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Victim Impact Statements: A Role in the Justice System for Women Survivors of Domestic and Sexual Assault

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METRAC

METRAC, Action on Violence

- works to prevent violence against women and youth
- a not-for-profit, community-based organization

www.metrac.org

METRAC's Community Justice Program

- provides accessible legal information and education for women and service providers
- focuses on law that affects women, from diverse backgrounds, especially those experiencing violence or abuse

FLEW, Family Law Education for Women in Ontario

- provides information on women's rights and options under Ontario family law and other relevant laws when families break down
- in 14 languages, accessible formats, online and in print

www.onefamilylaw.ca

www.undroitdefamille.ca

Presenters

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Topics to be Covered

1. What is a Victim Impact Statement (VIS)?
2. Who can prepare a VIS?
3. What can you say in a VIS?
4. Presenting a VIS in Court
5. Does the Court have to accept a VIS?
6. Who can help the survivor with a VIS?
7. Additional Resources

Information is accurate as of April 6, 2016



What is a Victim Impact Statement?

What is a VIS?

Victim Impact Statement (VIS)

- a statement by a victim of a criminal offence
- describes the harm or loss suffered by the victim because of the crime
- must be in writing
- part of how Court decides the sentence for the offender
- under *Criminal Code of Canada*, s. 722

What is a VIS?

Victim Impact Statement (VIS)

- voluntary
- to tell the Court and offender how crime affected the victim's life
- gives victims of crime a voice in the criminal justice system
- victim has a **right** to give a Victim Impact Statement when the Court is determining the offender's sentence

What is a VIS?

Victim Impact Statement (VIS)

- also provided to:
 - the prison system, if the offender is sentenced to jail
 - Review Board, if the offender is found not criminally responsible because of mental disorder
- if the offender may be released early on parole, another statement from the victim is possible
 - called a “Victim Statement”



Who Can Prepare a Victim Impact Statement?

Who Can Prepare a VIS?

Definition of “victim” who can make a VIS:

- A person who suffers as a result of the commission of a criminal offence
 - physical or emotional harm, or
 - property damage or economic loss
- If this person is incapable of giving a VIS
 - a spouse, common law partner, other relative
 - a dependent (child)
 - a person responsible for the care of the victim

Who Can Prepare a VIS?

A person other than a victim affected by the crime

- the statement is on behalf of the victim
- the information in the VIS is gathered from meeting with the victim

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Someone on behalf of a community affected by the crime

- called a “Community Impact Statement”

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What Can You Say in a Victim Impact Statement?

What Can You Say in a VIS?

- A Victim Impact Statement is about the person **affected** by the crime (not the offender)
- Should describe the **impacts** from the crime
- A VIS is written on a form provided by police or the Victim/Witness Assistance Program
- Can include a drawing, poem or letter (e.g. to offender or judge)

What Can You Say in a VIS?

- A VIS can include a description about the emotional impact of the crime:
 - feelings about and reactions to the crime
 - negative emotional impact
 - feelings of loss
 - impact on lifestyle and activities
 - effects on family relationships and friendships
 - changes in ability to work, attend school, study

What Can You Say in a VIS?

- A VIS can include description of the physical impact of the crime:
 - long-term or permanent disabilities
 - hospitalization or surgery
 - physical injuries and treatment
 - physiotherapy, emotional therapy, medication
 - physical limitations
 - ongoing pain or discomfort
 - scarring or disfigurement

What Can You Say in a VIS?

- A VIS should include any concerns about the offender and the **victim's personal safety, safety of family or friends**
- VIS can give ideas for a probation order that would help the victim, such as:
 - no contact from the accused (in person or through messages)
 - no access to weapons
 - no use of alcohol or drugs
 - attendance at counselling

What Can You Say in a VIS?

- A VIS can include description of the financial impacts of the crime:
 - medical expenses not insured
 - cost of therapy or counselling
 - lost wages
 - lost job
 - difficulty finding work
 - property damage or loss and cost to repair or replace

What Can You Say in a VIS?

- A VIS explains financial impact of crime, but might not lead to repayment
- A victim has the **right** to have the Court consider ordering the offender to pay “restitution”
- “restitution” means money to repay a person for a loss

Statement of Restitution

- Victim can fill out a “Statement on Restitution” and present with a VIS
- A Statement of Restitution includes
 - description of financial loss
 - amount and total of financial loss
 - should include copies of bills, estimates for costs, receipts for payments

Payment of Restitution

- A Court can order the offender to pay money to the victim as restitution for financial losses because of the crime
- If the offender does not pay:
 - the victim has the right to take the restitution order to civil court
 - the order can become a civil court judgment
 - the civil court can force the offender to pay

Other Options

- Criminal Injuries Compensation Board
 - for victims of violent crime
 - perpetrator does not have to be charged or convicted
 - government pays money for financial loss (not perpetrator)
- Civil court action (lawsuit)
- Human Rights Tribunal of Ontario
 - in cases of discrimination based on protected grounds in the *Human Rights Code*

What Can You Say in a Community Impact Statement (CIS)?

- A **Community Impact Statement** may include:
 - feelings of community members about the crime
 - negative emotions, feelings of loss
 - impact on community members' lifestyle and activities
 - changes in ability to work, attend school, study among community members
 - effects on community members' relationships with each other and outside the community
 - community's sense of belonging in the region

What Can You Say in a CIS?

- A Community Impact Statement may include:
 - change in ability of community members to access services, transportation
 - economic impact from loss of tourism
 - loss of property, reduced property values
 - fear for community members' safety and security, including family and friends

What Should Not be in a VIS or CIS

- A VIS or CIS is **not** about the offender
- A VIS or CIS should not include:
 - angry comments or criticism of the offender
 - description of the events of the crime
 - unproven events or offences not part of this finding of guilt
 - suggestions for the sentence, unless the Court allows
 - complaints about anyone other than the offender in this case (e.g. lawyers or police)

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Presenting a Victim Impact Statement in Court

Presenting a VIS in Court

- A VIS is prepared after the offender is found guilty
- The judge must ask before sentencing
 - if the victim knows about the chance to give a VIS
 - must ask victim, or Crown Attorney (government lawyer), or person representing victim
- The Court may give the victim time to prepare a VIS before sentencing

Presenting a VIS in Court

- The offender has the right to see the VIS
- VIS must be given by Crown Attorney or Court to offender's lawyer
- Offender's lawyer has the right to ask the victim questions about the VIS
- The offender has the right to be in the Court while the VIS is read
- VIS must be written, but does not have to be read out loud in the courtroom

Presenting a VIS in Court

- If the victim requests, the Court must allow:
 - victim to read the VIS out loud in Court, and
 - to have a support person nearby in Court
- Victim can choose to read the statement from outside of the courtroom or behind a screen so the victim does not have to see the offender:
 - offender will still be able to see the victim
- Court can agree to hear statement in any other way
 - someone reads the VIS for the victim

Presenting a VIS in Court

- Judge can allow a photograph of the victim to be shown in Court during the reading of a Victim Impact Statement
- VIS is part of Court hearing and a public document
- VIS is included in any publication ban regarding the identity of the victim



Does the Court Have to Accept a VIS?

Does the Court Have to Accept a VIS?

- A victim has the right to present a Victim Impact Statement in the criminal justice system
- The Court must consider a VIS that is presented in accordance with the rules, when deciding on sentencing the offender
- The Court will only take into account the parts of the VIS it considers relevant for sentencing



Helping a Survivor Prepare a VIS

Helping to Prepare a VIS

Victim/Witness Assistance Program (V/WAP)

- assists victims and witnesses of crime during criminal court process
- explains court procedures
- provides support to victims of intimate partner assault and sexual assault as well as other specific kinds of crime

Helping to Prepare a VIS

V/WAP worker can:

- explain the purpose of a Victim Impact Statement
- ensure victim knows when a VIS can be presented in Court
- provide the VIS form(s)
- explain what information the victim may include in a VIS

Helping to Prepare a VIS

V/WAP worker can:

- provide the Victim Impact Statement to the Crown Attorney
- provide emotional support during the preparation of the VIS
- accompany victim when reading the VIS in Court
- help arrange for other options to present the VIS (e.g. screen or outside of courtroom)
- assist victim with any questions or concerns about the VIS, the offender or the court process



Review Questions

Review Question 1

Annie's partner Sam has been convicted of aggravated assault and is about to be sentenced. Annie wants the judge to know how hard it has been for her and her son since Sam was arrested.

Annie has put lots of detail in her Victim Impact Statement about how the assault has affected her health and emotions, made it impossible to work for awhile, and affected her son's grades at school.

But she doesn't want to face Sam in the courtroom when her statement is read.

Does she have to be in Court and read the Victim Impact Statement for the judge to consider it?

Review Question 1

- a) Yes, Annie has to be in the courtroom and read the VIS, otherwise the judge won't consider it.
- b) No, Annie doesn't have to read the VIS, but she does have to be in court when it is read.
- c) No, the VIS can be presented in court without Annie reading it, or being in court at all.

Answer 1

c) No, the VIS can be presented in court without Annie reading it, or being in court at all.

A VIS has to be written, but does not have to be read in Court to be considered by the judge. Also, Annie does not have to be in the courtroom when the VIS is entered as an exhibit.

The judge can allow the VIS to be presented in any way she or he considers appropriate. For example, the Crown Attorney may read out all or portions of the statement, or the judge can read it to herself/himself. If Annie wants to read it, but doesn't want to see Sam, arrangements can be made for her to read it from behind a screen or from outside the court room.

No matter which way the VIS is presented in Court, the judge must consider it and take into account the relevant information to help determine Sam's sentence.

Review Question 2

Jared, the guy who sexually assaulted Alia, has pled guilty. They go to the same university, they were on a date when it happened, and she is glad the whole court process is almost over.

But she is worried that he is going to do it again to other women, and she's pretty sure he has done it before, because he was suspended from school for a while.

Alia wants to put in her Victim Impact Statement that this guy is a repeat offender who is likely to assault another woman if he doesn't get a serious sentence.

Can Alia put these things in her Victim Impact Statement?

Review Question 2

- a) No, because you can't talk about the offender's character in a Victim Impact Statement.
- b) No, because she can't talk about anything that Jared did that is not related to the offence he has been found guilty of.
- c) No, because you can't suggest what the sentence should be in a VIS.
- d) All of the above.

Answer 2

d) All of the above

Alia cannot put in her Victim Impact Statement that Jared is a repeat offender who is likely to assault another woman if he doesn't get a serious sentence.

Some of the reasons this would not be within the acceptable content of a Victim Impact Statement:

The purpose of a VIS is to tell the impact on the victim from the crime, not to discuss the character of the offender. Alia's belief that Jared has assaulted or will assault other women is not factual information about the event that he has been found guilty of. Finally, the judge, not the victim, decides the appropriate sentence, after taking into account the effects of the crime on the victim.

Review Question 3

The Feminist Women's Collective on campus has been supporting Alia through her ordeal, and the group has noticed how many other women on campus are afraid, dropping night courses, and boycotting the pub where Jared worked. The campus has not been the same since Alia was assaulted.

The Collective wants to write a statement for the Court about how Alia's sexual assault has changed life on campus. But they can't, because they are not the direct victim of the offence, or a relative of Alia's.

- a) True
- b) False

Answer 3

b) False

It is possible for a representative of the community affected by a crime to present a Community Impact Statement to the Court.

The Feminist Women's Collective could write a Community Impact Statement about the impact of the crime on their group, or on the campus community as a whole. The impact could be emotional (anxiety and disruption), physical (dropping classes), financial (from lost courses, less pub business, or fewer new students and staff) and fears for security (concerns about offender's continued presence on campus).

Review Question 4

Alia is afraid Jared will come back to school and harass her because she reported him to the police.

Can she say this in her Victim Impact Statement?

- a) Yes
- b) No

Answer 4

a) Yes

If Alia is afraid of Jared, this is very important to include in her Victim Impact Statement.

First, this is part of the emotional impact that the crime has had on her.

Second, the VIS has a section for victims to describe any fears for security. It is possible for the Court to include a Probation Order in the sentence, that puts limits on Jared's behaviour, to help Alia feel safe. It would help for Alia to say what would make her feel safe, such as an order that Jared cannot come near her, her residence, her classes, and cannot contact her directly or through friends.

Presenters

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Additional Resources

Additional Resources

Ministry of Attorney General – Victim/ Witness Assistance Program (V/WAP)

<http://www.attorneygeneral.jus.gov.on.ca/english/>

211 Canada.ca – Finding Community Services in Ontario

<http://211canada.ca/>

Additional Resources

Victim Crisis Assistance Ontario (VCAO)

- Immediate, on-site service to victims of crime 24 hours a day, 7 days a week
- Toll-free: 1-888-579-2888
- Toronto: 416-314-2447

Victim Support Line (VSL)

- province-wide, multilingual, toll-free information line providing a range of services to victims of crime
- Services available from 8 a.m. to 10 p.m., 7 days a week in 13 languages
- Toll-free: 1-888-579-2888
- Toronto: 416-314-2447

Victim Services in Ontario

<http://services.findhelp.ca/ovss/>

Court Prep

www.courtprep.ca

- provides information on the Canadian legal system and prepares victims and witnesses to give evidence

Additional Resources (General)

Online forms

<http://www.ontariocourtforms.on.ca/english/family/>

Ontario Court Forms Assistant

<https://formsassistant.ontariocourtforms.on.ca/Welcome.aspx?lang=en>

- Get help online to complete family court forms

Ontario Courts

<http://www.ontariocourts.on.ca/>

- Online guide provides an overview of all courts in Ontario
- Information on family courts:
 - Superior Court of Justice <http://www.ontariocourts.ca/scj/en/famct/>
 - Ontario Court of Justice <http://www.ontariocourts.ca/ocj/family-court/overview/>

Ontario Court Locations

http://www.attorneygeneral.jus.gov.on.ca/english/courts/Court_Addresses/

- Find court addresses across Ontario

Domestic Violence and Abuse

For information, if your partner or family member is abusive or violent:

Assaulted Women's Helpline <http://www.awhl.org/>

- 24 hours/7 days; multiple languages
- Toll-free: 1-866-863-0511; TTY: 1-866-863-7868

Legal Aid Ontario http://www.legalaid.on.ca/en/getting/type_domesticviolence.asp

- Available to every immigration status
- Free telephone interpretation services for languages other than English and French
- Toll-free: 1-800-668-8258; TTY: 1-866-641-8867

Family Violence Authorization Program (Legal Aid Ontario)

- Free 2-hour emergency meeting with a lawyer
- Offered through some shelters and community legal clinics
- Toll-free: 1-800-668-8258; TTY: 1-866-641-8867

FLEW (Family Law Education for Women) Resources page

<http://www.onefamilylaw.ca/en/resources/>

Domestic Violence and Abuse

Barbra Schlifer Legal Clinic

- Toronto: 416-323-9149 x278 (legal intake) TTY: 416-3231361
- Free counselling, referral, legal and interpreter services to survivors of violence (Family, Criminal and Immigration law)

Domestic Violence and Abuse

Network of Sexual Assault/Domestic Violence Treatment Centres

www.sadvtreatmentcentres.net

Ontario Coalition of Rape Crisis Centres

www.sexualassaultsupport.ca/

Ontario Association of Interval and Transition Houses (OAITH)

<http://www.oaith.ca/>

Family Court Support Workers

- Check local community agency or call Toll-free:1-888-579-2888 or 416-314-2447

Additional Resources (Family)

Legal Aid Ontario

<http://www.legalaid.on.ca/en/getting/default.asp>

- Toll-free: 1-800-668-8258; TTY: 1-866-641-8867
- Toronto: 416-979-1446 (accepts collect calls)

Family Law Information Centres (FLICs)

http://www.legalaid.on.ca/en/getting/type_family.asp

Family Law Services Centres (FLSCs)

<http://www.legalaid.on.ca/en/contact/contact.asp?type=flsc>

Family Law Education for Women (FLEW)

<http://www.onefamilylaw.ca/en/resources/>

Femmes ontariennes et droit de la familles (FODF)

<http://undroitdefamille.ca/>

Ontario Women's Justice Network (OWJN)

www.owjn.org

Additional Resources (General)

Law Society of Upper Canada Lawyer Referral Service

<http://www.lsuc.on.ca/with.aspx?id=697>

- Toll-free: 1-800-268-8326
- Toronto: 416-947-3330
- TTY: 416-644-4886

Toolkit for a good Client-Lawyer Relationship

<http://schliferclinic.com/vars/legal/pblo/toolkit.htm>

- Barbra Schlifer Commemorative Clinic

Ministry of the Attorney General

<http://www.attorneygeneral.jus.gov.on.ca/english/>

- Toll free: 1-800-518-7901
- TTY: 1-877-425-0575

Find a community legal clinic near you

<http://www.legalaid.on.ca/en/contact/contact.asp?type=cl>