



**Multi-Site Survey of Victims of Crime  
and Criminal Justice Professionals  
across Canada:**

**Summary of Judiciary Respondents**



Policy Centre for Victim Issues



Research and Statistics  
Division

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*The views expressed in this report are those of the author and do not necessarily represent the views of the Department of Justice Canada.*

These summaries are extracted from the ***Multi-Site Survey of Victims of Crime and Criminal Justice Professionals across Canada***, completed by Prairie Research Associates Inc. on behalf of the Department of Justice Canada.

## ***Multi-Site Survey of Victims of Crime and Criminal Justice Professionals across Canada:***

### **Summary of Judiciary Respondents**





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## Introduction

The *Multi-Site Survey of Victims of Crime and Criminal Justice Professionals* was conducted in 2002 under the direction of the Policy Centre for Victim Issues (PCVI) of the Department of Justice Canada in collaboration with the Research and Statistics Division. The PCVI implements the Victims of Crime Initiative which, through the Victims Fund, legislative reform, research, consultations and communication activities, works to increase the confidence of victims in the criminal justice system and responds to the needs of victims of crime as they relate to the Department of Justice.

The purpose of the *Multi-Site Survey of Victims of Crime and Criminal Justice Professionals* is to gather information on a wide range of issues concerning the criminal justice system as it pertains to victims and criminal justice professionals, with a particular emphasis on recent *Criminal Code* provisions, specifically Bill C-79, which was introduced in 1999. This legislation amended the *Criminal Code* in several areas, such as:

- ▶ giving victims the right to read their victim impact statements at the time of sentencing if they wish to do so;
- ▶ requiring the judge to inquire before sentencing whether the victim has been informed of the opportunity to give a victim impact statement;
- ▶ requiring that all offenders pay a victim surcharge of 15% where a fine is imposed or a fixed amount of \$50 or \$100 for summary or indictable offences, respectively, and can be increased by the judge (except where the offender can demonstrate undue hardship);
- ▶ clarifying the application of publication bans and providing a discretion to order, in appropriate circumstances, a publication ban on information that could disclose the identity of victims as witnesses;
- ▶ expanding the protection of victims and witnesses under the age of 18 years from cross-examination by a self-represented accused in sexual and personal violence offences;
- ▶ allowing any victim or witness with a mental or physical disability to be accompanied by a support person while giving evidence;
- ▶ ensuring that the safety of victims and witnesses are taken into consideration in judicial interim release determinations.

To a more limited extent, the survey also explored perceptions regarding amendments recently made to the *Corrections and Conditional Release Act* to provide victims with the opportunity to present prepared victim statements at parole board hearings.

Findings from this study will generate evidence to inform future legislative reforms and policy changes by providing insight on the use and awareness of recent reforms by criminal justice professionals as they pertain to victims of crime, the nature of information provided to victims during the criminal justice process, victims' experiences with the legal provisions and other services that are intended to benefit them throughout the criminal justice process, and barriers to the implementation of recent reforms for criminal justice professionals.

Given the breadth of findings in the final report the PCVI has prepared seven summary reports based on respondent groups in the survey.<sup>1</sup> This report is a summary of the findings from members of the judiciary who participated in the study. Additional summaries are available that speak to the findings of Police respondents, Crown Attorney respondents, Defence counsel respondents, Judiciary respondents, Probation Officers and Parole Officer respondents, Victims of Crime, and Victim Advocacy and Victim Service Organizations.

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<sup>1</sup> The full report and other summaries are available at: <http://canada.justice.gc.ca/en/ps/voc/pub.html> For copies contact the Policy Centre for Victim Issues, 284 Wellington Street, Ottawa, Ontario, K1A 0H8.



## Methodology

The multi-site survey was conducted in 16 sites within the 10 provinces in Canada; the territories were not included in this study. The 16 sites represent five regions: Atlantic (Nova Scotia, Prince Edward Island, New Brunswick, and Newfoundland and Labrador), Quebec, Ontario, Prairie (Saskatchewan and Manitoba), and Western (British Columbia and Alberta). Each region included at least three sites of varying size (small, medium, and large), with consideration of diversity in geography (rural, urban, northern) and population (especially cultural and linguistic). A subcommittee of the Federal Provincial Territorial Working Group (FPTWG) on Victims of Crime guided the research team and recommended some of the locations selected for site visits.

Data for this study came from criminal justice professionals and victims of crime. A total of 112 victims of crime participated in in-depth interviews, which were conducted in order to obtain detailed data on each individual victim's experience in the criminal justice system. Victim services providers assisted in contacting victims and obtaining their consent to participate in the study, which may have introduced selection bias into the research.

Criminal justice professionals who participated in the study were from 10 different groups: judges, Crown Attorneys, defence counsel, police, victim services providers, victim advocacy groups, probation officers, and three types of parole representatives (from the National Parole Board [NPB], Correctional Service Canada [CSC], and the provincial parole boards in Quebec, Ontario, and British Columbia). They participated through either self-administered questionnaires or interviews. Relying on two forms of data collection allowed for the most complete method of gathering information on the research questions. The use of self-administered questionnaires ensured that a large proportion of the criminal justice professionals in each site could participate, while the use of interviews meant that more in-depth, qualitative data could also be obtained.

Interviews were conducted with 214 criminal justice professionals from five respondent groups: victim services providers; police; Crown Attorneys; judiciary; and defence counsel. Interview results were captured as part of the quantitative data corresponding to that generated by the self-administered surveys. Self-administered questionnaires were also distributed to all 10 respondent groups. A total of 1,664 criminal justice professionals completed the self-administered questionnaire. Overall (in interviews and self-administered questionnaires), a total of 1,878 criminal justice professionals participated in this survey.

A total of 31 judges completed interviews, and 79 judges completed self-administered questionnaires (see appendix A for the interview guide and survey).





# Findings from Judiciary Respondents

This section of the report integrates the findings from the survey self-completed questionnaires and interviews with the judiciary.

## 1. Role of the Victim in the Criminal Justice Process

There is considerable agreement among all respondent groups, including judges, that victims of crime have a legitimate role to play in the criminal justice process.

Judges regard the victim primarily as a witness and a source of information. They generally believe that victims are entitled to be consulted to some extent before bail decisions and sentencing. They cautioned that the criminal justice system must deal with the accused in a manner that serves the public interest and protects society. They emphasized that decision-making ultimately must remain with the court and the Crown Attorney, who are more knowledgeable about the law and can be more objective. Concern was expressed that allowing too large a role for victims would erode the principle of innocent until proven guilty and thereby distort the criminal justice process.

**TABLE 1:  
WHAT ROLE SHOULD VICTIMS HAVE IN THE FOLLOWING STAGES OF THE CRIMINAL JUSTICE PROCESS, I.E., SHOULD VICTIMS BE INFORMED, CONSULTED OR HAVE NO ROLE?**

	Victim Services (N=318)	Crown Attorneys (N=188)	Defence Counsel (N=185)	Judiciary (N=110)	Police (N=686)	Advocacy Groups (N=47)
<i>Bail decisions</i>						
Victim should be consulted	64%	48%	34%	46%	59%	70%
Victim should be informed only	32%	42%	49%	40%	35%	30%
Victim should not have any role	2%	4%	17%	9%	4%	--
No response	3%	6%	0%	4%	3%	--
Totals	101%	100%	100%	99%	101%	100%
<i>Plea negotiations</i>						
Victim should be consulted	61%	44%	25%	N/A	N/A	81%
Victim should be informed only	32%	35%	38%	N/A	N/A	13%
Victim should not have any role	3%	14%	37%	N/A	N/A	2%
No response	4%	6%	1%	N/A	N/A	4%
Totals	100%	99%	101%	N/A	N/A	100%
<i>Sentencing</i>						
Victim should be consulted	64%	49%	23%	56%	N/A	75%
Victim should be informed only	31%	36%	54%	33%	N/A	21%
Victim should not have any role	2%	9%	23%	8%	N/A	--
No response	3%	6%	1%	3%	N/A	4%
Totals	100%	100%	101%	100%	N/A	100%

\* Respondents could give only one response. Totals that do not always sum to 100% due to rounding.

## **Bail Decisions**

A substantial proportion of judges surveyed believes that victims should be consulted in bail decisions. They explained in interviews that victims should make their safety concerns known to the police and to the Crown Attorney, whose responsibility it then becomes to bring these concerns forward to the court.

## **Sentencing**

There is also considerable support for consulting victims at sentencing. In interviews, judges said that consultation at the sentencing stage should occur primarily by way of the victim impact statement. In interviews, judges supported consulting victims for sentences served in the community, and a few judges noted that victims have the opportunity to contribute to crafting a sentence when restorative approaches are used. However, there is also general agreement that victims should not have any say regarding the length or severity of sentences. They believe that it is inappropriate for victims to suggest or determine a sentence, since the court is obligated to consider society's interests in sentencing, which may differ from those of the individual victim. From their perspective, introducing a personal or emotional element into sentencing would result in dissimilar sentences for similar crimes based on individual victims' characteristics. Such a practice would threaten the credibility of the criminal justice system.

## **2. Judicial Responsibility**

In both the interviews and self-completed questionnaires judges were asked to describe their responsibility to victims of crime through an open-ended question (i.e., no check list of possible responses was provided). Judges identified responsibilities such as explaining the criminal justice system, keeping victims informed of the status of their case, and providing them an opportunity to be heard and considering their views.

As Table 2 shows, judges believe that their main responsibility to victims of crime is to give victims an opportunity to be heard; 42% of those surveyed mentioned this responsibility. In interviews, judges explained that the judiciary has a responsibility to provide a forum in which victims can be heard, to listen to their views and concerns, and to let them know that the court appreciates their concerns and the harm that has been done to them.



<i>Responsibility</i>	Judiciary (N=110)
Listen to victims or give them an opportunity to be heard	42%
Provide a fair process or maintain an impartial role	18%
Protect the victim	17%
Treat victims with respect	14%
Explain the disposition	10%
Keep victims informed	9%
Apply the law	8%
Explain the law or the criminal justice process	3%
Other	6%
No response	12%

Note: Respondents could provide more than one response; total sums to more than 100%.

Some of the judges surveyed focused on the court's obligations to provide a fair and impartial process that will ensure that justice is done (18%) and to apply the law (8%). In interviews, judges expanded on these ideas, explaining that the judiciary has a responsibility to be fair to everyone who appears before it — whether victim, accused, or other member of the public. Some concern was expressed that since the introduction of victims of crime legislation, it is no longer clear how the judiciary is to balance its responsibility to victims with its responsibility to the accused and to society as a whole. Several judges observed, in interviews, that the judiciary must keep the public interest foremost in mind when balancing the rights of the victim with the rights of the accused.

Judges who were surveyed also mentioned their responsibility to protect the victim (17%), to treat victims with respect (14%), to explain the disposition of the case (10%), and to keep victims informed (9%). In interviews, judges at small sites noted that the judiciary has a responsibility to provide court facilities that allow victims to maintain a sense of dignity. In small rural or remote locations, it can be difficult to provide adequate facilities with separate waiting areas for victim and accused, courtrooms in which victim and accused sit apart from each other, and adequate interview rooms, telephones, and washrooms.

### **3. Bail Determinations**

The 1999 amendments to the *Criminal Code* include several provisions to protect the safety of victims of crime in bail determinations. The provisions direct police officers, judges, and justices of the peace to consider the safety and security of the victim in decisions to release the accused pending the first court appearance; require judges to consider no-contact conditions and any other conditions necessary to ensure the safety and security of the victim; and ensure that the particular concerns of the victim are considered and highlighted in decisions on the imposition of special bail conditions. This section describes judicial practices with respect to victim protection in bail determinations.

95% of judges surveyed said that they generally place conditions on the accused for the safety of the victim in bail determinations. In interviews, judges observed that certain conditions, such as no contact, are applied almost as a matter of course.

More than three-quarters of all judges surveyed consider themselves informed of safety issues in most bail hearings. However, in interviews, several judges said they are not as well informed as they could be, particularly in cases of domestic violence (although others said that safety issues were especially well covered in domestic violence cases). According to judges interviewed, possible ways of ensuring that the judiciary is better informed about safety issues include increased prosecutorial resources to enable Crown Attorneys to devote more time to victims prior to bail hearings; increased number of victim support workers to obtain information from victims about their safety concerns; and the presence of a victim advocate at bail hearings to state the victim's position and safety concerns.

More than three-quarters of judges surveyed ask about safety issues if the Crown Attorney has not mentioned them. However, judges observed in interviews that this is rarely necessary because the Crown Attorney is very diligent about bringing these issues to the attention of the court.

#### **4. Provisions to Facilitate Testimony**

Recognizing that testifying in court can be especially traumatizing for young victims or those with disabilities or victims of sexual or violent offences, the 1999 amendments to the *Criminal Code* included several provisions to facilitate testimony on the part of such witnesses. Publication bans on the identity of sexual assault victims have been clarified to protect their identity as victims of sexual assault offences as well other offences committed against them by the accused. The new provisions also permit judges to impose publication bans on the identity of a wider range of witnesses, where the witness has established a need and where the judge considers it necessary for the proper administration of justice. Other amendments restrict cross-examination by a self-represented accused of child victims of sexual or violent crime; and permit victims or witnesses with a mental or physical disability to have a support person present while testifying. The following sections describe the use of these provisions and other testimonial aids such as screens, closed-circuit television, and videotape.

##### **Publication Bans**

The 1999 amendments clarified that publication bans on the identity of sexual assault victims protect their identity as victims of other offences committed against them by the accused. For example, if the victim is robbed and sexually assaulted, her identity as a victim of robbery could not be disclosed. In addition, the amendments provided for a discretionary publication ban for any victim or witness where necessary for the proper administration of justice.

About one-quarter of judges surveyed reported having granted an application for a publication ban in non-sexual offences. Those who had granted such bans had done so primarily in cases involving child abuse or child welfare, or had granted only partial bans (i.e., on the name of the witness).



## Exclusion of the Public

Judges indicated that exclusion of the public is warranted in only the most exceptional circumstances, since an open court is essential to maintaining public confidence in the criminal justice system. In interviews, they explained that the public should be excluded only if permitting them to be present would interfere with the proper administration of justice and if other testimonial aids and protections would be insufficient to guarantee it; otherwise, the exclusion may give the defence counsel a ground to appeal.

Judges surveyed provided examples of circumstances that warrant a request to exclude the public. They include cases where the witness is vulnerable, fragile, or sensitive, such as child witnesses testifying in matters such as sexual abuse, as well as mentally challenged witnesses, or witnesses in sexual assault or domestic assault cases. Other circumstances include cases where the testimony of the witness would not otherwise be obtained due to extreme stress, embarrassment, or anxiety; and cases where the evidence, if it were public, would pose a risk to the safety or security of the witness (e.g., cases involving police informers or witnesses in witness protection programs). From the perspective of judges, appropriate circumstances are any where exclusion of the public is necessary to ensure the proper administration of justice.

## Screens, Closed-circuit Television, and Videotaped Testimony

There are three testimonial aids designed to assist young witnesses or those with a mental or physical disability, namely the use of screens, closed circuit television, or videotape. After screens, judges are about equally as likely to grant the use of closed-circuit television and videotaped testimony. Please refer to Table 3.

<b>TABLE 3: USE OF SCREENS, CLOSED-CIRCUIT TELEVISION, AND VIDEO-TAPED TESTIMONY IN ELIGIBLE CASES</b>			
	Judges (N=110) <i>Do you generally grant the use of...</i>	Defence Counsel (N=185) <i>Do you generally agree to the use of...</i>	Crown Attorneys (N=188) <i>Do you generally request the use of...</i>
<i>Screens</i>			
Yes	83%	57%	61%
No	6%	39%	32%
No response	12%	4%	7%
<i>Closed-circuit television</i>			
Yes	61%	44%	38%
No	20%	50%	51%
No response	19%	7%	11%
<i>Videotaped testimony</i>			
Yes	60%	24%	56%
No	20%	69%	33%
No response	20%	7%	11%
Note: Responses are not inter-related across groups			

## Screens

83% of judges said that they usually grant requests for the use of screens. Judges explained in interviews that they have no difficulty granting requests for a screen provided that the necessary legal criteria are met. Others said that screens are seldom used or seldom requested; at some large sites, judges explained that screens are not used because of the existence of “child friendly” courtrooms.

## Closed-circuit Television

Of the three testimonial aids, closed-circuit television is the least likely to be requested. 61% of judges surveyed said that they generally grant requests for closed-circuit televisions. As was also the case with screens, judges said that they grant the use of closed-circuit television as long as the legal criteria for its use are met. However, several explained that the necessary technology is not available or seldom used, or that they have never had an application for its use.

## Videotaped Testimony

60% of judges surveyed said that they generally grant requests for videotaped testimony. Judges are willing to grant the use of videotaped testimony where the Crown Attorney has presented a compelling case that its use is necessary, although several judges said that videotape is seldom used or that they personally have never had a request for its use.

## Overall Perceptions

There is considerable willingness among judges to grant the use of testimonial aids in eligible cases. Nevertheless, judges were careful to emphasize the need for the Crown Attorneys to present compelling evidence that the aids are necessary and the need to ensure that the *Criminal Code* criteria for their use are met. Furthermore in interviews, a few judges wondered how effective the testimonial aids really are. Several said that they initially deny the use of aids in order to determine whether witnesses can testify successfully without them. At some of the large sites equipped with child friendly courtrooms, requests for testimonial aids are rarely brought before a judge.

A majority of judges surveyed (60%) believes that testimonial aids are sufficiently available to meet current needs. Those who disagreed pointed primarily to a lack of necessary equipment (especially closed-circuit television) and funding limitations. There was little support among judges who were interviewed for extending the provisions to other types of witnesses, on the grounds that the aids interfere with the right of the accused to confront the complainant; make it more difficult for defence counsel to cross-examine the witness; and make it more difficult for the judge to assess the credibility of the witness and establish truth.

## Support Persons

The 1999 amendments to the *Criminal Code* permit victims or witnesses with a mental or physical disability to have a support person present while testifying. Of the various provisions to facilitate testimony, the use of support persons to accompany a young witness or witnesses with



a physical or mental disability appears to be the least controversial and the most widely used. Among judges, 82% of those surveyed reported that they usually grant requests for a support person.

**TABLE 4:  
USE OF SUPPORT PERSONS IN ELIGIBLE CASES**

	Crown Attorneys (N=188) <i>Do you generally request the use of a support person?</i>	Defence Counsel (N=185) <i>Do you generally agree to the use of a support person?</i>	Judiciary (N=110) <i>Do you generally grant the use of a support person?</i>
Yes	76%	66%	82%
No	16%	30%	6%
No response	8%	4%	13%

Note: Totals may not sum to 100% due to rounding. Responses are not inter-related across groups

More than 80% of judges surveyed reported usually granting requests for support persons. Judges are evidently quite prepared to grant the use of support persons in eligible cases, provided they do not interfere with testimony by attempting to influence or coach the witness, and provided they are not also witnesses in the case. However, several judges said in interviews that it can occasionally be difficult to locate a neutral party to act as a support person in small communities. Furthermore, small sites do not always have facilities (such as separate waiting areas and entrances) to accommodate young witnesses and support persons.

### Section 486 (2.3)

The 1999 amendments to the *Criminal Code* include the provisions in section 486 (2.3), which restrict cross-examination by a self-represented accused of child victims of sexual or violent crime.

### Use of Section 486 (2.3)

Close to one-fifth of judges surveyed reported having had a case where section 486 (2.3) applied. Among these judges a large proportion (84%) said that they would generally appoint counsel for the purpose of cross-examination in those cases. Seven judges in total reported having presided over any cases where they allowed the accused to cross-examine a young victim since section 486 (2.3) was adopted.

## 5. Victim Impact Statements

Victim impact statements (VIS) are written statements in which victims can describe the effect of the crime on them and any harm or loss suffered as a result of the crime. The 1999 amendments to the *Criminal Code* allow victims to read their statements aloud during sentencing, require the judge to ask before sentencing whether the victim has been informed of the opportunity to complete a VIS and permit the judge to adjourn the sentencing, to give the victim time to prepare the statement.

Victims of crime can submit victim impact statements at sentencing and at parole. At parole, the victim can rely on the victim impact statement from sentencing and/or provide another statement to the parole board. The following discussion considers victim impact statements at sentencing only.

## At Sentencing

### *Frequency of Submission*

Judges were asked whether, based on their experience, victims generally submit victim impact statements to the court. About half of judges surveyed believe that victims generally submit victim impact statements only in serious cases, such as sexual assault, other violent offences, and certain property crimes. About one-third think that victim impact statements are submitted in most cases, and sixteen percent reported that in their experience, victims usually do not submit victim impact statements, regardless of the severity of the offence.

The results for frequency of submission of victim impact statements are provided in Table 5. These results include only those respondents who provided an answer to this question.

<b>TABLE 5: DO VICTIMS USUALLY SUBMIT VICTIM IMPACT STATEMENTS AT SENTENCING? BASE: RESPONDENTS WHO PROVIDED A RESPONSE (DON'T KNOW AND NO RESPONSE EXCLUDED).</b>							
	Victim Services (n=195)	Crown Attorneys (n=183)	Defence Counsel (n=174)	Judiciary (n=101)	Police (n=547)	Advocacy Groups (n=38)	Probation (n=88)
Yes, in most cases	48%	32%	38%	33%	34%	42%	34%
Yes, only in serious cases	32%	50%	45%	52%	46%	37%	41%
No	20%	18%	17%	16%	20%	21%	25%

Note: Some column totals do not sum to 100% due to rounding.

### *Method of Submission*

Of the respondent judges with sufficient experience to respond to questions regarding the method of submission of victim impact statements, over 80% agreed that victim impact statements are usually submitted in writing only.

<b>TABLE 6: WHAT ARE THE MOST COMMON METHODS OF SUBMITTING A VICTIM IMPACT STATEMENT AT SENTENCING? BASE: RESPONDENTS WHO PROVIDED A RESPONSE (DON'T KNOW AND NO RESPONSE EXCLUDED).</b>				
	Victim Services (n=194)	Crown Attorneys (n=184)	Defence Counsel (n=180)	Judiciary (n=108)
Written statement only	82%	90%	79%	87%
Victim reads statement	18%	5%	2%	7%
Crown Attorney reads statement	16%	21%	18%	16%
Other	2%	3%	4%	--

Note: Respondents could provide more than one response; totals sum to more than 100%.



## Cross-examination of Victim

The survey results in Table 7 show that about one-tenth of judges have been involved in a case where the victim was cross-examined on his or her impact statement at trial or at sentencing.

<b>TABLE 7: HAVE YOU EVER HAD A CASE WHERE THE DEFENCE COUNSEL OR THE ACCUSED CROSS-EXAMINED THE VICTIM ON THEIR VICTIM IMPACT STATEMENT?</b>			
	<b>Crown Attorneys (N=188)</b>	<b>Defence Counsel (N=185)</b>	<b>Judiciary (N=110)</b>
<i>At trial</i>			
Yes	24%	20%	12%
No	71%	71%	80%
Don't know	3%	4%	3%
No response	3%	5%	6%
<i>At sentencing</i>			
Yes	26%	23%	10%
No	65%	70%	80%
Don't know	6%	3%	5%
No response	3%	5%	6%
Note: Respondents could provide only one response. Some totals sum to more than 100% due to rounding.			

Judges cited the inclusion of contradictory facts or facts not in evidence as some of the few instances where they would allow cross-examination on a victim impact statement.

## Judicial Use of Victim Impact Statements

As mentioned above, under the 1999 amendments to the *Criminal Code*, judges must inquire before sentencing whether the victim has been advised of the opportunity to prepare a victim impact statement and can adjourn the sentencing hearing to allow a victim to be informed and prepare an impact statement. Among the judges surveyed, in cases where no victim impact statement is submitted, one-third (32%) always make this inquiry, and one-fifth (19%) usually do. However, the remaining half said that they sometimes (17%), rarely (16%), or never (14%) ask whether the victim has been informed. Over one-third (36%) of judges reported that they have adjourned a sentencing hearing to permit the victim to be informed.<sup>2</sup>

When victim impact statements are submitted, judges have discretion to disallow parts of the statements. When asked if they have had to disallow parts of victim impact statements, close to half (44%) of judges surveyed said that they have. The most common reasons given for disallowing part of an impact statement included: the statement contained irrelevant or inappropriate content; the statement contained the victim's views on sentencing; and the statement gave a different version of the offence. In interviews, judges said that rather than disallow portions of the impact statement, they usually just disregard the inappropriate sections.

<sup>2</sup> In interviews, one or two judges said that rather than adjourning, they will sometimes ask victims who are in court at the sentencing hearing if they wish to say anything about the impact of the crime at that time. If the victim is prepared to speak to the court, these judges prefer to solicit the victim's input in this way, rather than delaying the process by adjourning.

Under the *Criminal Code*, judges must consider victim impact statements at the time of sentencing. 82% of judges reported that they use victim impact statements in determining the sentence. About two-thirds of surveyed judges provided further comments about their use of victim impact statements. The most common reflections were that victim impact statements are considered like all other relevant information and that judges use them to help determine the length of sentence and the severity of the offence. However, judges also noted in interviews that the use of victim impact statements is carefully circumscribed; while victim impact statements can provide relevant information, they do not and cannot influence sentencing to the extent that they express a desire for outcomes that differ from those defined by the *Criminal Code*.

## 6. Restitution

Restitution requires the offender to compensate the victim for any monetary loss or any quantifiable damage to, or loss, of property. The court can order restitution as a condition of probation, where probation is the appropriate sentence, or as an additional sentence (a stand-alone restitution order), which allows the victim to file the order in civil court and enforce it civilly if not paid.

To determine views on when restitution should be requested, judges were asked when, in their view, restitution is appropriate. Surveyed judges responded that damages must be quantifiable (87%), and the offender must be able to pay (61%). They placed less emphasis on the victim's desire for restitution (32%).

## 7. Victim Surcharge

The victim surcharge is a penalty of 15% where a fine is imposed or a fixed amount of \$50 or \$100 for summary or indictable offences, respectively, and can be increased by the judge. It is imposed on the offender at sentencing and used by provincial and territorial governments to fund services for victims of crime. The 1999 amendments to the *Criminal Code* made the surcharge automatic in all cases except where the offender has requested a waiver and demonstrated that paying the surcharge would cause undue hardship.

### Frequency of Waiver

While over half (58%) of judges surveyed reported that they generally apply the victim surcharge, over a third do not (37%).<sup>3</sup> When those who do not generally apply the surcharge were asked to explain, they reported that they do not apply the surcharge largely because the offender does not have the ability to pay (62%), although a few judges viewed the surcharge as inappropriate (6%) or questioned whether the funds are used to assist victims (5%). A third (31%) of judges reported varying from the minimum surcharge. Of those, a few (3%) reported that they raised the surcharge, however most of the variances were to waive or lower it.

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<sup>3</sup> The remaining 5% did not respond to the question.



## 8. Conditional Sentences

The *Criminal Code* permits judges to order that sentences of less than two years' imprisonment be served in the community instead of in jail. Conditional sentences may be imposed only when the court is convinced that the offender poses no threat to public safety. They are accompanied by restrictive conditions that govern the behaviour of the offender and strictly curtail his or her freedom.

### Consideration of Victim Safety in Conditional Sentences

As Table 8 shows, the vast majority (94%) of judges surveyed usually grant conditions for the victim's safety in conditional sentences.

<b>TABLE 8: USE OF CONDITIONS FOR VICTIM'S SAFETY IN CONDITIONAL SENTENCES</b>			
	<b>Crown Attorneys (N=188)</b> <i>Do you generally request conditions for the victim's safety?</i>	<b>Defence Counsel (N=185)</b> <i>Do you generally agree to conditions for the victim's safety?</i>	<b>Judiciary (N=110)</b> <i>Do you generally grant conditions for the victim's safety?</i>
Yes	93%	94%	94%
No	1%	2%	4%
Don't know	2%	3%	2%
No response	4%	1%	1%
Note: Totals may not sum to 100% due to rounding.			

## 9. Restorative Justice

In recent years, restorative justice approaches have become more widely used at all stages of criminal proceedings. Restorative justice considers the wrong done to the person as well as the wrong done to the community. Restorative justice programs involve the victim(s) or a representative, the offender(s), and community representatives. The offender is required to accept responsibility for the crime and take steps to repair the harm he or she has caused. In this way restorative approaches can restore peace and equilibrium within a community and can afford victims of crime greater opportunities to participate actively in decision-making. However, concerns have been raised about victim participation and voluntary consent, and support to victims in a restorative process. This study included several exploratory questions to discover the extent to which judges have participated in restorative justice approaches and their views on the appropriateness and effectiveness of these approaches.

## Participation in Restorative Justice Approaches

One-quarter of judges indicated that they have participated in a restorative justice process.

<b>TABLE 9: HAVE YOU EVER PARTICIPATED IN A RESTORATIVE JUSTICE APPROACH?</b>							
	Victim Services (N=318)	Crown Attorney (N=188)	Defence Counsel (N=185)	Judiciary (N=110)	Police (N=686)	Advocacy Groups (N=47)	Probation (N=206)
Yes	12%	43%	58%	26%	17%	36%	15%
No	80%	52%	34%	74%	80%	64%	84%
Don't know	5%	4%	5%	--	2%	--	1%
No response	3%	1%	3%	--	1%	--	1%

Note: Some column totals do not sum to 100% due to rounding.

Table 10 below shows that the most common explanations for judges' lack of involvement in restorative justice is that restorative approaches are not available or not yet widely used in their province. Several judges pointed out in interviews that restorative justice tends to be used primarily in rural, northern, or remote Aboriginal communities. Twenty percent of judges explained that restorative justice had never been presented to them as an option by the Crown Attorney or by defence counsel.

<b>TABLE 10: WHY HAVE YOU NOT USED OR PARTICIPATED IN A RESTORATIVE JUSTICE APPROACH? BASE: RESPONDENTS WHO HAVE NOT PARTICIPATED IN RESTORATIVE JUSTICE PROCESSES.</b>							
	Victim Services (n=253)	Crown Attorneys (n=98)	Defence Counsel (n=62)	Judiciary (n=81)	Police (n=549)	Advocacy Groups (n=30)	Probation (n= 172)
Not available	19%	57%	61%	43%	29%	40%	59%
No opportunity or no suitable case	21%	10%	15%	26%	24%	20%	22%
Do not adequately protect victim	10%	18%	--	5%	11%	23%	4%
Do not act as a deterrent	5%	10%	--	6%	13%	13%	3%
Don't know or no response	20%	14%	18%	6%	14%	10%	4%

Notes: Respondents could provide more than one response, but not all responses have been included in this table; totals sum to more than 100%.

In interviews, judges commented extensively on the use of restorative justice. Several suggested that the logistics involved in these approaches are a significant obstacle to their more frequent application. Restorative justice processes are more time-consuming than court processes and demand from community members a significant commitment of time and effort in order to succeed. It is often difficult to identify a group of individuals who are prepared to participate, particularly since these individuals are usually volunteers. In rural areas where participants may be required to travel considerable distances in order to attend restorative processes, the fact that they are not paid for their time or transportation is especially an issue. As a potential remedy to this situation, a few judges suggested promoting less elaborate restorative approaches (e.g., mediation as opposed to community conferencing or sentencing circles).

### Cases where Restorative Justice would be most Effective



Judges were asked to comment in interviews on when they believe that restorative justice approaches would be most effective. They indicated that such processes would be particularly effective in cases involving young offenders, first offenders, and minor property offences. Generally speaking, judges indicated that restorative approaches should not be used for sexual assaults, child abuse, and other violent offences; however, several indicated that some minor assault cases could potentially qualify. Interviewees also suggested that restorative justice would be most effective where an offence affects an entire community or parts of it (e.g., disputes between neighbours or friends) and where the community takes a direct interest in the process and is prepared to participate. As an example, a few judges said that restorative approaches would be particularly effective in Aboriginal communities or other small, tightly knit communities. Several judges expressed a wish to see restorative justice approaches used more often and more effectively in the future, and some added that this will only be possible if resources are committed to creating the necessary infrastructure.

### **Protection of Victim Safety**

Judges were asked in interviews about the importance of consulting the victim in the use of a restorative justice approach. Almost all respondents believe that such consultation is indeed important. There was widespread agreement that in order for restorative justice to adequately address victims' needs, victims should consent to and participate in the process, and that there is less chance of success if such consultation does not occur.

## **10. Impact of *Criminal Code* Provisions**

Judges were asked what, in their opinion, has been accomplished by the *Criminal Code* provisions intended to benefit victims. While they did identify numerous outcomes that they believe have resulted from the *Criminal Code* provisions, about a quarter of judges did not answer this question. About one-quarter of judges (24%) said that the *Criminal Code* provisions intended to benefit victims have provided a more balanced criminal justice system. Judges also noted that the provisions have led to more uniform consideration of victims in the courts and to increased credibility of the system in the eyes of the public.

Judges also mentioned that the provisions have given victims a voice in the system. About one-quarter of judges cited this as an accomplishment of the *Criminal Code* provisions. Some judges also believe that victims are now more satisfied with the criminal justice system. In the survey, 16% of judges listed this as an impact of the *Criminal Code* provisions. In interviews, judges explained further that the provisions have increased victim confidence in the criminal justice system and made victims more willing to participate in it. In the survey, 12% of judges mentioned better protection of victims as accomplishments of the *Criminal Code* provisions.

The results discussed above are shown in Table 11.

<b>TABLE 11: POSITIVE IMPACTS OF CRIMINAL CODE PROVISIONS TO BENEFIT VICTIMS</b>						
	Victim Services (N=318)	Crown Attorney (N=188)	Defence Counsel (N=185)	Judiciary (N=110)	Police (N=686)	Advocacy Groups (N=47)
Gives victims a voice or opportunity for input	11%	25%	12%	27%	9%	15%
More balanced criminal justice system	13%	19%	10%	24%	7%	4%
Victims more satisfied or informed	11%	11%	5%	16%	3%	
Victim testimony or experience easier	--	9%			1%	
Better protection of victims	3%	7%		12%	5%	11%
Victim impact statement positive	5%	3%		8%	2%	
More restitution	--	2%		6%		6%
Don't know or No response	52%	28%	25%	23%	47%	35%

Note: Respondents could give more than one answer; some totals sum to more than 100%.

While these results show that many judges believe that the legislative changes have improved the experience of victims of crime in the criminal justice system, others cautioned that it is impossible to accommodate everything that victims want in an adversarial system. There was considerable concern among judges, as well as Crown Attorneys and defence counsel that the provisions have inadvertently created unrealistic expectations on the part of some victims about both the level of their involvement and how that involvement might affect any decisions made. These respondents worried that if expectations are not met, this could cause disappointment or resentment (16% of judges).

Only 2% of judges indicated concern over the effect of the provisions on the ability of Crown Attorneys to make independent legal decisions in their capacity as representatives of the state. Other concerns about the provisions come primarily from defence counsel. However, 6% of judges commented on the delays in the process caused by the provisions (e.g., the time required to consult with victims or the adjournments needed to inform victims of victim impact statements).

<b>TABLE 12: NEGATIVE IMPACTS OF CRIMINAL CODE PROVISIONS TO BENEFIT VICTIMS</b>						
	Victim Services (N=318)	Crown Attorneys (N=188)	Defence Counsel (N=185)	Judiciary (N=110)	Police (N=686)	Advocacy Groups (N=47)
Delays criminal justice process	--	9%	11%	6%		
Unrealistic expectations on part of victims	--	9%	15%	16%		
Victim impact statement negative	1%	5%			<1%	
Curtails Crown Attorney discretion	--	3%	17%	2%		
Erosion of accused rights	--	--	10%			
Has achieved mainly political objectives	--	--	9%			
Reduces judicial independence	--	--	7%			
Nothing or little has been accomplished	12%	12%	13%	11%	27%	15%
Don't know or No response	52%	28%	25%	23%	47%	35%

Note: Respondents could give more than one answer; some totals sum to more than 100%.



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In summary, while all respondent groups included some comments on the limitations of the impact of the *Criminal Code* provisions, most reflections on the provisions revealed positive accomplishments. The two biggest accomplishments are the creation of a more balanced criminal justice system through increased awareness of the concerns and interests of victims and the provision of more formal mechanisms to ensure that the victims have opportunities to participate and have a voice in the system.





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## Appendix A:

# Interview Guide and Self-Administered Questionnaire for Survey of the Judiciary





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## KEY INFORMANT INTERVIEW GUIDE FOR THE JUDICIARY

The Department of Justice Canada has recently launched a multi-site study of victims of crime and criminal justice professionals. The main objectives of this study are:

- ▶ To provide information on the use and awareness of recent reforms with respect to victims of crime in the criminal justice system
- ▶ To identify any impediments to the implementation of recent reforms by criminal justice professionals
- ▶ To learn what information is provided to victims throughout the criminal justice process
- ▶ To gain a better understanding of the experiences of victims of crime in the criminal justice system and with various victim services.

The following questions address issues relating to the roles of the judiciary and the victim in the criminal justice system, and the implementation of recent reforms to assist victims of crime through the criminal justice process.

### **The role of the judiciary**

1. In your opinion, what is the judiciary's responsibility to victims?

### **The role of the victim**

2. In your opinion, what role should the victim have in the criminal justice system? In particular, please consider bail decisions, plea negotiations, and sentencing.

### **Recent reforms relating to victims of crime**

As you may know, a number of legislative changes at the federal level have been made relating to victims of crime and their participation in the criminal justice system (victim surcharge, victim impact statements, consideration of victim safety in bail decisions, assistance to victims testifying at trial, publication bans, etc.). The following questions address issues relating to the implementation of these provisions.

3. In bail or conditional release decisions, do you generally place conditions on the accused for the safety of the victim? Do you generally ask about safety issues if the Crown prosecutor does not mention them?
4. Do you think that you are adequately informed of safety issues in most bail hearings? If not, what changes would ensure that you are better informed of safety issues?
5. Have you granted an application to exclude the public from a trial? In what circumstances would you grant a request to exclude the public from a trial?

6. Do you generally grant applications for publication bans in sexual assault cases?
7. Have you granted an application for a publication ban in cases other than sexual offences? If yes, in what types of offences?
8. Do you generally place limitations or conditions on publication bans? If yes, what kinds of conditions do you generally order?
9. Do you generally grant requests for the use of a screen, videotape, or closed circuit television for testimony of a young witness or a witness with a mental or physical disability? If no, why not? Do you think that these aids are sufficiently available to meet current needs? Do you think that these aids should be available for other types of witnesses?
10. Do you generally grant requests for a support person to accompany a young witness or a witness with a mental or physical disability? When would it not be appropriate to allow a support person?

Section 486 (2.3) of the *Criminal Code* states that unless required by "*the proper administration of justice,*" a self-represented accused cannot cross-examine a child witness (under 18 years of age). This section is applicable to proceedings where an accused is charged with a sexual offence, a sexual assault under sections 271, 272 and 273, or where violence against the victim is "*alleged to have been used, threatened or attempted.*"

11. Have you ever had a case where section 486 (2.3) applied? If yes, in those cases, did you appoint counsel to conduct the cross-examination of the victim/witness? Have you presided over any cases where you allowed the accused to cross-examine a victim/witness? Why did you decide to allow the accused to cross-examine the victim/witness?
12. Based on your experience, do victims usually submit victim impact statements? What about in serious cases?
13. In cases where no victim impact statement was submitted, do you always inquire whether the victim was advised of the opportunity to prepare a victim impact statement? Have you had to adjourn a sentencing hearing to permit the victim to be informed?
14. What are the most common methods for submitting a victim impact statement (e.g., written only, victim reads, Crown reads, other)?
15. Do you use victim impact statements in determining the sentence? Why or why not?
16. Have you had to disallow parts of victim impact statements? If yes, why?



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17. Have you heard cases where the defence counsel or the accused wanted to cross-examine the victim on his or her statement either during trial or during sentencing? If yes, did you allow it?
  18. Do you generally apply the victim surcharge? Why or why not? Do you ever vary from the usual surcharge? If yes, please explain.
  19. Do Crown usually request restitution as part of the sentence where appropriate? In your view, when is restitution appropriate?
  20. In conditional sentences, do you generally impose conditions to protect a victim's safety?

### **Restorative justice**

Restorative justice considers the wrong done to a person as well as the wrong done to the community. Restorative justice programs involve the victim(s) or a representative, the offender(s), and community representatives. The offender is required to accept responsibility for the crime and take steps to repair the harm he or she has caused.

21. Have you been involved in any restorative justice processes such as healing circles, etc? If yes, please explain. Have you received recommendations on sentencing from a restorative justice process? If you have not been involved in a restorative justice approach, why not?
22. In what kinds of cases do you think that the restorative approach would be most effective? Do you consider it important to consult the victim in the use of a restorative approach?

### **Conclusion**

23. In your opinion, what has been accomplished by the *Criminal Code* provisions intended to benefit victims? Have there been any unintended consequences to these provisions? Please explain.
24. Do you have any other comments?

**Thank you for your participation.**





## Self-Administered Questionnaire for Survey of the Judiciary

1. What role should victims have in the following stages of the criminal justice process?

	Victim should be		Other (specify)	Victim should not have any role
	Informed	Consulted		
Bail decisions	1	2	3 _____	00
Sentencing decisions	1	2	3 _____	00

2. What is the Court's responsibility to victims?

\_\_\_\_\_

\_\_\_\_\_

**The next several questions ask about the use of specific *Criminal Code* provisions intended to benefit victims.**

3a. Do you generally do any of the following: (*Check "Yes" or "No" for each of the following.*)

	Yes	No
Place conditions on the accused for the safety of the victim in bail determinations	1	2
Ask about safety issues if the Crown prosecutor has not mentioned them during bail determinations	1	2
Grant applications for publication bans in sexual assault cases	1	2
Place limitations or conditions on publication bans If yes, what kinds of conditions do you generally order? _____	1	2
Grant requests for the use of a screen for young witnesses or witnesses with a mental or physical disability Comments _____	1	2
Grant requests for the use of closed-circuit television for young witnesses or witnesses with a mental or physical disability Comments _____	1	2
Grant requests for the use pre-trial videotaped testimony for young witnesses or witnesses with a mental or physical disability Comments _____	1	2
Grant requests for a support person to accompany young witnesses under the age of 14 or witnesses with a mental or physical disability Comments _____	1	2

3b. Are you informed of safety issues in most bail hearings?

1 Yes            2 No            8 Don't know

If "No," what changes might ensure that you are better informed of safety issues?

\_\_\_\_\_ 8 Don't know  
\_\_\_\_\_

3c. Do you think that testimonial aids (screens, close-circuit television, videotape, or support persons) are sufficiently available to meet current needs?

1 Yes            2 No            8 Don't know

If "No," why not? \_\_\_\_\_

4. Have you granted an application to exclude the public from a trial?

1 Yes            2 No            8 Don't recall

5. In what circumstances would you grant a request to exclude the public from a trial?

\_\_\_\_\_ 8 Don't know  
\_\_\_\_\_  
\_\_\_\_\_

6a. Have you granted an application for a publication ban in cases other than sexual offences?

1 Yes            2 No            8 Don't recall

6b. If "Yes," in what types of offences?

\_\_\_\_\_ 8 Don't recall  
\_\_\_\_\_  
\_\_\_\_\_

Section 486 (2.3) of the *Criminal Code* states that, unless required by "*the proper administration of justice*" a self-represented accused cannot cross-examine a child witness (under 18 years of age). This section is applicable to proceedings where an accused is charged with a sexual offence, a sexual assault under sections 271, 272, and 273, or where violence against the victim is "*alleged to have been used, threatened, or attempted.*"

7. Have you had a case where Section 486 (2.3) applied?

1 Yes            2 No            8 Don't recall



8. [If “Yes” to question 7] In those cases, would you generally appoint counsel to cross-examine the victim/witness?

- Yes       No       Don't recall

9a. [If “Yes” to question 7] Have you presided over any cases where you allowed the accused to cross-examine a victim/witness?

- Yes       No       Don't recall

9b. If you answered “Yes” to question 9a, why did you decide to allow the accused to cross-examine the victim/witness? (Please describe)

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**The next several questions ask you to consider victim impact statements.**

10. Based on your experience, do victims generally submit victim impact statements to the court? (Check one)

- Yes       Yes, in serious cases       No       Don't know

11. What is the most common method for submitting a victim impact statement?

- Written statement only       Victim reads statement       Crown reads statement

Other (Specify) \_\_\_\_\_

12. If no victim impact statement is submitted, do you inquire whether the victim was advised of the opportunity to prepare a victim impact statement?

- Always       Usually       Sometimes       Rarely       Never

Depends on the case (Explain) \_\_\_\_\_

13. Have you had to adjourn a sentencing hearing to permit the victim to be informed of a victim impact statement?

- Yes       No       Don't recall

14. Do you use victim impact statements in determining the sentence?

- Yes       No       Sometimes

Please explain \_\_\_\_\_

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15. Have you had to disallow parts of victim impact statements?

1 Yes                      2 No                      8 Don't recall

If yes, please explain \_\_\_\_\_  
\_\_\_\_\_

16. Have you had a case where the defence counsel or the accused wanted to cross-examine the victim on their victim impact statement?

	Yes	No	Don't recall
During trial	1	2	8
During sentencing	1	2	8
Other ( <i>Specify</i> ) _____	1	2	8

16a. If "Yes," did you allow it?

	Yes	No	Don't recall
During trial	1	2	8
During sentencing	1	2	8
Other ( <i>Specify</i> ) _____	1	2	8

**The next questions ask about the victim surcharge.**

17. Do you generally apply the victim surcharge?

1 Yes                      2 No

Why or why not? \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

18. Do you ever vary from the usual surcharge?

1 Yes                      2 No                      8 Don't recall

If "Yes," please explain \_\_\_\_\_

**The next questions concern restitution.**

19. Does the Crown usually request restitution as part of the sentence, when appropriate?

1 Yes                      2 No                      8 Don't know



20. In your view, when is restitution appropriate? (*Check all that apply*)

- <sub>1</sub> When the offender can pay restitution
- <sub>2</sub> When damages victim suffered are quantifiable
- <sub>3</sub> When the victim desires it
- <sub>66</sub> Other (Specify) \_\_\_\_\_

**The next question asks about conditional sentences.**

21. Do you generally impose conditions to protect a victim's safety in conditional sentences?

- <sub>1</sub> Yes
- <sub>2</sub> No
- <sub>8</sub> Don't know

The following questions are about restorative justice. Restorative justice considers the wrong done to a person as well as the wrong done to the community. Restorative justice programs involve the victim(s) or a representative, the offender(s), and community representatives. The offender is required to accept responsibility for the crime and take steps to repair the harm he or she has caused.

22. Have you been involved in any restorative justice processes such as a healing circles, etc.?

- <sub>1</sub> Yes
- <sub>2</sub> No

If yes, please explain \_\_\_\_\_  
\_\_\_\_\_

23. Have you received recommendations on sentencing from a restorative justice process?

- <sub>1</sub> Yes
- <sub>2</sub> No

24. [*If "No" to questions 22 and 23, why have you not been involved in a restorative justice approach? (Check all that apply)*]

- <sub>1</sub> Restorative justice approaches are not available
- <sub>2</sub> Restorative justice approaches do not protect the victim adequately
- <sub>3</sub> Restorative justice approaches do not act as a deterrent
- <sub>66</sub> Other (Specify) \_\_\_\_\_

25. Do you consider it important to consult the victim in the use of a restorative justice approach?

- <sub>1</sub> Yes
- <sub>2</sub> No
- <sub>3</sub> Depends (*Please explain*) \_\_\_\_\_

26. In your opinion, in what kinds of cases do you think that the restorative approach would be most effective?

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**The concluding questions ask you to consider all of the *Criminal Code* provisions intended to benefit victims.**

27. In your opinion, what has been accomplished by the *Criminal Code* provisions intended to benefit victims?

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28. Have there been any unintended or unexpected consequences to these provisions?

1 Yes       2 No       8 Don't know

What are they? \_\_\_\_\_

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29. Do you have any other comments?

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**Thank you for taking the time to complete this survey.  
Please return the questionnaire by faxing it back to us toll-free at:**



## For More Information

The complete *Multi-Site Survey of Victims of Crime and Criminal Justice Professionals* report and the summary reports in this series can be ordered from the Policy Centre for Victim Issues, via mail or fax (see below).

These reports will be available online at <http://canada.justice.gc.ca/en/ps/voc/pub.html>

### Summaries Available

*Multi-Site Survey of Victims of Crime and Criminal Justice Professionals: Executive Summary*

*Multi-Site Survey of Victims of Crime and Criminal Justice Professionals: Summary of Victims of Crime Respondents*

*Multi-Site Survey of Victims of Crime and Criminal Justice Professionals: Summary of Victim Services Providers and Victim Advocacy Group Respondents*

*Multi-Site Survey of Victims of Crime and Criminal Justice Professionals: Summary of Judiciary Respondents*

*Multi-Site Survey of Victims of Crime and Criminal Justice Professionals: Summary of Crown Attorney Respondents*

*Multi-Site Survey of Victims of Crime and Criminal Justice Professionals: Summary of Defence Counsel Respondents*

*Multi-Site Survey of Victims of Crime and Criminal Justice Professionals: Summary of Police Respondents*

*Multi-Site Survey of Victims of Crime and Criminal Justice Professionals: Summary of Probation Officer, Corrections, and Parole Board Respondents*

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