

VICTIMS' RIGHTS IN CANADA

TESTIMONIAL AIDS

What are testimonial aids?

The *Criminal Code* contains a number of provisions that make it easier for victims and witnesses to provide their testimony in court proceedings. Testimonial aids include:

- Allowing victims and witnesses to testify outside the courtroom by **closed-circuit television** or inside the courtroom but **behind a screen** which would allow them not to see the accused.
- Allowing a **support person** to be present while victims and witnesses testify in order to make them more comfortable.

Other measures that may be available for witnesses, and which can help make it easier for them to provide their testimony include:

- **Appointing a lawyer** to cross-examine a witness when the accused is self-represented.
- **Excluding some or all members of the public** from the courtroom during all or part of the court proceedings or allowing the witness to give their testimony from **behind a screen or other device that prevents the witness from being seen by the public**.

A victim's right!

The *Canadian Victims Bill of Rights* came into force on July 23, 2015. This Act gives every victim the right to have their security considered and to have reasonable and necessary measures taken to protect them from intimidation and retaliation. Victims of crime also have the right to request a testimonial aid when they testify as a witness in a criminal court. These rights are part of a victim's right to protection.

Who can get a testimonial aid?

A victim or witness can ask the prosecutor for testimonial aids. The prosecutor can then ask the Court for these special protections before or at any time during the proceedings. A victim or witness can also ask the Court directly for testimonial aids.

How does the Court decide whether to order a testimonial aid?

The Court will consider:

- the age of the witness;
- the nature of the offence;
- the kind of testimonial aid or other measure that is requested; and
- other factors, such as society's interest in encouraging the reporting of crime or the accused person's right to a fair trial.

Testimonial Aids

Victims and witnesses **under the age of eighteen years** or any witness with a mental or physical disability that makes it difficult for them to give their testimony will receive **testimonial aids** when they are requested. The Court must allow the use of the aid unless the Court believes it would interfere with the proper administration of justice by, for example, affecting the right of the accused person to a fair trial.

Other victims and witnesses may receive a testimonial aid if the Court believes it would make it easier for the victim or witness to testify fully and honestly or to serve justice. The Court will consider factors such as the witness' age, the nature of the offence, the nature of any



RIGHT TO INFORMATION



RIGHT TO PROTECTION



RIGHT TO PARTICIPATION



RIGHT TO SEEK RESTITUTION



RIGHT TO MAKE A COMPLAINT



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relationship between the witness and the accused, and whether the testimonial aid is needed for the witness's security. You can find a full list of factors in sections 486.1 and 486.2 of the *Criminal Code*.

Appointment of Counsel

Victims of crime have the right to have reasonable and necessary measures taken to protect them from intimidation or retaliation. On some occasions, it is possible that a victim who is a witness may feel intimidated by an accused who acts as their own lawyer in court and can then cross-examine the victim as a witness. Upon application, the Court can appoint a lawyer to cross-examine the victim instead.

All witnesses, including victims under the age of 18 years or any victim of criminal harassment, sexual assault, sexual assault with a weapon or aggravated sexual assault can ask the Court to **appoint counsel to cross-examine** them when the accused acts as their own lawyer. The Court must grant this protection unless it believes the proper administration of justice requires the accused to cross-examine the witness.

Other witnesses including witnesses who are victims may ask the Court to have counsel appointed for their cross-examination if the Court believes it would allow them to give full and candid testimony or would otherwise be in the interest of the proper administration of justice. The Court will consider factors such as the witness' age, the nature of the offence, the nature of any relationship between the witness and the accused, and whether the order is needed for the witness's security or to protect them from intimidation or retaliation.

A full list of factors can be found in section 486.3 of the *Criminal Code*.

Exclusion Orders

The Court can make an order **excluding some or all members of the public from some or all of the proceedings**. The Court can also make an order allowing the witness to give their testimony from behind **a screen or other device that prevents the witness from being seen by the public**. In making either order, the Court will consider factors such as encouraging the reporting of offences, safeguarding the interests of witnesses under the age of 18 years, whether the order is needed to protect the witness and whether the witness will be able to give his or her testimony without the exclusion order.

A full list of factors can be found in section 486 of the *Criminal Code*.

Can the accused person object to the use of any of these measures?

These measures can assist victims who are witnesses to provide their testimony while also respecting the rights of accused persons. In some cases, the Court may deny or limit the use of these special protections in order to ensure the rights of the accused person are not infringed.

Are testimonial aids new?

Testimonial aids have been part of the *Criminal Code* since 1988. They were most recently amended in 2015 as part of the *Canadian Victims Bill of Rights* to provide greater protection for victims and witnesses.

Where is more information available?

If you or someone you know has been a victim of crime, there is help. All provinces and territories offer services for victims of crime. They can help you if you need information or other assistance. The Victim Services Directory can help you to find victim services near you:

<http://www.justice.gc.ca/eng/cj-jp/victims-victimes/vsd-rsv/index.html>

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