

Thierjer, Lisa (JUS)

From: St. Hill, Jacqueline (JUS)
Sent: Mar 17, 2008 2:42 PM
To: McFetridge, Glenn (JUS)
Cc: Slough, Don (JUS); Thierjer, Lisa (JUS)
Subject: Victims Bill of Rights Information -- Taman Inquiry
Importance: High
Attachments: Victim Services/VBR/HTA Fatality Cases; Sent on behalf of Jacqueline St. Hill; RE: Victims' Rights Registration forms; RE: Victims Bill of Rights --- Counsel retained by Victims; RE: Victims Policy; VBR AND PRISM USE; FW: Victims' Bill of Rights

Glenn,

Further to our conversation, attached are e-mails that have gone out to "All Crowns"/"All Prosecutions Staff" in relation to VBR in the last couple of years.

These do not all appear currently in the Intranet version of the VBR Policy Manual.

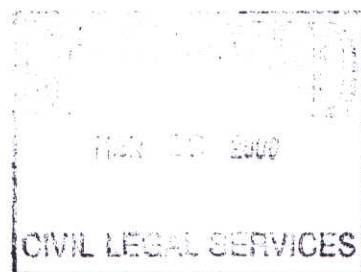
The e-mail dated June 21, 2005 was only directed to the Winnipeg Supervising Senior Crowns as a consideration for when they were assigning cases. Our process of case assignment has since changed, but you'll see that the issue at that point related to a systems gap.

I will also send up a hard copy of e-mails and attached memos from:
 July 8, 2004
 March 17, 2004
 January 21, 2003
 February 2, 2002

For your information and assistance,

Jacqueline St. Hill
 Director
 Winnipeg Prosecutions
 5 - 405 Broadway
 Winnipeg R3C 3L6
 phone: (204) 945-3228
 fax: (204) 948-2392
 email: Jacqueline.StHill@gov.mb.ca

NOTICE: The information contained in this transmission is confidential and intended only for the use of the individual or entity to whom it is addressed. If you are not the intended recipient, you are hereby notified that any distribution, copying, disclosure and use of, or reliance on, the contents of this transmission is strictly prohibited. If you have received this communication in error, please notify the sender immediately by telephone and permanently delete the original message, attachments and all copies.



3335

Mar 17, 2008

VICTIM SERVICES

1.0 INTRODUCTION

Manitoba Justice Victim Services helps victims of the most serious crimes as outlined in *The Victims' Bill of Rights*, victims of domestic violence and child victims and witnesses. In Winnipeg, services are divided into specialty units. The type of crime determines which unit will help the victim. In rural Manitoba, crime victim service workers provide a range of services in each of the above categories of crime. Crime Victim Service Workers (CVSWs) represent the Minister of Justice and conduct themselves professionally. All CVSWs act as "agents of the Crown"¹.

In general, Victim Services provides information about the criminal justice system, helps people access their rights, understand their responsibilities and connects them to other services or agencies as their matter proceeds through the court.

2.0 OBJECTIVES

- To interpret and explain the complexities of the Criminal Justice process in a way that is understandable to the victim
- To provide information and assistance to victims of crime regarding the criminal incident, their eligibility for *VBR* registration, victim impact statements, compensation for victims of crime and other victim related programs and support services
- To identify and assess high risk cases and promote client safety through careful analysis of risk factors and safety and protection planning
- To offer information about and assist with protective relief orders
- To provide short term counselling and to identify immediate physical, social and emotional needs
- To liaise with police, prosecutions, probation, courts and corrections officials to ensure that victims receive accurate information and that they are able to voice their concerns.
- To address victims' emotional variability by diffusing situations and debriefing with victims throughout the court process in a respectful manner
- To assess victims' abilities to testify by looking at developmental/social/psychological factors and tailor the court preparation process accordingly
- To assess fears and concerns about the court process and help to alleviate them by normalizing and demystifying the criminal justice system

¹ *Agents of the Crown - Crime Victim Services Workers act as representatives of Crown attorneys when dealing with victims, and therefore, have access to the same information as Prosecutions.

OBJECTIVES CONTINUED...

- To consult with the Crown attorney where necessary to ensure that information provided to victims is accurate and up to date
- To work as a team member to co-ordinate victim access to the criminal justice system by making recommendations and relating concerns and accurate information to the appropriate justice partner – police, Crown, Courts, Corrections
- To provide court support and accompaniment on a priority basis
- To inform the victim and collateral agencies about the status of the case upon request
- To provide community referrals to victims for further support
- To provide written information concerning victims and post them in PRISM for the Crown's review

3.0 STANDARDS

- Manitoba Justice Victim Services Programs are voluntary
- Clients throughout the Province are able to access services
- First contact is made as soon as possible with clients. In domestic violence matters, CVSWs contact clients within 48 hours of notification of an incident, where possible
- Each contact with a client, either by phone, letter or in person, is documented in PRISM
- Domestic violence high risk clients are seen within one week
- Safety and protection planning is always discussed where appropriate

4.0 ABBREVIATIONS

CVSW.....	Crime Victim Service Worker
CVSS.....	Child Victim Support Service
DVSS.....	Domestic Violence Support Service
VRSS.....	Victim Rights Support Service
DVIU.....	Domestic Violence Intervention Unit
DV Memo	Domestic Violence Memo
PIS.....	Police Information Sheet
POD.....	Protection Order Designate

5.0 INITIAL CONTACT

A. Policy

Upon notification of an incident, the support staff or CVSW creates a VR file/holding file in PRISM. CVSWs document all contact and correspondence with victims/witnesses in PRISM. Situations that cross assignment areas and require the involvement of more than one CVSW are usually assigned to the worker who meets with and develops a rapport with the complainant. Ongoing work with these complainants is co-coordinated between CVSWs through consultation and collaboration.

B. Procedure

- The assigned CVSW and in some instances, support staff, send out the appropriate introductory **letter**, **fact sheet** and **insert card** to the victim.
- In CVSS and VBR matters where letters are initially sent, CVSWs will follow-up with a phone call if no response is received from the complainant within a reasonable timeframe.
- In domestic violence matters, the assigned CVSW will attempt to contact the complainant by telephone prior to sending out a letter.
- Once direct or telephone contact has been made with the victim, it is not necessary to send out a letter or insert card except:
 - in *VBR* matters; and
 - in pre-charge situations (excluding warrant status) where an introductory letter is sent to indicate what charges have been laid.
- CVSWs encourage complainants to book an in person appointment to discuss their concerns and the court process.
- CVSWs that have telephone or direct contact with complainants, explain the purpose of the program and outline the way in which the information gathered will be used.
- If the complainant would like to speak to the Crown attorney, the CVSW provides him/her with the direct phone number to the assigned Crown, if indicated.
- Staff who work with individuals pre-charge create a holding file and document all contact in PRISM. Once a PR file has been created in PRISM, the CVSW will ensure that the information is associated.
- It is imperative that CVSWs create a system to track their *VBR* cases so that they are aware of impromptu changes in court dates or file activity. CVSWs also review all of their cases on PRISM weekly to ensure proper case management.

6.0 DOCUMENTATION

A. Policy

All communication (e-mail, in-person, phone, and letter) between the CVSW and the victim **must be** documented in PRISM.

B. Procedure

- All information entered into PRISM should be relevant, clear and concise.
- Agreements made between the CVSW and the victim about how services will be provided must be documented in PRISM (e.g. victim would only like to be notified of preliminary hearing or trial court date)
- Where possible, domestic violence memos are completed within 48 hours after initial face-to-face (and in some cases telephone) interviews with domestic violence complainants.
- Domestic Violence CVSWs apprise Crown attorneys of existing DVIU files by entering a file note on the VR side of PRISM. If domestic violence CVSWs are notified of pre-existing DVIU files, they enter a file note on the VR side indicating same (e.g. DVIU file exists). However, if a new DVIU incident occurs that is related to a file that is already open to a domestic violence CVSW, the worker will note the incident number, the date of the offence and detail a brief summary of the incident in a file note on the VR side. If the DVIU file contains important details that are relevant to the criminal matter, the CVSW will e-mail the Crown directly and indicate where the information can be found.
- All auto-registered *VBR* complainants are always registered for specific rights in PRISM. However, if there are outstanding warrants, CVSWs will initially offer standard, reach-out services to complainants and register them for their rights once the warrants have been executed.
- CVSWs document all conversations with other justice professionals e.g. police officers, correctional officers, community victim service providers, shelter workers, etc. in PRISM.
- If *VBR* complainants or their next of kin indicate, either verbally or in writing, that they do not want to receive services, the file will be closed.
- All CVSWs send standard letters from PRISM.
- Relevant outlook e-mails are posted into PRISM.
- When regional CVSWs are at a circuit court location, client contact information should be posted into PRISM within 48 hours, or as soon as practically possible.
- If CVSWs receive victim impact statements, they ensure that the VIS box in PRISM is checked and that the original is forwarded to the Crown's office.

7.0 COURT ORIENTATION AND ACCOMPANIMENT

A. Policy

Court orientation is provided to victims who have been subpoenaed to testify in court prior to a trial/preliminary hearing. If time permits, CVSWs will try to provide court accompaniment to victims who will be testifying in court.

B. Procedure

- Whenever possible, CVSWs will attend to an empty courtroom to explain the set up of the courtroom, the roles of the various participants involved and where they will be positioned (except for the accused, given the possibility that the complainant may be asked to identify the accused during the criminal proceeding). See Best Practices Manual
- Upon request, CVSWs may help victim/witnesses complete victim impact statements. (See Best Practices Manual)
- CVSWs will monitor victims' support networks and abilities to handle the court proceedings when determining whether or not to accompany them to court.
- CVSWs are reminded that court accompaniment is not a right or entitlement under *The VBR* and as case loads increase it may not be possible to spend extended periods of time providing court accompaniment.
- If court accompaniment requires travel beyond the "normal range" (e.g. overnight stay), CVSWs will gain approval from their supervisor prior to making any commitments to victims.
- The morning of court, CVSWs may assist Crown attorneys by enabling complainants to review their statements prior to preliminary hearing or trial dates.
- The day of court, CVSWs will meet complainants/parents/guardians at their office or in the victim waiting room at the court office (if available). If necessary, CVSWs explain any legal information for the victims/parents/guardians prior to court.
- At times CVSWs may be asked by the Crown attorney or complainants to be present during meetings between defence counsel and complainants. During the meetings, CVSWs act as observers and provide verbal summaries on important issues to the Crown attorneys. Workers may be asked to testify about the content of the conversation between defence counsel and the complainant.
- Prior to meetings with defence counsel, CVSWs will advise complainants that:
 - They are not obligated to meet with defence counsel
 - They can choose to meet with defence counsel in the presence of the Crown attorney
 - Anything shared during the meetings can be disclosed to the court and the accused
 - They can choose to share what they want and refuse to answer any questions
 - They can leave the meeting at any time

Court Orientation and Court Accompaniment (cont.)

- They are not obligated to discuss family proceedings
NOTE: In child victim/witness matters, the Crown attorney will always be present in meetings with defence counsel.
- CVSWs inform Crown attorneys and other court personnel where victims can be found when it is time to testify.
- CVSWs wait with the victims/witnesses in the waiting room, or agreed upon location, until they are called to court to testify.
- CVSWs escort complainants into and out of the courtroom and remain in the courtroom as support for the victims, if required and if time allows.
- If complainants identify safety concerns while at the courthouse, CVSW will refer them to the sheriff or, in Winnipeg, the Victim/Witness Assistance Program
- In child victim matters, CVSWs ensure that evidence is not discussed prior to testifying. If the parent/guardian is required to testify, CVSWs will sit with children in the waiting room (if available) until the parent has finished testifying, if necessary.
- If safety concerns are identified in the courthouse, the CVSW will alert a sheriff or the victim/witness assistance program.
- Once victims/witnesses have testified they may choose to either stay or leave. If they choose to leave, CVSWs will encourage them to follow-up with their assigned CVSW to find out about the outcome of the case. CVSWs also provide victims with the court information contact number. If complainants request a copy of any disposition information, CVSWs will send them out by mail. In the case of a preliminary hearing, CVSWs encourage complainants to remain in contact with them to find out about Queen's Bench trial dates.
- In situations where cases in rural areas are set for a Queen's Bench trial in Winnipeg and there is a scheduling conflict for the regional CVSW, the regional worker will liaise with the Winnipeg CVSW to coordinate services in order to ensure that the needs of complainants are met.
- CVSWs will also assist in court preparation where the matters occur in another jurisdiction but the complainants are now in Manitoba. CVSWs document assistance with out of province matters in a holding file in PRISM.

8.0 REFERRAL

A. Policy

CVSWs assess the degree to which the victim has been traumatized and the type of assistance that the victim or family/next of kin requires.

B. Procedure

- CVSWs make referrals to the appropriate counselling resources.
- CVSWs help clients gain access to therapy and other services through the Compensation for Victims of Crime Program. If necessary, CVSW may assist with the completion of the application form.
- CVSWs refer complainants who are appropriate for priority placement housing to women's resource centers or shelters. Unlike, Victim Services, these agencies meet Manitoba Housing's requirement to act as a source of referral by maintaining ongoing continuous contact with clients.
- Where appropriate, CVSWs ensure that complainants have detailed protection plans in place and offer information about protective orders that may be applicable.
- CVSWs explain the options to clients in relation to orders of protective relief and will assist with protection order applications. If CVSWs are unavailable or have had little contact with the protection order applicant, they will connect the individual with a DVIU worker or Protection Order Designate.
- In Winnipeg, CVSWs refer high-risk cases, to the Criminal Organization, High-Risk Offender Unit (COHROU). In consultation with the Crown attorney, the CVSW will recommend to the domestic violence manager that a matter be brought to COHROU. The manager will bring appropriate cases to the COHROU steering committee to determine if an offender is put on their caseload. If the offender is accepted, the CVSW will liaise with the COHROU officer in dealing with the victim.
- In extremely high risk cases, where normal safety and protection planning measures are inadequate, CVSWs will refer the matter to the Director of Victim Services for consideration for further protective measures (e.g. re-location). These files are referred to as 900 files.
- When an assault against a child has occurred, the CVSW will contact Child and Family Services (CFS) and inform an intake worker. Follow-up calls are also made to CFS if the worker believes that the child may be at risk or has witnesses abuse.
- If offenders are sentenced to six months or more in custody, CVSWs will provide complainants with application packages to the National Parole Board. The provision of packages to complainants is documented in PRISM.

Note: CVSWs can not act as agents for complainants who complete National Parole Board applications but do not want to receive the information directly.

9.0 INFORMATION SHARING

A. Policy

CVSWs have the authority to collect information outside the police report under section 37(2) of *The Freedom of Information and Protection of Privacy Act*.

B. Procedure

- Before speaking to complainants in-depth, CVSWs outline the role of the program and the purpose of their discussion (e.g. to relay information to Crown attorneys so that they are aware of complainants' concerns).
- Complainants are informed that their information is confidential within the justice system, unless they disclose issues of child welfare, self-harm or harm to others. Domestic Violence complainants should also be informed that portions of their information outlined in the memo to the Crown may be shared in court.
- All complainants are provided with information on how to contact their CVSW, either in-person or by letter so they can follow-up with them if they have further questions.
- Under section 44 of *FIPPA*, CVSWs are able to discuss safety issues concerning complainants with other justice employees and outside agencies.
- If outside agencies request information from CVSWs (or vice versa) relating to complainants that is outside the realm of the information normally provided to the public, CVSWs will ask complainants to sign consent for release of information forms. These forms are used on rare occasions and will only be used in situations that meet the best interests of the complainant, within the parameters of the program. It is sufficient if complainants fax or mail the signed and witnessed consent forms to the office. All requests for release of information should be discussed with the CVSW's manager.
- In some situations, Probation Services is required to contact domestic violence victims. Upon request from a Probation Officer, CVSWs will contact victims and ask them if they would like to contact the probation officer directly or if they would like the officer to call them.
- CVSWs cooperate with Probation Officers in relation to pre-sentence/pre-disposition reports by clarifying whether or not victims (who are mandated under the program) have completed victim impact statements (e.g. reporting on the status of the statements) and identifying if ongoing contact will be maintained with victims. In some situations, CVSWs may follow-up with complainants to explain the purpose of victim impact statements and determine whether or not they plan to complete the forms in the future.
- Requests by Family Conciliation to share information about victims are addressed by confirming whether or not we have had contact with the victim and describing the purpose of our program. Confidential client information is not revealed.

Information Sharing (Cont.)

- When sending out copies of protective orders or dispositions to complainants, CVSWs black out the following information:
 - The accused person's address
 - The names of any other victims mentioned on the order
 - Whether the individual is a ward of CFS
 - Charges or convictions against a young offender that do not relate to the victim
- In child victim matters, protective orders or dispositions are only sent out upon request by the victim/witness or parent/guardian.

10.0 PRACTICAL ASSISTANCE FOR IMPROVED ACCESSIBILITY

A. Policy

CVSWs offer short-term supportive resources to assist complainants before and during the court case.

B. Procedure

- Based on the CVSW's discretion, payment for babysitting may be offered to complainants when they book appointments. The following guidelines apply:
 - no financial ability to pay for a babysitter
 - no appropriate family member to care for the children
 - only babysitting for travel and appointment time will be covered
 - the complainant is responsible for finding and paying the babysitter
 - the complainant is paid when s/he meets with the CVSW
 - the complainant signs a receipt for babysitting
- A cab may be sent as a last resort under the following conditions:
 - the complainant has a handicap/disability that prevents the use of public transportation
 - the complainant is an elderly person who has hampered mobility
 - the complainant has safety concerns
- If the complainant expresses that s/he is unable to pay for public transportation CVSWs may (where available) provide complainants with bus ticket(s) when they arrive for their appointment.
- If a victim is subpoenaed to testify in court, the Prosecutions Division is responsible for covering travel and accommodation expenses (if necessary) for victim/witnesses.
- If a complainant does not speak English or has a difficult time communicating in English an interpreter is provided. In Winnipeg, CVSWs access interpreters through The International Centre's Language Bank, Immigrant Women's Center or another appropriate designated interpretation center.
- Home visits are arranged **ONLY** in exceptional situations e.g. the client is physically unable to attend to the office or the client lives in a rural area and is unable to access transportation
 - CVSWs will seek approval from their manager before going on a home visit
 - CVSWs have a personal safety plan in place when visiting complainants outside the office and if possible attend with a police/probation officer
 - Home visits are not conducted in domestic violence matters if the accused is released from custody; unless the worker is escorted by a law enforcement officer
 - When meeting the complainant outside the office, the meeting location and expected time of return is provided to another staff person

Practical Assistance for Improved Accessibility (cont.)

- CVSWs must take a cellphone with them on each visit
- A government vehicle may be used if available
- CVSWs who are required to work alone refer to the Human Resources Working Alone Guide <http://www.jus.internal/hrs/hrinitiatives/healthwellness/worksafe.html>.

11.0 CLOSING FILES

A. Policy

Once a case has been disposed of, CVSWs change the status of the file from active to closed. In child victim and *VBR* matters, the CVSW will indicate in PRISM that the matter was disposed of and the date and type of disposition.

B. Procedure

- In situations where CVSWs are aware of the disposition of a matter they will attempt to inform complainants directly prior to sending out information relating to the disposition of a case (copies of orders).
- CVSWs obtain copies of relevant orders, and if appropriate, send the victim or the parent or legal guardian a copy, especially if there are NCC/NTA conditions in effect. As per section 9.0, "Information Sharing", certain information is blacked out before the orders are sent to complainants.
- If a complainant has sporadic contact with a CVSW after a file has been closed, the CVSW can enter the information into a communication log or file note without changing the status of the file to "active" again.
- If a domestic violence complainant contacts their CVSW after a file has been closed, the CVSW will search all DVIU holding files to determine whether or not the complainant has been involved in a no-charge domestic violence incident. If the CVSW has had ongoing contact with the complainant, the worker will enter a file note on the DVIU holding file and contact the DVIU worker directly to indicate that s/he will follow-up with the complainant regarding the no-charge situation. In addition, the CVSW will also note in the DVIU holding file, the VR file number where the documentation can be found. **Note:** If the CVSW has had minimal contact with the complainant, the CVSWs may decide (in consultation with the DVIU worker) that the matter will continue to be covered by the DVIU worker.
- If a CVSW has ongoing contact with an individual after the file has been closed (e.g. CELL program client, appeal filed) the CVSW will change the status of the file to "active" again and transfer it from the Central File Room (CFR) to their barcode.
- If a matter is appealed, the case will be re-opened when notification of same is obtained. The client will be notified of the appeal process.
- Once a file is closed, CVSWs affix a label indicating the year that the file was closed and move the physical file to the closed section of the file room. Closed files are sorted alphabetically.

12.0 COMMUNITY OUTREACH

A. Policy

CVSWs regularly attend various resource centres and agencies to provide on site services to victims and information to staff employed at various facilities.

B. Procedure

- CVSWs give presentations about the Victim Services Branch to police, Probation Services, Prosecutions, shelters and resource centres
- CVSWs consult with staff from other agencies to provide the best service to victims
- CVSWs meet with clients at other agencies to provide them with information about victim services' programs and court processes.
- Victim Services trains community Protection Order Designates (POD) to assist individuals in obtaining protection orders and provides ongoing service information and case consultation.
- Victim Services coordinates and provides training for the CELL (Cellphone Emergency Limited Link-up) program that loans domestic violence and stalking victims free cellphones pre-programmed to dial 911 at times of extreme risk. The program is a co-operative effort between MTS, Nokia, Starcom, 27 social service agencies throughout Manitoba, police services and Manitoba Justice.

13.0 DOMESTIC VIOLENCE SUPPORT SERVICE

13.1 Introduction

The Domestic Violence Support Service (DVSS) formerly the Women's Advocacy Program (WAP) was established in 1986. It was one of the first programs of its kind in North America. It is a free service that helps victims of domestic violence where criminal charges have been laid against their partners. The primary goal of the program is to advise victims of domestic violence of their rights and responsibilities and to offer them support while the charge proceeds through court.

Unlike other victims of crime, victims of domestic violence often face complex relationship issues with the offender. CVSWs explain the cycle of violence, how the cycle may affect victims and their families and how to escape from it. They also help victims to develop protection plans to increase their personal safety and to provide cellphones to women who qualify for the CELL Program. CVSWs also explain how to get and use orders of protective relief and make referrals to other agencies and/or resources (treatment programs, shelters, and support groups).

13.2 Eligibility

Individuals whose partners or ex-partners (heterosexual or same sex couples) have been charged with domestic violence are eligible for services from DVSS. CVSWs will meet with male heterosexual victims upon request by the Crown attorney. If the complainant is 14 years or older and in a non-exploitive, peer-like, domestic relationship, the DVSS (as opposed to the CVSS) will provide service. The program does not provide long-term counselling.

13.3 Notification

In Winnipeg, incidents of domestic violence are brought to the attention of the CVSWs through the Winnipeg Police Service (WPS) and/or Crown referrals. The support staff obtain information from RMS (Record Management System) daily, collate it into alphabetical order and provide the assigned CVSWs with the relevant information. In Winnipeg, support staff will notify domestic violence CVSWs if the DVIU staff has had contact with any complainants assigned to their caseload.

In rural Manitoba, CVSWs either photocopy first appearances at the court office or receive referrals from a variety of sources including police agencies, women's shelters, Crown attorneys, defence lawyers and self-referrals.

13.4 Interviews

A. Policy

When providing services to victims of domestic violence, CVSWs try to meet with complainants so they can provide Crown attorneys with domestic violence (DV) memos outlining the information discussed during the interviews.

B. Procedure

- CVSWs review the files and identify the next court dates before meeting with complainants.
- In **cross-charge** situations, the “Double Domestic” letter is sent to the complainant. If the complainant contacts the worker directly, an appointment can be scheduled while the charges are still proceeding through court, **only** to discuss safety planning. CVSWs do not discuss the charges that are pending because it may place them in a position of having to testify in court. In these situations, domestic violence memos that outline the complainant’s safety and position on contact may be written.
- Upon Crown referral, CVSWs will meet with male victims in heterosexual relationships, where the matter is legitimate and serious and the male does not have a previous history of domestic violence charges. In these situations, the CVSW will complete a domestic violence memo. CVSWs always try to avoid a conflict of interest when meeting with complainants.
- In most circumstances, CVSWs meet with complainants alone. However, if the complainant is under 18 years of age, the CVSW will request that a parent or guardian be present, at least for part of the meeting. In special circumstances, the CVSW will meet with the complainant alone (e.g. independent living).
- If the complainant is over the age of 14 and would like the NCC/NTA conditions to be removed from the order, s/he does not have to gain consent from a parent/guardian. However, the parent/guardian can influence if and where the complainant and the accused have contact.
- The purpose of the program is explained.
 - DVSS is part of the justice system. CVSWs are counsellors and they do not have the authority to affect change to the charges.
 - CVSWs advocate and support victims through the court process when their partners have been charged with domestic violence. Safety planning is discussed. Victims are given an opportunity to voice their concerns to the Crown attorney in the form of a memo that is posted in PRISM by the CVSW.
- Confidentiality and the responsibility of the CVSW to disclose certain information to a third party is outlined e.g. child welfare issues, suicidal tendencies/attempts.
- CVSWs explore the history of the relationship with the client, e.g. length of relationship, children, previous history of abuse, the character of their relationship.

Interviews (cont.)

- CVSWs gain a general understanding of the complainant's perception of the incident, but do not discuss incident details in depth.
- CVSWs explore complainants' wishes about what they would like to see happen with the court case:
 - To rehabilitate the accused (depending on the criminal history of the accused)
 - To address safety concerns and have NCC/NTA conditions remain in effect
 - To encourage the accused to take responsibility for his behavior
 - To have NCC/NTA conditions varied
- The cycle of violence and protection planning are always reviewed with the complainant and s/he is given the related handouts.
- CVSWs take rough notes during the interview and place them in the physical file.
- Complainants are offered referrals to resources for on-going support.

13.5 Protection Order Removal

A. Policy

Upon request by the judiciary, CVSWs meet with applicants who request the removal of a protection order prior to the judge granting his/her decision.

B. Procedure

- If victims request the variation/removal of a Protection Order, they must attend to the law courts, pay a fee and fill out an "Application for Removal Form" on their own.
- Before a Protection Order is removed, the Clerk of the Court of Queen's Bench, on behalf of the Judge, may send a referral form to Victim Services requesting that a CVSW schedule an appointment with the client to discuss safety and protection planning. CVSWs may also proactively meet with applicants prior to hearing dates.
- The CVSW completes the standardized Protection Order Removal form and faxes or e-mails it to the Clerk prior to the next court date. Where applicable, the CVSW will amend the form to indicate if criminal charges are pending, if the complainant is being coerced or if CFS has concerns about the removal of an order.
- If possible, CVSWs review the original Protection Order. However, because the purpose of the meeting is to discuss safety issues and implications for the client if the order is removed, reviewing the original order is not a mandatory requirement. Original Protection Orders can be obtained from the Court of Queen's Bench Clerk.
- A copy of the report is kept on the CVSWs file. If there is no pre-existing physical file the report will be placed in a general Protection Order Removal file for one year before being archived.

13.6 Memo Writing

A. Policy

Memos reflect information, which is pertinent to Crown attorneys and that is gathered during interviews with complainants.

B. Procedure

- Where possible, DV memos are completed within 48 hours of meeting with a complainant.
- Memos are written for a variety of reasons. Depending on the reason, the format of the memo may change slightly e.g. Crown referral, Probation Variation, High Risk Client (See Best Practices Guide)
- The memo is divided into three sections: summary, general information and safety concerns.
- Summary:
 - The Summary outlines (in a couple of sentences) the complainant's desire for the future of his/her relationship with the accused and any concerns regarding the NCC/NTA conditions on the order.
- General information includes:
 - information relevant to the prosecution, including all information identified as important by the victim e.g. the future of her/his relationship with the accused, her desires for the outcome of the case (if the client requests that the accused attend counselling, indicate what kind)
 - history of abuse – triggers, alcohol/drugs, mental health issues
 - type of contact, if any, the client wants with the accused and the reasons for the contact.
 - client's desire to have conditions on the order changed
 - clients willingness to testify
 - clients' desire to recant or assert that they lied. When meeting with a **recanting** or non-confirming complainant, email the crown to advise that a memo has been posted and add the line "complainant not confirming" to the email to give the Crown a heads up
 - complainant's concerns regarding the incident - focus is given to general terms in order to get a sense of the client's perception of the incident. Indicate if:
 - the incident was confirmed or not

13.7 Intake Procedures

A. Policy

In both Winnipeg and the rural areas, CVSWs on intake duty prepare clients for and accompany them to court. In rural Manitoba, these duties are completed by one CVSW in unison with the other tasks outlined previously. Given the volume in Winnipeg, however, domestic violence CVSWs rotate through a schedule where they are responsible for intake for one week.

B. Procedure

- In Winnipeg, CVSWs accompany complainants who have requested support during their court case. CVSWs attend to the Victim/Witness office at or before 9:00 a.m. in the morning to provide assistance to complainants who have questions or concerns about their partners/ex-partners case. The Victim/Witness Assistance office and Crown attorneys refer complainants who need support to the CVSWs.
- While at court, CVSWs collaborate closely with Crown attorneys.
- In cases where court accompaniment is prearranged with the CVSW, the worker sets a time to meet the person at the Victim/Witness Assistance Office or the rural court office. The CVSW reviews the complainant's file and may bring a copy to confirm the information and determine if there are any changes. The complainant is given the option of reviewing his/her statement while waiting to meet the Crown attorney (See Best Practices Manual).
- In Winnipeg, while at the court office the CVSW retrieves court orders from the appropriate mail slot.
- In Winnipeg, CVSWs address the needs of all walk-in clients (such as booking appointments and listening to concerns). When booking appointments for walk-in clients in Winnipeg, the CVSW meets with the client in his/her office and gives the complainant a card containing the appropriate CVSWs contact information. If a client has already scheduled an appointment with the appropriate CVSW but would like to meet with someone immediately the intake worker will see if the assigned CVSW is available.
- In Winnipeg, complainants may attend to courtroom 308 and request to express their wishes and concerns on record. In these situations, JJPs (Judicial Justice of the Peace) may call and request that the intake worker meet with the complainant in 308 to discuss the implications of voicing his/her concerns in court in this manner. CVSWs advise the complainant that addressing the court will not accomplish anything and that it could have negative consequences too complicated to explain at that point. The complainant is reminded of the normal procedures for expressing his/her wishes i.e. contact their CVSW and book an appointment to discuss his/her position.
- In Winnipeg, CVSWs who are on intake manage their regular caseloads, catch up on memos and schedule urgent appointments with regular clients.

14.0 CHILD VICTIM SUPPORT SERVICE

14.1 Overview

Child Victim Support Service (formerly Child Victim Witness Support Program) was established in 1984 and focuses on the needs of children and youth who may be required to testify in criminal court. In most cases, these children are victims/witnesses of sexual and physical abuse. The program also provides services to adult victims of child sexual abuse, as well as other vulnerable individuals. Crime Victim Services Workers (CVSWs) provide information, support and assistance to help prepare children and their families for their participation in court proceedings. CVSWs, in cooperation with Crown attorneys, are responsible for: identifying and alleviating children's fears in relation to the court experience, educating children about the court process, assisting children to develop coping skills for their appearance in court, and providing short-term counselling.

Depending on the circumstances, CVSWs may meet several times with victims/witnesses and/or their respective legal guardians or family supports. During these meetings, CVSWs prepare children for their testimony by visiting an empty courtroom to help familiarize them with the surroundings. They educate children and parent/guardians about the justice system and courtroom procedures in order to reduce further trauma to the victims. CVSWs assess the need for testimonial aids such as screening devices and closed circuit television (where available) to make the court experience more sensitive to the needs of young victims. They will try to schedule meetings with the Crown attorney as well as provide emotional support to children through court accompaniment. CVSWs do not discuss evidence in child victim matters.

The CVSW acts as a liaison between victims, the police, the Crown attorney and the court to keep the victims/witnesses informed of the status of their case. CVSW use age-appropriate language and aids such as activity books, court kits, puppets, books, an interactive courtroom on the Internet and a model courtroom (where available).

14.2 Eligibility

The program provides services to child victims and witnesses (17 years old and younger) of sexual and physical abuse, sexual assaults and exploitation, physical assaults involving non-peer like situations, as well as other serious crimes in cases where criminal charges are laid in the Province of Manitoba. Adult survivors of childhood sexual abuse are also provided service. Vulnerable adults in cases not usually "intaked" by CVSS are provided service upon request.

Except for child fatality matters (which are addressed by the Victim Rights Support Service), CVSWs will intake situations, in which the child is too young to testify in order to provide services to the family. In addition, serious cases involving child witnesses will also be "intaked" upon request. However, in these situations families will not receive services until a trial date has been set.

14.3 Notification

Children are referred to the program from various sources: Winnipeg Police Service (WPS), Royal Canadian Mounted Police (RCMP), Prosecutions, Child and Family Services (CFS), Probation Services, Child Protection Centre, Community Services, Aboriginal organizations, schools, medical facilities, victims' parents or guardians and Victim/Witness Assistance. CVSWs also accept referrals from Court Victim Services offices across Canada to provide court preparation for children/youth who will be testifying outside of Manitoba but who reside locally.

CVSWs receive the vast majority of their referrals through automatic notification in PRISM. All offences related to child victims or witnesses under the age of 18 are sent to a specific mailbox in PRISM, which is accessed by CVSWs in Winnipeg. The Winnipeg CVSWs distribute the cases to the regional offices as appropriate.

CVSWs contact CFS to determine possible involvement of their child victims with the agency. This allows CVSWs to gather information about the child's legal status and living arrangements and to initiate contact with the appropriate CFS worker and guardian.

14.4 Case Management

A. Policy

CVSWs review the incident details on PRISM or the PIS and determine whether or not the case falls within the CVSS criteria. (See CVSS Best Practices)

B. Procedure

- CVSWs print the particulars or obtain them from the police or Crown (which include the arrest report and contact information). The guardian is determined by contacting the appropriate CFS agency to see if the child is in care or if the family is involved. CVSWs then send out the appropriate intake letter and information package to the guardian. If the child victim/witness is in care, the assigned CFS worker will be listed as the guardian. If the file is open but the children are not in care, the assigned protection worker will receive a copy of the intake letter that is sent to the family.
- When sending out letters to victims of sexual assault, the CVSW may delete the "automatically populated" charge section of the PRISM letter.
- If no response is received from the guardian, a follow-up phone call is initiated. Subsequent contact is determined between the CVSW and the guardian after this point.
- In Winnipeg, if a trial or preliminary hearing date is set, the information is entered into the court calendar (found in W: drive). The file is then physically removed from the intake filing drawer and placed in the "trial/preliminary-hearing file" labeled with the appropriate month and year. If the complainant requests to be notified of the preliminary date, CVSWs contact the client as soon as they are notified of the date.
- CVSW's review upcoming preliminary hearings and trials approximately 1-2 months in advance and assign cases to the appropriate CVSW.
- In Winnipeg, the Victim/Witness Assistance office is given a copy of the following month's court calendar indicating the assigned CVSW so they can ensure that the CVSWs are aware of all child victim cases for which the Victim/Witness Assistance office has received subpoenas. This enables Victim/Witness Assistance to refer families to the assigned CVSW when appropriate.
- Prior to a trial or preliminary court date, CVSWs attempt to contact the parents/guardians in relevant cases again, in order to begin the court preparation process. If the CVSW is unable to contact the client by telephone, the CVSW will send another letter.

14.5 Child Court Preparation

A. Policy

Clients usually attend to the CVSWs office, or other suitable locations for their appointments. The CVSW generally meets with both the child and the parents/guardians so that everyone hears the same information. Separate child/parent meetings may take place to facilitate specific discussions as needed.

B. Procedure

- Throughout the appointment the CVSW is careful to remain neutral in describing the court process and its key participants. CVSWs do not discuss the client's evidence (See CVSS Training Manual). If the child were to disclose further information about the abuse, the Crown attorney would be notified for potential police follow-up.
- If the child or the child's guardian/parent requests that the no-contact and no-communication conditions be removed or that the charges against the accused be dropped, the CVSW will explore the reasons for the request, while ensuring the incident details are not discussed, and relay the information to the Crown (in person, by telephone, or by e-mail).
- Clients are asked to express any questions that they have about the court process. Tools, such as the "What Makes Me Scared" form, help children to express their concerns. These tools also help CVSWs to deal proactively with clients' emotions. (See CVSS Training Manual)
- During the preparation session, the CVSW identifies the child's developmental level, family concerns and dynamics, and any other child related issues that affect their ability to testify (e.g. medical, psychiatric, hearing, learning conditions) so that these issues can be accommodated. This is helpful in identifying the need for testimonial aids to the Crown attorney and assessing the need for additional resources (See CVSS Training Manual).
- CVSWs may use props, such as the puppets or the mock courtroom, to provide information about the court process and to normalize the child's experience of testifying.
- If possible, the child is given an opportunity to try out his/her voice and to sit in the chairs of the various participants so that the experience is less intimidating.
- The CVSWs familiarizes the client and the parents/guardians with the child witness waiting room. If a waiting room is unavailable, the CVSW makes arrangements in consultation with the Crown attorney as to where the child will wait prior to testifying. Where a child witness waiting room is available, the room shall be equipped as outlined in the Child Waiting Room List. Where no child waiting room is available, the CVSW will bring a court kit, equipped with toys, snacks, etc. (See Court Kit Equipment).

- Before the Crown meets with the client and/or parent or guardian, the CVSW provides him/her with a brief assessment (either verbally or by e-mail) about the child's understanding of the key court-related concepts and his/her ability to testify.
Child Court Preparation (cont.)

This also includes significant information like family dynamics and recommendations on the use of testimonial aids.

- The CVSW usually sits with the parent(s) while the Crown speaks with the child and vice versa.
- Arrangements to meet the family or complainant the day of court are generally made at the conclusion of the court prep meeting.

15.0 VICTIMS' BILL OF RIGHTS SUPPORT SERVICES

15.1 Overview

The Victims' Bill of Rights (VBR) specifies the rights of victims of the most serious crimes as they relate to their dealings with police, prosecutors, courts and corrections officials. Depending on the offence, complainants and surviving family members of homicide victims are either eligible to, or automatically registered to, receive rights. Those individuals who are eligible must complete a form in order to be registered under *The VBR*.

The first phase of *The VBR* was proclaimed into force on August 31, 2001 and guaranteed rights to victims of the following offences by way of the Designated Offences Regulation: Murder, Manslaughter, Sexual assault causing bodily harm, Sexual assault with a weapon, Aggravated sexual assault, Sexual assault with more than one attacker, Sexual assault with threats to a third party, Infanticide, Criminal negligence causing death, Impaired operation of a vehicle causing death, Dangerous operation of a vehicle causing and death and Workplace fatalities. (Under *The Workplace Health and Safety Act*, investigating officers forward workplace fatality files to the Crown's office to review. CVSWs contact the victim or surviving family members once the Crown has decided to lay a charge).

The second phase of *The VBR* was implemented on January 31, 2002 and guaranteed rights to victims of Aggravated assault, Assaulting a peace officer or public officer, Discharging a firearm with intent and Attempted murder by allowing them to register for the services under *The VBR*. Victims of domestic violence, whose partners are charged with a designated offence outlined in the first or second phase of *The VBR* also receive services.

In December 2003, the legislation was expanded through regulation to include the following child offences: Parent or guardian procuring sexual activity, Corrupting children, Computer luring of children, Living off the avails of a prostitute under 18 and Procuring a prostitute under 18 (See Designated Offences Regulations).

On April 26th, the *Regulation* was amended to add: Criminal harassment Section 264, and An offence under *The Highway Traffic Act* that relates to a death of a person.

Faint hope hearings and Long term offender proceedings were also introduced in this expansion. However, because *The VBR* stipulates specific services to victims relative to offences and not situations, these proceedings were included through a Prosecutions "enhanced" victim service policy directive.

CVSWs advise victims of their rights, options and responsibilities as victims of crime under *The VBR*. They register victims on the Prosecutions information system and assist them with the selection of their rights. CVSWs highlight and explain the various stages in the court process in which victims may participate as per their selected rights.

15.2 Eligibility

Individuals who are victims of the most serious designated offences outlined in the regulations under *The VBR* are eligible for services from CVSWs. If the complainant is 14 years or older and is involved in a non-sexual incident where the complainant and accused are in a "peer-like", non-exploitive relationship, the VRSS (as opposed to the CVSS) will provide service. The VRSS also intakes all auto registered non-domestic sexual assault related *VBR* offences when the complainant is 17 years or older.

15.3 Notification

CVSWs in Winnipeg are automatically notified through PRISM about all auto-registered incidents. This notification occurs when Prosecutions support staff add a new file. CVSWs will consult with the appropriate Winnipeg or Regional CVSW to ensure they are aware of all cases and establish who will be assigned. If the matter is a non-auto, eligible offence complainants must complete a registration form requesting that they would like to receive services.

15.4 Case Management

A. Policy

When a charge is laid or a CVSW receives a referral, the CVSW taking the lead creates the *VBR* file and assigns him/herself to the case in PRISM, even if the file has not been entered by Prosecutions staff and exists as a virtual file (See list of eligible *VBR* offences in the Legislation Manual).

B. Procedure

- If the incident is auto-register, the worker will choose the auto-register rights under the heading, Registered Rights History, in PRISM. (See Best Practices manual) CVSWs **guide victims to choose certain rights** that can be provided by the department on a consistent basis. If the victim requests rights other than those suggested, the CVSW will explain the potential limitations of those rights. CVSWs must use their professionalism when discussing and guiding victims to choose certain rights (See Best Practices).
- In regional matters, CVSWs will make every possible effort to contact the investigating officers either directly or via e-mail and inform them that they are dealing with the victim/victim's family. This will provide a point of contact for the investigating officers and assure them that Victim Services is covering the victim's needs per the *VBR*.
- In situations where the matter has been sent for Crown Opinion, the CVSW will e-mail the assigned Crown and request to be notified once a decision has been entered.
- In appropriate situations, CVSWs invite victims or their surviving family members to attend an introductory information session about the criminal justice system.
- If victims or their surviving family members hire counsel to represent their interests under the *VBR*, CVSWs will ensure that their obligations under the *VBR* are met by relaying information to the victim/family member only and not to their hired counsel. If counsel request to be present during meetings with the CVSW and the victim/family member, it is important that counsel outline their intentions prior to participating in the meeting.
- If victims choose not to register, CVSWs will open a VR file and create a File Note that is posted on both the PR and VR sides, outlining victims' wishes. CVSWs will notify victims who choose not to register that they may re-visit their right to register at a different time in the process. Unless the victim re-engages with the program, the CVSW will respect victims' decisions and cease communication.
- If CVSWs lose contact with the victim, the individual is de-registered. However, if the victim dies, the VR individual will not be de-registered. Instead, an alternate (if available) will be designated and the information will be entered under the same file. The file is closed once a disposition has been reached.

- If regional staff have contact with victims pre-charge, and after the charge has been laid victims choose not to register, a file note indicating their wishes should be created in both the PR and VR sides of PRISM.
- Should victims re-engage with the program, a File Note outlining their wishes will be posted on both the PR and VR sides of PRISM.
- CVSWs inform victims and surviving family members of homicide about community resources and support at the outset of the court matter. In Winnipeg, resources for surviving family members include Aurora Family Therapy Center and MOVA (Manitoba Organization of Victim Assistance). In appropriate situations, CVSWs remind surviving family members about MOVA and their ability to provide court accompaniment support prior to trials to ensure that they have MOVA's contact information.

POLICY STATEMENT:

Public prosecutions commenced at the instance of the Province of Manitoba are normally conducted by the Province's Crown Attorneys. This cadre of Crown Attorneys is amongst the most experienced and talented group of criminal litigators in Manitoba, and the Department of Justice is fortunate to have their services.

There are, however, some cases that, if prosecuted by the Province's Crown Attorneys, might give rise to inappropriate public perceptions and raise issues of public confidence. Most commonly, these cases involve situations where those who are involved in the administration of criminal justice in Manitoba are themselves directly involved in the case. For instance, where, following a police investigation, it is proposed that criminal charges be laid against a prosecutor or a judge, there exists the need to assure the public that decisions will be made on a principled basis, free from any sort of bias.

The purpose of this policy is to ensure confidence in the justice process by providing for the appointment of independent counsel in those situations where a reasonable person would perceive that an accused person may receive differential treatment because of his/her relationship with Manitoba Justice. The likelihood of such a perception is determined, in large part, by the closeness of the relationship between the accused and the Department. The nature of the alleged offence may also be a secondary factor. The following categories describe the circumstances in which independent counsel should be appointed, as well as the method by which that decision should be made.

1. Direct Connection to the Justice System. Whenever a criminal charge is laid against a person who is directly connected to the justice system, there may be a reasonable perception that the accused could receive some kind of differential treatment if prosecuted by a staff Crown Attorney. In all such cases, the prosecution must be conducted by independent counsel.

Persons who come within this category include judges, Crown Attorneys, police officers, lawyers involved in criminal defence work (or those having regular business with the Department), as well as employees of the Department of Justice who have direct involvement in either the court process (e.g. court clerks) or Prosecutions (e.g. support staff within Prosecutions). Members of the Legislative Assembly, and their immediate staff and family are also in this category.

For greater certainty, independent counsel must be appointed where the Department has been asked by the Commissioner of the Law Enforcement Review Agency to consider whether criminal charges should be laid following an investigation under *The Law Enforcement Review Act* respecting the conduct of a police officer.

The Assistant Deputy Attorney General has delegated the authority to appoint independent counsel to the Director of Regional Prosecutions and Education. Therefore, when a case in this category arises, the Crown Attorney is expected to refer it, as soon as possible, to the Director of Regional Prosecutions and Education for the appointment of independent counsel.

2. General Connection to the Justice System. This category includes employees of Manitoba Justice who are not directly involved in the court process and, in addition, close relatives of a person with a direct connection to the justice system (provided the Crown is aware of this relationship). In these cases, independent counsel will often be appointed. However, in order to require the appointment of independent counsel, the connection of the accused to the justice system must be more than trivial. In making this judgment, consideration should also be given to the seriousness and notoriety of the alleged offence.

In cases where the accused has a general connection to the justice system, the Crown Attorney is expected to refer the case as soon as possible to the Director of Regional Prosecutions and Education along with a recommendation as to whether independent counsel should be appointed. The Director of Regional Prosecutions and Education will determine whether the circumstances warrant prosecution by a staff Crown Attorney or outside independent counsel.

3. No Obvious Connection to the Justice System. In the vast majority of cases, there will be no connection between the accused and the justice system. These cases should generally be prosecuted by staff Crown Attorneys. However, there may be unusual circumstances where facts come to light that suggest that independent counsel is appropriate. Crown Attorneys must be alert to situations where a reasonable person may perceive that the accused could receive differential treatment because of a connection between the accused and the justice system.

If the Crown Attorney, after consultation with his/her Supervising Senior Crown, believes that an accused has a connection to the justice system that might give rise to a perception of bias, the case should be referred to the Director of Regional Prosecutions and Education for a decision as to whether independent counsel should be appointed.

Other Considerations

This Policy applies to individuals who have been charged with criminal offences. However, it may be appropriate to appoint independent counsel in cases involving provincial statute offences given the closeness of the accused's relationship to the Department and given the nature or severity of the offence. Crowns Attorneys who, after consultation with their Senior Supervising Crown, are concerned about the need to appoint independent counsel in a non-criminal case should refer the matter to the Director

of Regional Prosecutions and Education for a decision as to whether independent counsel will be appointed.

It may also be appropriate to apply this Policy, where the individual is not charged with an offence but is the victim of a crime or will be called as a material witness. If the case is one in which a reasonable person would have concern about differential treatment or where the Crown Attorney is concerned that his/her decisions about the case may be influenced because of the identity of a witness or victim, the Crown Attorney should refer the case to the Director of Regional Prosecutions and Education for a decision regarding the appointment of independent counsel.

Where charges to which this Policy applies have already been laid, or an opinion is sought on whether charges are appropriate, counsel should refer the matter as soon as possible to the Director of Regional Prosecutions and Education for the appointment of independent counsel. Immediate steps are necessary to ensure that even preliminary issues such as release on bail, adjournment of the charges and disclosure to the defense are decided by the independent counsel.

Nature of Appointments

There are an infinite variety of circumstances in which it may become necessary to appoint independent counsel. In view of this, there are a number of alternative approaches that may be adopted to ensure an independent decision-making process. In ascending levels of independence from government, they are:

a) *Appointment of a Crown Attorney from within Manitoba but from another Crown Office*

In some situations, the necessary degree of independence may be achieved through this type of appointment.

b) *Appointment of a Private Practitioner from Manitoba*

Where a former Crown Attorney who has since left the Department is being considered for appointment as independent counsel, care must be taken to ensure that sufficient time has elapsed to gain a "distance" from the Department. Care must also be taken to ensure that the person selected has not had any previous dealings with the alleged offender.

c) *Appointment of a Crown Attorney from Another Province*

Informal protocols exist between this Department and many other provinces and territories to facilitate the appointment of a Crown Attorney from outside of Manitoba. This approach was judicially approved by the Alberta Court of Appeal in *Kostuch v. AG Alberta* (1995), 101 C.C.C. (3d) 321 Alta. C.A., at p. 333 (in which a Manitoba Crown Attorney was appointed to prosecute in Alberta to avoid a perceived conflict of interest in that province).

d) *Appointment of a Private Practitioner from Another Province*

This option gives maximum independence from the Department. It is also the most expensive option, given the need to travel to and from Manitoba to interview witnesses and conduct proceedings. This option should only be pursued in exceptional cases, and after conferring with the Deputy Attorney General.

Depending on the issues that arise in a particular case, it may be necessary to appoint independent counsel for only one aspect of the case (e.g. the examination or cross-examination of a specific witness).

APPENDIX TO THE POLICY

Upon determining that independent counsel should be appointed, the Director of Regional Prosecutions and Education will proceed to make the appointment. While individual Crown Attorneys may have relatively little involvement at this stage, it is important that the process should be as transparent as possible and it is useful for Crown Attorneys to be aware of the process.

The Process of Appointment

The principal criteria for the selection of an independent counsel are:

- independence from government and the individuals involved in the specific case;
- excellence in the practice of law;
- a track record for integrity; and
- significant previous experience in either the prosecution or defense of criminal charges in the court system.

In some cases, the Director of Regional Prosecutions and Education will consult with the Assistant Deputy Attorney General and/or the Deputy Attorney General before making a final decision. *Ad hoc* appointments will usually be appropriate as individual cases arise. In matters arising under *The Law Enforcement Review Act*, a standing appointment of the independent counsel will be made to facilitate referrals from the Commissioner of the Law Enforcement Review Agency directly to the independent counsel.

Terms and Conditions of Appointment

Where a lawyer from outside the Department is retained to act as an independent counsel, the terms of reference under which the independent counsel is retained should be reduced to writing and made publicly available upon request in order to ensure a transparent process and public accountability. A copy of this Policy Statement and any prosecutions policies or directives that reasonably appear at the outset to be applicable to the retainer must also be provided to the independent counsel once retained, and be made available to the public on request.

Absent exceptional circumstances, the following should generally form a part of the terms of reference:

- a) The retainer agreement, including the terms of reference and any subsequent amendments, are publicly available on request;

- b) Where a legal opinion is sought, the precise question(s) for which the advice is being sought, and the person to whom it should be provided;
- c) The advice and decisions in the case are final and binding on the Department of Justice for the Province of Manitoba, subject only to receiving direction from the Attorney General or the Deputy Attorney General, which direction, if given, will forthwith be made public;
- d) It is acknowledged that there will be an ongoing relationship between the Department of Justice and the independent prosecutor in the post-retainer period. This relationship is reasonable, necessary and exists for administrative, practical and consultative purposes. It does not detract from the independence of the prosecutor. As such, the independent counsel has full access to all employees within, and all documents and information held by the Department of Justice for the Province of Manitoba. This access might reasonably be sought by the independent counsel in a number of situations, such as, to consult regarding matters requiring a degree of expertise possessed by departmental prosecutors pertaining to prosecutions in a particular area such as commercial crime, cyber crimes, domestic violence, or youth crime, or relating to questions of local practice or best prosecutorial practices. Such consultation is to be encouraged, recognizing that the ultimate decision-making authority rests with the independent prosecutor. In addition, independent prosecutors, particularly those from outside the jurisdiction, may require the assistance of departmental prosecutors to attend to administrative or preliminary tasks on their behalf, such as remanding a matter at the request of the independent prosecutor. If the independent counsel wishes to exercise the on-going right of access, the Director of Regional Prosecutions and Education shall facilitate such contact between the departmental prosecutor and employee and the independent counsel and assist in accessing any documentation held by the Department of Justice;
- e) The independent counsel is to be guided by the prosecution policies issued on behalf of the Attorney General of Manitoba, which apply to all provincial prosecutions throughout the province. This includes, for instance, the charge approval standard (see: Crown Policy on Laying and Staying of Charges), disclosure policies as well as directives from the Attorney General on the position to be taken in cases of gang-related crime, violent crime, child victims, etc.
- f) The independent counsel is required to consult with the Manitoba Justice Constitutional Law Branch on issues of constitutional law, should they arise in a particular case. This will ensure that independent counsel do not take positions that are different from, or incompatible with constitutional law positions taken by departmental prosecutors regarding requirements of the Constitution and other related issues.
- g) The independent counsel is bound by the same obligations as those imposed on departmental prosecutors with respect to *The Victim's Bill of Rights*. A copy of the prosecutions policy regarding legislative obligations on departmental prosecutors

under *The Victim's Bill of Rights* must also be provided to the independent counsel. Additional inquiries can be directed by independent counsel to the Director of Regional Prosecutions and Education who can facilitate consultation with the Victims Services Branch.

- h) Periodic administrative meetings may be held between the Director of Regional Prosecutions and Education and independent counsel to ensure that the referrals to independent counsel are being handled in a conscientious manner (in particular, that files are not being neglected). These administrative meetings are necessary and reasonable and do not diminish the independence of the prosecutor, as the ultimate decision-making authority remains with the independent counsel.
- i) In many cases, it will be appropriate to include in the terms of reference a statement to the effect that advice is also being sought on the extent to which information concerning the case, including the opinion sought, should be made available to the public. This will be especially important where the case has attracted considerable public attention and scrutiny.