

The Impact of Murder on the Family Unit

Dealing With the Criminal Judicial System and the Correctional Service of Canada

Criminal Judicial System

Most Canadians have very little to do with the criminal judicial system throughout their lives. Perhaps the odd minor infraction or the responsibility to appear in order to be considered for jury duty. It is a very foreign world, confusing and complicated, especially for victims of major crimes. Each of the key elements of the criminal judicial system – the investigation, the prosecution, the sentencing and prison/parole, take you on a complex journey; a journey that no one would ever wish for.

During the first element, the investigation, the person charged with the murder (the accused) is presumed to be innocent. As a survivor of a homicide victim it feels like an inordinate amount attention is being paid to the accused and his/her rights. It seems like so much more care and attention is being paid to his/her rights that to the victim's rights or those of the victim's family. This is not just a perception. The Canadian Charter of Rights and Freedoms guarantees that an accused person has the right to be presumed innocent and has a right to a fair trial. While one may not agree with every decision made or understand them all, it must be kept in mind that many decisions are made because of these guaranteed rights. One might often wonder – What about the victim's rights? What about his/her basic right to life?

In Canada, once a death has been ruled a homicide and a suspect is arrested and charged, he/she has a constitutional right to reasonable bail unless there is some compelling reason to deny it. A hearing will be held where a judge decides whether to release the accused person before the case is dealt with in court. The Crown and defense summarize the evidence against the accused and the judge decides whether the accused can be released into the community or keep him/her in custody. The judge will consider a variety of factors including whether the accused person has a criminal record, the seriousness of the charge, whether it involves any violence etc. The judge must consider the safety or security of the public and the risk of the accused fleeing.

The second element of the criminal judicial system is difficult for many victims to understand and it is that the criminal judicial process is not necessarily a search for the truth. At best, it is a qualified search for the truth. The evidence presented in court or put before a judge/jury may not be the complete story as you know it or believe it to be. Evidence that you think is important may not be allowed for complex legal reasons. At trial, the burden of proof is on the Crown. The Crown must prove the accused is guilty beyond a reasonable doubt. The defense is not obliged to prove innocence and is not obligated to call any evidence or witnesses. The accused has the right to remain silent and does not have to testify. A trial is not necessarily about what has happened, but what can be proved given legal constraints.

The criminal judicial process can be long and very difficult for survivors. Survivors have very little say in the proceedings since the only two parties involved are the offender and the state while the survivor is, at most, a witness for the prosecution. At sentencing, survivors do have the right to present a victim impact statement to explain to the court the impact the crime has had on them (financially, physically and emotionally). Some expect that when the trial is over, a sentence is imposed and the perpetrator is incarcerated, that you will have closure or a sense of closure. Not true! There is no closure! Yes, for some, the conclusion of a trial may be an important part of their healing journey. For others, it does very little to address their needs or questions. Your loved one is still dead. Unlike the accused, you have a life sentence with no chance of parole; ever!

Correctional Service of Canada

If the offender is convicted of murder or manslaughter and given a sentence of more than two years, he/she will go to a federal prison and become the responsibility of the Correctional Service of Canada (CSC).

A very important program implemented in 2007 and managed by CSC is the National Victim Services Program (NVSP). Through this program, CSC is committed to working with victims of federally incarcerated offenders by providing them with their legally entitled rights to information about their offender. The information that can be disclosed to victims is contained in the Corrections

and Conditional Release Act (CCRA). The CCRA is based on the Canadian Statement of Basic Principles of Justice for Victims of Crime which is intended to guide federal and provincial governments in the development of legislation and policy. This statement of basic principles was created in response to the 1985 United Nations' Declaration of Basic Principles of Justice for Victims of Crime, and with concern for the harmful impact of criminal victimization on individuals and society. Also, it recognizes that all persons have the full protection of rights guaranteed by the Canadian Charter of Rights and Freedoms and other provincial Charters governing rights and freedoms. As well, the rights of victims and offenders need to be balanced; under the shared jurisdiction of federal, provincial and territorial governments. Therefore, the federal, provincial, and territorial Ministers Responsible for Criminal Justice agreed in 2003 that the following principles should guide the treatment of victims, particularly during the criminal judicial process.

1. Victims of crime should be treated with courtesy, compassion and respect.
2. The privacy of victims should be considered and respected to the greatest extent possible.
3. All reasonable measures should be taken to minimize inconvenience to victims.
4. The safety and security of victims should be considered at all stages of the criminal justice process and appropriate measures should be taken when necessary to protect victims from intimidation and retaliation.
5. Information should be provided to victims about the criminal justice system and the victim's role and opportunities to participate in criminal justice processes.
6. Victims should be given information, in accordance with prevailing law, policies and procedures, about the status of the investigation; the scheduling, progress and final outcome of the proceedings; and the status of the offender in the correctional system.
7. Information should be provided to victims about available victim assistance services, other programs and assistance available to them, and means of obtaining financial reparation.
8. The views, concerns and representations of victims are an important consideration in criminal justice processes and should be considered in accordance with prevailing law, policies and procedures.
9. The needs, concerns and diversity of victims should be considered in the development and delivery of programs and services, and in related education and training.
10. Information should be provided to victims about available options to raise their concerns when they believe that these principles have not been followed.

As a result of the above principles the NVSP makes available to survivors various information concerning the offender. To be considered by the NVSP it is the survivor's responsibility to contact the program and register. Once registered the NVSP can provide survivors with information such as:

- Offender's name;
- Offence and the court that convicted the offender;
- Offender's sentence start date and length of sentence;
- Dates on which the offender will be reviewed for and eligible for temporary absences and parole.

In addition to the above, if the survivor's interest clearly outweighs any invasion of the offender's privacy, a victim may also receive a variety of other information about the offender. Generally, it is not common for this to be withheld from victims due to such privacy concerns. The additional information that can be provided includes:

- The location of the penitentiary in which the sentence is being served;
- The offender's age;
- The date when the offender is to be released on any form of release, temporary absence, or parole;
- Any of the conditions attached to the offender's unescorted temporary absence, parole or statutory release and the reasons for any unescorted temporary absence;
- The offender's destination upon any form of release, absence, or parole and whether she or he will be in the area of the victim at any point in his or her travels;

- The reason for any temporary absences;
- Whether the offender is in custody and if not, the reason that the offender is not in custody;
- The reason why an offender is transferred from one institution to another, including advanced notice, whenever possible, of transfers to minimum-security institutions;
- Information about the programs in which an offender is participating or has participated; and
- Any serious disciplinary offences committed by the offender.

The NVSP can help survivors in a variety of other ways as well. NVSP can assist survivors in having their voices heard on matters relating to parole by helping them to complete and submit impact statements to the National Parole Board. NVSP can also provide information on the types of financial assistance they may be eligible for to attend parole hearings. If a survivor requests further support or professional services (regarding such things as counselling or legal assistance for example) the NVSP is able to refer the survivor to such services within their community. Furthermore, the NVSP can help to facilitate victim-offender mediation by providing them with information on CSC's Restorative Opportunities Program and referring them to the appropriate coordinator in their area.

An important responsibility of CSC, which has a major impact on survivors of homicide victims, is parole. Parole gives an offender a chance to finish the rest of his or her sentence in the community. This is done under the supervision of a CSC Parole Officer, with conditions that an offender must follow to reduce his or her risk of re-offending and to protect the community. According to the CCRA all offenders must be considered for some form of conditional release during their sentence. Conditional release does not mean the sentence is shortened.

The Parole Board of Canada (PBC), an independent administrative tribunal, is responsible for making parole decisions. There are two types of parole, day parole and full parole:

- Day parole (DP) gives an offender a chance to participate in community-based activities while serving his or her sentence (e.g. employment, volunteer work, studies). This will prepare an offender for release on full parole or statutory release. While on day parole, an offender must return to his or her community-based residential facility at the end of each day. He or she must meet regularly with a Parole Officer.
- Full parole (FP) lets an offender serve the rest of his or her sentence under supervision in the community. While on full parole an offender is normally allowed to live on his or her own but needs to report to a Parole Officer on a regular basis. During these meetings, the offender must let the Parole Officer know if anything changes with his or her release plan or life situation.
- PBC hearings are normally held in the prison where the offender is. As a survivor, one may attend a parole hearing and present a victim statement (orally, in writing or recorded) concerning the continuing impact of the crime and any concerns the survivor has for his or her safety or the safety of the community.
- Information about the harm victims have suffered is important in cases where the PBC must decide whether to detain an offender in custody until the end of his/her sentence, and to assess the offender's release plans and the conditions required to manage a particular risk to society that the offender might present, especially if the offender will be near the victim or is a member of the victim's family.

Offenders serving sentences for first-degree murder become eligible for unescorted temporary absences and day parole three years before their full parole eligibility date (normally 25 years). An offender may apply for escorted temporary absences after admission to a federal institution. The sentencing judge determines when people convicted of second-degree murder are eligible for consideration for parole, which can be set between 10 and 25 years. Inmates incarcerated for second-degree murder become eligible for consideration for unescorted temporary absences and day parole three years before their full parole eligibility date. If an offender doesn't follow his or her parole conditions, parole can be suspended and/or revoked. This means the offender could be returned to an institution. If anyone with a life sentence does get parole, he/she remains on parole for the rest of their lives.