

Checklist of Changes Arising From Bill C-32 (The Canadian Victims Bill of Rights)

Bail

s.515(13) requires that, if an order is made, there be a statement that the safety and security of every victim of the offence was considered

Pre-Trial

Appointing Counsel to Cross-Examine Witnesses

- s.486.3(1) makes it mandatory for witnesses under 18 on application by Crown or the witness, **unless** the judge finds that cross-examination by the accused is needed for the proper administration of justice
- s.486.3(2) applies the same test to all victims of offences under 264, 271, 272, or 273
- s.486.3(3) permits a judge to make such an order in all other cases if found necessary for the witness to give a full and candid account or would otherwise be necessary for the proper administration of justice

Publication Bans

- s.486.4(1) adds historical sex offences where there was a violation of the complainant's sexual integrity
- s.486.4(2.2) requires a judge to inform a victim of any offence under 18 as soon as feasible of their right to apply for such an order and requires the order to be made on the application of the victim or the prosecutor
- s.486.5(1) amends the provisions for permissible publication bans in other cases, changing the test to "in the interest of the proper administration of justice" and in s. 486.5(7)(b) changes the factor re harm from substantial to any

Orders for Non-Disclosure

- s.486.31 allows for an order prohibiting disclosure of any information that could identify a witness if it is in the interest of the proper administration of justice. s.486.31(2) permits the hearing to be in private and s.486.31(3) lists the factors to be considered
- For disclosure of third party records in sexual offence cases, changes are:
 - o s.278.2(1) adds historical sexual offences where sexual integrity is violated as qualifying offences
 - o s.278.3(5) lengthens the notice period, unless the judge allows a shorter time in the interests of justice, from 7 to 14 days
 - o s.278.4(2.1) requires a judge to inform complainants, witnesses, persons in control of such records and other persons to whom the record relates of their right to be represented by counsel at the disclosure hearing
 - o ss.278.5(2), 278.7(2) and 278.7(3) add the security interests of the complainant, witness or other persons to whom the record relates as a relevant factor

Trial

Testimonial Aids

- s.486.1(1) requires that a support person be permitted to be close to a witness under 18, or who has a mental or physical disability **unless** this would interfere with the proper administration of justice
- s.486.1(2) adds the factor of being in the proper administration of justice as the basis for authorizing a judge to order this for other witnesses
- s.486(2.1) lowers the standard for permitting a witness under 18, or who has difficulty testifying by reason of physical or mental disability, to be given outside the courtroom or behind a screen, to when it would facilitate the giving of a full and candid account or is in the interests of the proper administration of justice
- s.486(2.1) also permits the application to be made to any judge

Sentencing

Plea Arrangements

- s.606(4.1) requires a judge, after accepting a guilty plea in cases of serious personal injury offences as defined in s.752, to ask the prosecutor if reasonable steps have been taken to inform the victim of the plea agreement
- s.606(4.1) requires a judge, after accepting a guilty plea in cases of an indictable offence subject to a sentence of five years or more, to ask the prosecutor if the victim has expressed a desire to be informed of the plea agreement and, if so, whether reasonable steps have been taken to inform the victim of the plea agreement

Sentencing Principles

- s.718 is amended to make protection of society the fundamental purpose of sentencing
- s.718(a) adds denouncing harm done to victims or the community as an objective
- s.718.2(e) adds that harm done to victims or the community shall be considered in determination of whether sanctions other than imprisonment are appropriate

Victim Impact Statements

- s.722(2) requires a judge, before imposing sentence, to ask the prosecutor if reasonable steps were taken to provide the victim with an opportunity to prepare a victim impact statement
- the new Form (34.2) allows the victim, with the Court's approval, to express an opinion or recommendation about the sentence
- s.722(5) specifies options for the manner of presenting the statement
- s.722(6) permits the victim, or their representative, to bring a photo of the victim taken before the offence if it would not disrupt the proceedings

Community Impact Statements

- s.722.2 permits community impact statements in the prescribed form in all cases

Restitution Orders

- s.737.1(1) requires a judge to consider a restitution order in all cases
- s.737.1(2) requires a judge to ask the prosecutor if reasonable steps have been taken to give the victims an opportunity to say whether they are seeking restitution
- s.737.1(5) requires a judge not making an order to give reasons for not doing so
- s.739.1 confirms that an offender's inability to pay does not bar such an order (but, as Sanjeev Anand's paper points out, case law makes this inability, and the impact of restitution on rehabilitation, as factors to be considered)

Canada Evidence Act

- s.4(2) now that the accused's spouse is competent and compellable to testify for the prosecution. Spousal privilege remains under s.4(3) preventing compelling a spouse to disclose communications made during their marriage.