

WHAT IS AN APPLICATION FOR THIRD-PARTY RECORDS?

An Application for Third Party Records can be brought by the accused, or his lawyer, to view and admit your third party records into evidence at a criminal sexual assault trial.

This includes any form of record that contains personal information for which there is a reasonable expectation of privacy, including medical records, psychiatric and counselling records, personal journals, or employment records.

You, the record-holder (e.g. doctor, therapist, sexual assault centre) and Crown are all able to make your own arguments at the hearing to try to protect the privacy of the records.

To bring the application, the defence must establish that the record is relevant to an issue in the case or to your competence to testify. If the records are ordered, they can only be used for that specific case.

WHAT IS THE SURVIVOR'S ROLE?

You have an active role in the application process because allowing the records to be shown to the accused and his lawyer is a violation of your personal privacy.

Because your personal privacy is at stake, you can have legal representation throughout the process.

You may attend the hearing in front of a judge and have the opportunity to try to prove why your personal records

should not be shown to the accused and his lawyer.

If the judge allows the application, they can impose conditions to protect your privacy, such as ordering the record to be partially redacted or edited.

You can also choose not to oppose the application.

WHAT HAPPENS AT THE HEARING?

You, the accused, the record-holder, and the Crown may advocate for your positions before the court at both steps of the process:

1. The judge first decides whether the court should see the record, either fully or in part.
2. If the judge decides the court should see the record, then the record goes to another judge who reviews the file and decides whether part or all of the record should be released to the defence.

The judge must weigh many factors, including:

- » The extent to which the record is necessary for the accused to have a full defence;
- » Potential prejudice to your personal dignity and right to privacy; and
- » Society's interest in encouraging the reporting of sexual offenses and encouraging survivors of sexual offenses to obtain treatment

The judge must provide reasons for ordering or refusing to order the records.

WITNESS FAQs

WHAT COURT APPEARANCES DO I HAVE AN ACTIVE ROLE IN?

Only the preliminary inquiry, trial, and sentencing appearances. The survivor does not have an active role at the bail, first appearance, or arraignment dates.

DO I EVER GET TO SEE MY POLICE STATEMENT? Yes. Survivors can review the police statement before testifying, but cannot take it into the witness box with them.

DO I HAVE A LAWYER? No. The Crown is not the survivor's lawyer and does not represent the survivor's specific interests. The only time a survivor would get a lawyer is if the accused or their lawyer requests access to third party records (i.e. medical or counselling records).

Do I get to meet with the Crown? Yes. Generally the Crown will meet with the survivor to prepare for the trial a few days before the date.

How do I find out what is going on with the case?

By contacting your Victim/Witness Assistance Program (VWAP) worker, who is your liaison with the Crown.

Your VWAP can provide:

- Documents such as bail conditions and probation orders (VWAP will not provide police reports);
- Information about the criminal justice system;
- Referrals to community agencies;
- Arrangements for language interpreters;
- Help with completing a Victim Impact Statement.

ROLE OF THE SURVIVOR IN A CRIMINAL LAW CASE

Not Okay Project

A Fact Sheet for Survivors of Sexual Violence



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NOT A PARTY

After reporting to the police, the survivor does not have a decision making role in the criminal process as it moves forward. They do not have their own lawyer and are not the one choosing to "charge" the accused.

The police and Crown make the decision to investigate, lay charges, and prosecute the accused as they see fit.

WITNESS

If the criminal case against the accused moves ahead, the survivor will likely be called as a witness.

WHEN?

The preliminary inquiry (if there is one), at trial, and maybe at sentencing.

WHAT HAPPENS?

The survivor will be required to present her evidence to the court. She will be required to promise to tell the truth. Not telling the truth could result in criminal charges. At these proceedings, the Crown will begin by asking the survivor questions. She can only sit in on the trial after her testimony and cross-examination are finished.

WHAT IS CROSS-EXAMINATION?

Cross-examination is where the accused's lawyer asks the survivor questions about her evidence after the Crown has done so. If he is self-represented, the Crown can request a lawyer to do the cross-examination for him. This is often very stressful for the survivor, because the questions can be difficult. Testimonial aids, such as testifying by video or behind a screen, may be requested from the Crown to help make the process easier. A support person can also be in the room. Some courts even have support animals to assist survivors when they testify.

Role of the Survivor in a Criminal Law Case

DOCUMENTOR

If the accused person has been found guilty, the survivor will be given the opportunity to complete a Victim Impact Statement.

WHAT IS IT?

A Victim Impact Statement is a written account of the personal harm suffered by a victim of crime.

WHAT IS INCLUDED?

The statement may include a description of any physical, emotional, and financial effects of the crime on the survivor.

WHY IS IT IMPORTANT?

The statement gives survivors a voice in the criminal justice process. It allows them to participate in the sentencing of an offender by explaining to the court, and the offender, how the crime has affected them.

IS THERE SUPPORT AVAILABLE TO COMPLETE THE FORM?

Yes. Victim/Witness Assistance Program workers can help survivors complete a Victim Impact Statement.