRALS AND FOLLOW-UP

If you refer the victim to a lawyer, social service agency, or health professional, remember to follow up to ensure that the victim is looked after. A simple phone call to the victim should suffice. Should you need to consult with a professional (for instance, a psychiatrist) about a victim's ongoing case, you need to have the victim sign a written release form authorizing you to collect information about them, or on their behalf.

A. *General Referrals*

[Crime Victim Assistance Program](#)

P.O. Box 5550 Stn. Terminal
Vancouver, BC V6B 1H1
E-mail: cvap@gov.bc.ca

Telephone: (604) 660-3888 (Lower Mainland)
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. 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 their 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.

[Directory of Victim Service and Violence Against Women Programs in BC](#)

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

Victim Notification – Victim Safety Unit

302 – 815 Hornby Street
 Vancouver, BC V6Z 2E6
 Email: vsusg@gov.bc.ca

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 BC 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 the accused or offender may have to follow. 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.

Community Safety and Crime Prevention Branch

Ministry of Public Safety and Solicitor General
 302 - 815 Hornby Street
 Vancouver, BC V6Z 2E6

Telephone: (604) 660-5199
 Toll-Free: 1-800-663-7867
 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

Email: VictimLinkBC@bc211.ca

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. The service is toll-free, confidential, and anonymous.

Public Guardian and Trustee of British Columbia

700 - 808 West Hastings Street
 Vancouver, BC V6C 3L3
 Email: mail@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 languages.

Victim Justice Network

Email: mail@trustee.bc.ca

- An online-based network with links to existing networks and information hubs to promote awareness of services and supports for victims of crime in Canada. They aim to raise awareness, understanding, and support for victims of crime in a society by providing online victim-centred information, resources, and referrals.

Victimsinfo.ca

- An online resource for victims and witnesses of crime in BC. The website links several Key Contacts such as the Victims Information Line, Lawyer Referral Service, Youth Against Violence Line, among others.

B. Referrals for Specific Victims

1. Children and Youth Victims

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 BC: 1-800-663-9122

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

Society for Children and Youth of BC (SCY)

303-1720 Grant St.

Vancouver, BC, V5L 2Y7

Email: info@scyofbc.org

Telephone: 778 657-5544

Toll-free 1-877-462-0037

- The Society for Children and Youth of BC (SCY) is a unique provincial organization dedicated to improving the well-being of children and youth in British Columbia.
- SCY recognizes that adult duty-bearers need to advocate for the rights of children and youth of BC as listed in the United Nations Convention on the Rights of the Child (UNCRC) in order to improve their well-being.

The SCY operates the Child and Youth Legal Centre (legal advice and representation for children and youth) – contact information the same as for SCY

- The Child and Youth Legal Centre is committed to improving the well-being of children and youth in British Columbia through the advancement of their legal rights. The role of the Centre is to advocate on behalf of vulnerable children and youth in BC.
- The Centre provides legal representation, free to those who qualify, for young people who are experiencing problems related to family law, child protection, human rights and many other legal issues.
- The Centre has two full-time child and youth lawyers.
- **The Centre offers a free drop-in clinic on the first Tuesday of every month** at 920 East Hastings Street from 3-6 pm for children and youth aged 9 to 19. Call or visit their website for more details.

General Ministry Inquiries

Telephone: 1-877-387-7027

Email: MCF.infot@gov.bc.ca

Provincial Government Referral Service

Victoria: (250) 387-6121

Metro Vancouver: (604) 660-2421

Elsewhere in BC: 1 800 663-7867

2. *Other Victims*

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

UBC Robson Square, 800 Robson Street, Plaza Level, Room 1.400 Telephone:(604)-822 8585
Vancouver, BC V6Z 3B7

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

The Surrey Women's Centre

Telephone: 604-583-1295

- The Surrey Women's Centre has a mobile assault response team that provides services over the phone and in-person to anyone who has experienced a physical or sexual assault. They are available 24-hours a day, 7 days a week, 365 days a year. You do not have to go to the hospital or make a police report to use their services.

WAVAW

Telephone: 604-255-6344
Outside lower mainland: 1-877-392-7583

- WAVAW provides support services to survivors of sexualized violence who have shared experiences of gender marginalization: cis and trans women, Two-Spirit, trans and/or non-binary people. They advocate for social and systemic change through education, outreach and activism.

British Columbia Society for Male Survivors of Sexual Abuse

Telephone (Vancouver): 604-682-6482
Telephone (Surrey): 778-222-6885

- BC Society for Male Survivors of Sexual Abuse aims to provide therapeutic services for males who have been sexually abused at some time in their lives. They provide treatment and support services to survivors and support significant-others and relatives of the survivors as well as educate on material concerning sexual abuse of males

C. *Referrals for Criminal Injuries Outside British Columbia*

National Office for Victims

Telephone: 1-866-525-0554

- 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

Directory of International Crime Victim Compensation Programs

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 they qualify for any form of compensation.

a) *Other Canadian Provinces and Territories*

Alberta: [Victims of Crime Act, RSA 2000, c V-3.](#)

[Victims of Crime Financial Benefits Program](#)

Alberta Solicitor General and Ministry of Public Security
9th Floor, John E. Brownlee Building
10365 – 97 Street
Edmonton, AB T5J 3W7

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

Manitoba: [Victims' Bill of Rights, CCSM c V55.](#)

[Compensation for Victims of Crime Program](#)

1410-405 Broadway
Winnipeg, MB R3C 3L6

Telephone in Winnipeg: 945-0899
Toll-Free: 1-800-262-9344

New Brunswick: [Victims Services Act, SNB 2016, c 113.](#)

[Victim Services Program](#)

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

Telephone: (506)-453-3992
Email: DPS-MSP.Information@gnb.ca

Newfoundland: [Victims of Crime Services Act, RSNL 1990, c V-5.](#)

[Victim Services Program, Provincial Headquarters](#)

Department of Justice
Victim Services Program
4th Floor, East Block, Confederation Building
P.O. Box 8700, St. John's, NL A1B 4J6

Telephone: (709) 729-7970
Email: victimservices@gov.nl.ca

Northwest Territories: [Victims of Crime Act, RSNWT 1988, c 9.](#)

[Government of the Northwest Territories](#)

Department of Justice
c/o Public Trustee Office
P.O. Box 1320
Yellowknife, NWT X1A 2L9

Telephone: (867) 873-7500

Nova Scotia: [Victims' Rights and Services Act, SNS 1989, c 14.](#)

Criminal Injuries Compensation Board

Victim Services Division
5151 Terminal Road, 3rd Floor
P.O. Box 7, Halifax, NS B3J 2L6

Telephone: (902) 424-4030
Email: justweb@gov.ca

Ontario: [Victims' Bill of Rights, SO 1995, c 6.](#)

The Criminal Injuries Compensation Board

14th Floor, 655 Bay St
Toronto, ON M7A 2A3
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.](#)

Victim Services

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 Heather Moise Drive
Suite 19, 2nd Floor
Summerside, PE C1N 5P1
Tel: (902) 888-8218
Fax: 902) 888-8410

Quebec: [Crime Victims Compensation Act, LRQ c I-6.](#)

**Commission de la santé 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

Telephone: (514) 906-3019
Toll-Free: 1-800-561-4822
Fax: (514) 906-3029
Email: info@ivac.qc.ca

Saskatchewan: [Victims of Crime Act, SS 1995, c V-6.011.](#)

Victim Services

610 - 1874 Scarth Street
Regina, SK, S4P 4B3
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.](#)

Victim Services

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

D. Finding Funding for Counselling

[Crime Victim Assistance Program funding for counselling](#)

- The CVAA 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 CVAP.

Children's Counselling Services (formerly Children's Sexual Abuse Intervention Program)
Telephone: (604) 885-5881 ext. 228

- 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.

[Stopping the Violence Counselling](#)

Ministry of Public Safety and Solicitor General

- 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.

[Children Who Witness Abuse Programs \(Ministry of Public Safety and Solicitor General\)](#)

- This community-based program provides individual and group counselling services for children who witness the abuse of a parent, who is 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.

Residential Historical Abuse Program

Toll-Free: 1-800-563-0808 (VictimLINK information line)

Acquire forms from the Ministry of Health, Victim Assistance, or Mental Health Centres.

The Residential Historical Abuse Program provides professional counselling services for BC 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. A counsellor who meets provincial standards will develop a personal treatment plan with the victim, which may include individual, group, or family counselling. The victim does not have to prove that they were sexually, physically, or mentally abused to receive counselling services, nor does they have to name the person(s) who abused them. The Ministry will simply verify that they were 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 victim 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.

E. Resources and Remedies for Seniors

BC has a Parliamentary Secretary to the Minister of Health for Seniors (Ronna-Rae Leonard), a Seniors' Services Branch and an Office of the Seniors Advocate.

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

1. General Support

If the adult is in need of health or home care related services, or there are concerns about the adult's ability to seek support due to a disability or condition impacting their ability to make decisions, the victim'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 can investigate the situation, present options to the victim, and place them in contact with necessary assistance.

Seniors First BC (Formerly BC Centre for Elder Advocacy and Support (BCCEAS))

Martha Jane Lewis, Executive Director

Telephone: (604) 688-1927

Disability Alliance of BC (Formerly BC Coalition of People with Disabilities)

Mailing Address:

#204-456 West Broadway

Vancouver, BC V5Y1R3

8835

Email: feedback@disabilityalliancebc.org

Telephone: (604) 875-0188

Toll-Free: 1-800-663-1278

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

BC Association of Community Response Networks (has list of resources by community)

Sherry Baker, Executive Director

Telephone: (604) 513-9758

2. Shelter

If the alleged abuser cannot be removed from the home, the victim 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. Some houses do not have a one-week maximum stay, although 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 victim may depend on the alleged abuser for help in the home and may be reluctant to act because they fear being placed in a nursing home. In fact, the victim may only need a little extra help to live alone. Phone the BC Ministry of Health Services Long-Term Care Program to determine whether the victim is eligible to receive home support services (cleaning, handyman services, etc.). A person may also be able to contact intake in the health authority in which they live to request an assessment. 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	(604) 732-7638 or (604) 733-6615 (Cantonese)
Burnaby	(604) 299-5754 ext. 23
Chilliwack	(604) 793-7242
Langley	(604) 533-1679
New Westminster	(604) 520-6621
North Shore, West Vancouver	(604) 922-3414
Surrey	(604) 588-6325
White Rock / South Surrey	(604) 541-6325
Port Coquitlam	(604) 942-7506

4. Seniors' Benefits

The client may not be receiving all of the financial benefits they are entitled to. These benefits (Old Age Security Pension, Guaranteed Income Supplement, Canada Pension Plan, and others) may give the client more freedom to change their situation. Phone a local seniors' centre for more information.

More information is available online [here](#).

Information regarding Shelter Aid for Elderly Renters may be found [here](#).

5. *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.

6. *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 counselling; and links to resources, see BC's OCTIP, Ministry of Public Safety and Solicitor General website [here](#).

BC's Office to Combat Trafficking in Persons, Ministry of Public Safety and Solicitor General

Victim Services and Crime Prevention Division

Main Office Phone: (604) 660-5199

Toll-free Line: 1-888-712-7974

#302 – 815 Hornby Street

Vancouver, BC V6Z 2E6

Email: octip@gov.bc.ca

The above phone line is answered by VictimLink BC, 24 hours a day, seven days a week. Interpretation is provided.

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 BC communities are addressing this issue.

The online training course and toolkit are available [here](#).

BC Crime Stoppers

Individuals with information about a crime are able to provide an anonymous tip by calling the tip line at 1-800-222-TIPS (8477)

Individuals may also provide an anonymous tip online [here](#).

RCMP Human Trafficking Coordinator for BC/Yukon

The RCMP Human Trafficking Coordinator for the BC/Yukon region plays a significant role in the investigation of human trafficking situations and in raising awareness about this crime.

Telephone: (604) 598-4603

Seniors Abuse and Information Line (SAIL)

SAIL, operated by the BCCEAS, 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**.

