

# Some Views on the Sentencing Process

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I operate a programme that provides assistance to victims of crime during the prosecution phase. Currently the programme exists in twenty jurisdictions in Ontario. The people who work in the Programme provide information to victims of crime about the criminal justice process, provide emotional support during the trial and sentencing portions, provide referrals to community agencies for counseling and support services, and most importantly, the Victim/Witness Assistance Programme staff provides information about what the system can and cannot do for the victim in relation to repairing the harm done by the criminal act.

Today, I will speak from the perspective of the victim. I will speak about how the sentencing process can affect the victim. To prepare for this presentation, I asked the staff in the field to provide me with information on how the sentencing process could be improved in order to allow victims to have a better understanding of the sentence given, and also to increase the victim's ability to recover from the harm done. It is important to note that the work of the Victim/Witness Assistance Programme (V/WAP) is largely focussed on preparing victims for the reality that the input they provide to the court will only form part of the information considered by the court. Victims of crime are prepared for their role as witnesses, not as an advice-giver to the judge in relation to the sentence.

Judges can profoundly affect the healing process for a victim and can assist in providing an official end to a destructive period in the victim's life which is often exacerbated by the forced participation in the unknown and unpleasant criminal-justice process. Judicial comment during sentencing can be very powerful for victims and can increase the likelihood of recovery and allow victims the chance to begin to reconstruct their lives.

Professors Anthony Doob and Julian Roberts, then of the University of Toronto, conducted several public surveys concerning the public's knowledge of the sentencing process. I recently re-read a 1983 survey on public attitudes to sentencing where the authors found, among other things, that when people were provided with limited information about the reasons for sentence (for example, what is commonly reported in the media about crime) those people surveyed reported that the sentences given were too lenient. The same people, when given access to more complete information about the factors considered by the presiding judge in determining the sentence, reported that they were more content with the judges' decisions.

The results of the study reflect precisely what the Victim/Witness Assistance Programme staff has reported to me over the last decade of our work. That is, when victims are given the information in the courtroom about the factors the judge considered when deciding on a particular sentence, there is a greater likelihood that the victim will walk away from the process with a feeling that the injuries they sustained were, at least, recognized. With clear information, given in open court, in plain language, it is our experience that victims are more likely to be satisfied that they have been fairly treated. Even if a victim doesn't agree with a particular judges' decision, the victim will at least understand how a judge arrived at the sentence. At a minimum, victims have a right to expect that this information be provided to them.

## **I. UNDERSTANDING THE SENTENCING PROCESS**

Understanding how the judge arrived at a sentence greatly increases acceptance. Victims of crime report that they would like to know how a judge arrived at a particular sentence. For example, it is important that the judge explain the following points :

1. The aggravating and mitigating circumstances that were considered;
2. The weight given to a joint submission;
3. The consideration given to current decisions of the Court of Appeal;
4. The calculation of the sentence, including the time already served by the offender;
5. Whether credit was given for a guilty plea.

It is important to victims to hear these explanations in plain language in open court. Most people do not understand the meaning of legal terminology (for example "the accused waived the preliminary", "dead time", "joint submission").

## **II. VICTIM IMPACT STATEMENTS**

Victim Impact Statements are very important on guilty pleas when the judge has not heard the victim give evidence.

Judges can assist the victims by inquiring whether a Victim Impact Statement was submitted to the crown or the clerk. This serves to ensure that the Victim Impact Statement will be handed over to the court, when it has been requested or when it is available. The police/crown may not have requested one from the victim and the judge, in making this inquiry, may "remind" the crown that this document is required.

It is important that the victim be given an opportunity to present a Victim Impact Statement, either in writing or under oath, because during the trial the victim is only allowed to answer the questions put to her/him by counsel. Providing a Victim Impact Statement allows the victim to feel she/he is playing a larger part in the outcome of the case. Victims report to us that they want an opportunity to tell the court their version of their experience as a result of the criminal offence.

Many times the agreed statement of facts may not resemble the victim's experience and the aggravating details around the incident are not shared with the court. It is critically important to the victim that she/he be allowed an opportunity to describe the short and long term impact on the victim and his/her family (that is, an agreed statement of facts will not likely reflect details that the offender threatened to kill the victim if she reported the offence). This is important information for the victim to relay.

### III. VICTIM'S FAMILY

It is important to acknowledge the victim's/family's trauma and pain/suffering. The healing process for victims and their families is assisted when the victims have the opportunity to share details of their suffering with the court and to feel that the court has given consideration to their words. It is particularly helpful when a judge refers to specific aspects of the trauma and acknowledges the physical/emotional suffering of a victim. When a judge actually quotes from a Victim Impact Statement, a victim can feel that the impact of the offence has been given due consideration. For example, during the sentencing of Paul Bernardo, Associate Chief Justice LeSage read excerpts from the Victim Impact Statements, in open court, from many of the sixteen sexual assault victims. The victims were surprised to hear the judge read the excerpts and were moved to see clear evidence that the judge had read the statements and had considered the descriptions provided by the women of the trauma they had endured at the hands of the offender important enough to be included in the proceedings. The victims reported to us that it was extremely important to them that Associate Chief Justice LeSage had taken the time to read them aloud. These women had endured a wait of six or seven years for the criminal process to end and this act of kindness at the hands of the judge helped the women begin to close the book on a terrible and punishing ordeal.

### IV. THIRD PARTY VICTIM IMPACT STATEMENTS

Give consideration to hearing Third Party Victim Impact Statements prepared by clinicians, psychologists, psychiatrists. Currently, the law allows Victim Impact Statements to be produced by the direct victim or in some cases by a family member. In cases involving child and adult sexual assault it is important to consider accepting Victim Impact Statement reports from third parties — particularly clinicians — about the impact of these crimes on the victim. These reports can offer objective validation of the victim's statements of harm done. These reports can assist the judiciary in understanding the complex repercussions of a sexual assault on victims.

Take into consideration and comment on aggravating factors such as :

1. Evidence that the offender, in committing the offence, abused a position of trust or authority in relation to the victim; and
2. Evidence that the offender, in committing the offence, abused the offender's spouse or child.

Since at the sentencing stage, the guilt of the offender is now a fact, it is important to review your comments in order to avoid making comments about the victim or his/her behaviour, that can be construed by the victim as blaming her/him for the offence.

It is also important not to minimize the offence or the injuries. The people who work in the criminal justice system, used to dealing with the most serious and traumatic cases, sometimes downplay the harm done to victims in cases which appear to be "less serious" in the grand scheme of things. Victims consider the cases in which they are

involved as highly significant, regardless of our view of the seriousness of the case. Comments from the bench, which appear to minimize the harm done to the victim, can be devastating to the victim and irrelevant to the task at hand.

Bear in mind that if the accused enters a plea on the eve of trial, he has not truly "spared" the victim. Yes, the victim benefits from not having to testify a second time, but a victim has already paid a great personal cost in the suffering/anxiety experienced while awaiting trial.

Up until the time the accused pleads guilty, the victim is still preparing for trial. This is very difficult for the victim and it should be noted that any last minute change is disorienting and confusing for the victim.

Alternative forms of Victim Impact Statements which could be considered by the courts as acceptable :

1. Oral Victim Impact Statement given to the court behind a screen or via closed circuit T.V., in appropriate cases;
2. Audio Taped Victim Impact Statements. When a witness is unable to communicate well or at all in writing, this kind of a statement allows the victim a valuable opportunity to speak to the court in a way that makes it much easier for her/him to participate;
3. Pictures of the deceased with Victim Impact Statements. It is our experience that where there is a sentencing on a homicide, it is vitally important to the participating families that the deceased be recognized for the contribution that person had made to the world. Often our Victim/Witness Assistance Coordinators tell families of homicide victims to include a picture of the deceased with the Victim Impact Statement. It is vitally important to the family that the deceased be recognized as something other than the body noted in the pathologist's report;
4. Videotaped Victim Impact Statements. This kind of Victim Impact Statement was accepted by a General Division judge recently in a homicide case in Ontario. The family of the deceased in this case felt very strongly that the court should see their child as she was before she died and acknowledge the lost opportunities for the dead girl. The acceptance of this kind of Victim Impact Statement satisfied the family of the deceased that they were treated respectfully by the court and that their loss was officially recognized.

## CONCLUSION

Judges are perceived by victims to be very powerful. Victims of crime seek to be listened to and acknowledged by the court. Victims of crime consider the case in which they are involved as *very* important. I urge you to take the time necessary to respect the contribution of each victim to the administration of justice. Take the time to acknowledge

the contribution made by the victims and commend them for their strength in participating. This is hard work for victims.

The perception of the system by the victim will be shaped by how he or she has been treated during their dealings with those of us who work in the Criminal Justice System. Because the judge sets the tone in the courtroom, your kindness and consideration for the victim during the sentencing process will form the lasting impression, and one which victims will take away with them. Justice is better served when the victim walks away feeling their contribution has been recognized and respected. It is our experience that victims, when well informed about the process, do not want to do the work of the judge, they just want to be heard.