



**THE
BRITISH COLUMBIA REVIEW BOARD
AND
VICTIM IMPACT STATEMENTS**

Mentally Disordered Accused Persons and the Criminal Justice System

In a criminal trial, a court decides whether an accused is guilty or not guilty of an offence. To convict, a court must be satisfied beyond a reasonable doubt that the accused:

- ♦ acted in a manner prohibited by law or failed to act in a manner required by law, and
- ♦ at the time of the act, was able to form the intent required to commit the offence.

In some cases, the court hears evidence about the mental state of an accused person either at the time of the offence or at the time of the trial.

If evidence establishes that the accused committed the offence but lacked the required intent due to a mental disorder, the court can make a verdict that the accused was **not criminally responsible on account of mental disorder (NCRMD)**.

If evidence establishes that an accused is **unable to conduct a defence at the time of trial**, the court may find that the accused is **unfit to stand trial (UST)**. To reach this verdict, the court must be satisfied that the accused is **unable**, on account of a mental disorder, to:

- ♦ understand the nature or object of the proceedings,
- ♦ understand the possible consequences of the proceedings, or
- ♦ communicate with counsel.

The British Columbia Review Board and Mentally Disordered Accused Persons

The **British Columbia Review Board (BCRB)** is an independent tribunal established under the **Criminal Code** to make dispositions about accused persons found **not criminally responsible on account of mental disorder (NCRMD)** or **unfit to stand trial (UST)**.

When a court makes a verdict that an accused person is either **not criminally responsible (NCRMD)** or **unfit to stand trial (UST)**, on account of mental disorder, it refers the matter to the **BC Review Board (BCRB)**.

The **BCRB** is required to hold hearings at least yearly to make a disposition (order) about the accused person's future considering his or her mental condition, his or her rights and liberties, and the protection of the public from dangerous persons.

The **BCRB** sits in panels including a lawyer or judge, a psychiatrist and one other member.

Participants, or parties, at a **BCRB** hearing include the **accused**, the accused's counsel, a representative of the **Attorney General** (Crown Counsel) and a representative of BC's **Youth or Adult Forensic Psychiatric Services** systems, or their counsel.

The **BCRB's** decisions are based on written and oral evidence received at a hearing including psychiatric reports, court records, and any other relevant information.

The **BCRB's** disposition may order the accused person's detention in a forensic psychiatric facility; may discharge the accused to live in the community subject to supervision and restrictions including limiting or prohibiting contact with victims and their families. In the case of an accused found **NCRMD**, the **BCRB** may discharge the accused absolutely.

An accused person remains under the legal jurisdiction of the **BCRB** until the accused is found fit to stand trial or, in the case of a **NCRMD** accused, is absolutely discharged.

The BC Review Board and Victim Impact Statements

A victim is a person who has suffered harm, including physical or emotional loss, as a result of an offence.

The rights of victims, in cases involving mentally disordered accused persons under the jurisdiction of the **BCRB**, are set out in Part XX.1 of the ***Criminal Code of Canada***. The Code provides that victims may request notice of **BCRB** hearings and of the relevant provisions of the Code relating to **Victim Impact Statements** at **BCRB** hearings. These provisions are reproduced and explained in **Appendix 1**.

At a hearing in respect of an accused found **not criminally responsible on account of mental disorder (NCRMD)**, the **BCRB** must consider a **Victim Impact Statement** to the extent that it is relevant to making an appropriate disposition (order).

What is a Victim Impact Statement?

A victim may give evidence as a witness at the trial of an accused person charged with an offence.

A victim may also voluntarily provide a "**Victim Impact Statement**", a written statement describing how the offence has affected the victim and his or her family. The decision to prepare or file a **Victim Impact Statement** is voluntary and rests entirely with the victim.

If the victim filed a **Victim Impact Statement** as part of the accused's criminal trial, a copy of this statement is given to the **BCRB** automatically. If the victim did not file a statement at the trial or the victim's circumstances have changed since the trial, the victim can prepare and file a new or amended statement at any time until the **BCRB** grants the **NCRMD** accused an absolute discharge.

A victim may file a written **Victim Impact Statement** without attending a **BCRB** hearing.

A **Victim Impact Statement** may, on request and with the permission of the **BCRB**, also be presented or read, in person at a disposition hearing. If the victim is unable to prepare or present a **Victim Impact Statement**, a relative or custodian may do so on the victim's behalf.

The **BCRB** decides how and in what manner evidence is presented at its hearings. If a victim wishes to present a written statement in person to the **BCRB** at a hearing, the victim must **contact the BCRB at least 14 days** before the hearing and request the opportunity to read the statement. By appearing in person to present a written statement at a hearing, the victim may be questioned as to the contents of that statement.

Once a **Victim Impact Statement** has been provided to the **BCRB**, the statement forms part of the **BCRB's** record and is considered at each subsequent disposition hearing to the extent relevant. If the harm caused to the victim does not change over time, there is no need to prepare or file a new or amended **Victim Impact Statement**.

Assistance in Preparing a Victim Impact Statement

A **victim service worker**, friend or family member can assist in the preparation of a **Victim Impact Statement**. A service called **VictimLink** provides victims with information 24 hours a day, 7 days a week at:

BC Toll Free 1 800 563-0808 (TTY: 604 875-0885)
<http://www.vcn.bc.ca/isv/victims.htm>

The Form of the Victim Impact Statement

There is no required form for a **Victim Impact Statement**, however a suggested form is attached as **Appendix 2**. While the use of this format is optional, a **Victim Impact Statement** must be legible, written in clear and concise language and should:

- describe how the offence has affected the victim and the victim's family;
- indicate the victim's safety concerns about future contact with the accused if the accused is released into the community;
- provide details about the physical, emotional or economic harm suffered by the victim; and
- avoid direct comments on the accused's character, the court proceedings or any previous verdicts or sentencing decisions.

For certain serious offences, including sexual offences and child pornography, the **BCRB** is required to make an order banning the publication of information about the identity of minor victims. With respect to other offences, if a victim has concerns about disclosure, the victim may ask the **BCRB** to order a publication ban. This request must be in writing and must state why the publication ban is necessary. An application for a publication ban may be submitted with the **Victim Impact Statement**, or before or at the time of a disposition hearing.

Submitting a Victim Impact Statement

A **Victim Impact Statement** must be dated, signed and submitted in writing to the **BCRB** at least 14 days before the accused's next scheduled disposition hearing. If the **Victim Impact Statement** requires translation into the English language, it should be submitted at least 30 days before the hearing.

If a **Victim Impact Statement** is not already part of the court record, a new or amended statement may be submitted directly to the **BCRB** or delivered to the local Crown counsel office.

The **British Columbia Review Board** may be contacted at:

Vancouver Telephone	604-660-8789	Location
BC Toll Free	1 877-305-2277	1203, 865 Hornby Street
Fax	1-604-660-8809	Vancouver, B.C.
Website	http://bcrb.bc.ca	V6Z 2G3

Crown counsel offices are listed in the **Blue Pages** of the telephone directory under "**Government of British Columbia, Crown Counsel**". Contact information for the nearest Crown counsel office is also available through Enquiry BC from 7:30 am to 5:00 pm Monday to Friday by calling:

Telephone:

In Victoria	250 387-6121
In Vancouver	604 660-2421
Elsewhere in BC	1 800 663-7867
Outside BC	1 604 660-2421

**Appendix 1:
Victim Impact Statements
Part XX.1 of the *Criminal Code***

The rights of a victim in preparing and presenting a **Victim Impact Statement** to the **Review Board** during a disposition hearing are set out in the ***Criminal Code***. The relevant sections of the Code are reproduced in Column One in the table below. For ease of reference, the numbers in this column refer to section numbers in the Code.

The policies and practices of the Review Board compliment the provisions in the Code and indicate how the rights of a victim are given effect in the context of a Review Board disposition hearing. A summary of specific policies and practices is set out in the Explanatory Notes in Column Two in the table below. Further information about the Review Board is available by contacting the Review Board or by looking at the Review Board's website (www.bcrb.bc.ca).

<i>Criminal Code</i> Requirements	Review Board Practice/Procedure
<p>"Victim" defined</p> <p>722 (4) "Victim", in relation to an offence</p> <p>(a) means the person to whom harm was done or who suffered physical or emotional loss as a result of the commission of the offence; and</p> <p>(b) where the person described in paragraph (a) is dead, ill or otherwise incapable of making a statement referred to in subsection (1) (describing the harm done to, or loss suffered by, the victim), includes the spouse or any relative of that person, anyone who has in law or fact the custody of that person or is responsible for the care and support of that person or any dependant of that person.</p>	<p>A victim must be able to show harm or loss as a result of the commission of an offence. Crown counsel or a victim service worker can assist a person in deciding what steps to take and in accessing other resources and support services within the community.</p> <p>A victim service worker, friend or family member can assist in preparing a Victim Impact Statement.</p> <p>If a victim is dead, ill or unable to prepare a Victim Impact Statement, a relative, parent or guardian can prepare and present the statement on behalf of the victim or any of the victim's dependants.</p> <p>The policies and procedures which apply to Victim Impact Statements prepared by victims also apply to statements prepared by a victim's relative or guardian.</p>
<p>Procedure at disposition hearing</p> <p>672.5 (1) A hearing held by a court or Review Board to make or review a disposition in respect of an accused shall be held in accordance with this section.</p>	<p>Hearings are scheduled according to the time lines set out in the <i>Criminal Code</i>.</p> <p>An initial disposition hearing before the Review Board is held within 45 days if the court makes no disposition and within 90 days if the court makes an initial disposition.</p> <p>Thereafter, unless there are exceptional circumstances, subsequent hearings take place once each year until the accused is either fit to stand trial or no longer a risk to himself or the community.</p>
<p>Hearing to be informal</p> <p>(2) The hearing may be conducted in as informal a manner as is appropriate in the circumstances.</p>	<p>Most Review Board hearings are conducted with all of the parties present in person at the same location. However, in some circumstances, a hearing may be conducted using written submissions, by video conference or with a telephone link.</p>

Criminal Code Requirements	Review Board Practice/Procedure
<p>Notice</p> <p>(5.1) At the victim's request, notice of the hearing and of the relevant provisions of the Act shall be given to the victim within the time and in the manner fixed by the rules of the court or Review Board.</p>	<p>A victim may telephone or write to the Review Board requesting notice of a hearing. The request for notice must be received by the Review Board at least 14 days before the next scheduled hearing.</p> <p>This table sets out the provisions of the Code which are relevant to a victim's right to present a Victim Impact Statement at a Review Board hearing.</p>
<p>Order excluding the public</p> <p>(6) Where the court or Review Board considers it to be in the best interests of the accused and not contrary to the public interest, the court or Review Board may order the public or any members of the public to be excluded from the hearing or any part of the hearing.</p>	<p>Normally, Review Board hearings are open to the public. However, the Review Board may exclude the public or a member of the public from all or part of a hearing if the exclusion is in the "best interests of the accused and not contrary to the public interest".</p> <p>Victims may attend Review Board hearings as members of the public, although written psychiatric information about an accused remains confidential.</p>
<p>Right of accused to be present</p> <p>(9) Subject to subsection (10), the accused has the right to be present during the whole of the hearing.</p>	<p>Normally, the accused is entitled to be present at a Review Board hearing, to participate in the hearing and to be represented by a lawyer.</p> <p>The Attorney General may send a representative (Crown counsel) to a Review Board hearing. If an accused is detained in custody or required to attend at a clinic or treatment facility, a representative of that facility also participates in Review Board hearings.</p>
<p>Removal or absence of accused</p> <p>(10) The court or the chairperson of the Review Board may</p> <p>(a) permit the accused to be absent during the whole or any part of the hearing on such conditions as the court or chairperson considers proper; or</p> <p>(b) cause the accused to be removed and barred from re-entry for the whole or any part of the hearing</p> <p>(i) where the accused interrupts the hearing so that to continue in the presence of the accused would not be feasible,</p> <p>(ii) on being satisfied that failure to do so would likely endanger the life or safety of another person or would seriously impair the treatment or recovery of the accused, or</p> <p>(iii) in order to hear, in the absence of the accused, evidence, oral or written submissions, or the cross-examination of any witness concerning whether grounds exist for removing the accused pursuant to subparagraph (ii).</p>	<p>If the accused is removed from a Review Board hearing for any reason, the accused's lawyer continues to represent the accused during the remainder of the hearing.</p> <p>A victim concerned about his or her safety during a Review Board hearing should bring those concerns to the attention of Crown counsel.</p>

Criminal Code Requirements	Review Board Practice/Procedure
<p>Adjournment</p> <p>(13.1) The Review Board may adjourn the hearing for a period not exceeding thirty days if necessary for the purpose of ensuring that relevant information is available to permit it to make or review a disposition or for any other sufficient reason.</p>	<p>The Review Board requires good reasons to grant an application for any type of adjournment.</p> <p>The victim should make every effort to complete a Victim Impact Statement as soon as practicable after harm or loss has been suffered as a result of the commission of an offence and within 30 days of an NCRMD verdict.</p> <p>An adjournment will only be granted in exceptional circumstances.</p>
<p>Determination of mental condition of the accused</p> <p>(13.2) On receiving an assessment report, the court or Review Board shall determine whether, since the last time the disposition in respect of the accused was made or reviewed there has been any change in the mental condition of the accused that may provide grounds for the discharge of the accused under paragraph 672.54(a) or (b) and, if there has been such a change, the court or Review Board shall notify <u>every</u> victim of the offence that they are entitled to file a statement in accordance with subsection (14).</p>	<p>The Review Board is required to give notice to the victims of an offence if the Review Board requests and receives a new assessment report for an accused and the assessment report recommends that the Review Board consider whether:</p> <ul style="list-style-type: none"> • the accused, who was found not criminally responsible on account of mental disorder, is now ready for an absolute discharge, or • the accused is now ready for a discharge with conditions. <p>Upon receiving a notice under this section, the victim should review his or her initial Victim Impact Statement and determine whether the initial statement adequately describes the victim's harm or loss. If the victim's circumstances have changed as a result of the commission of the offence, the victim can amend the initial statement or ask to prepare and submit a new statement.</p>
<p>Victim impact statement</p> <p>(14) A victim of the offence may prepare and file with the court or Review Board a written statement describing the harm done to, or loss suffered by, the victim arising from the commission of the offence.</p>	<p>A Victim Impact Statement must be in writing, signed and delivered to the Review Board at least fourteen days before the accused's next scheduled hearing. (see submitting a Victim Impact Statement, P.3, above)</p>
<p>Copy of statement</p> <p>(15) The court or Review Board shall ensure that a copy of any statement filed in accordance with subsection (14) is provided to the accused or counsel for the accused, and the prosecutor, as soon as practicable after a verdict of not criminally responsible on account of mental disorder is rendered in respect of the offence.</p>	<p>A copy of each Victim Impact Statement is provided to the participants in a Review Board hearing seven days before the hearing. In addition to Victim Impact Statements, the participants also receive relevant court documents and new assessments or medical reports.</p> <p>In deciding what disposition it will make, the Review Board considers all of the statements and reports it has received and any evidence which is presented during a hearing to the extent that it is relevant.</p>

Criminal Code Requirements	Review Board Practice/Procedure
<p>Presentation of victim impact statement</p> <p>(15.1) The court or Review Board shall, at the request of a victim, permit the victim to read a statement prepared and filed in accordance with subsection (14), or to present the statement in any other manner that the court or Review Board considers appropriate, unless the court or Review Board is of the opinion that the reading or presentation of the statement would interfere with the proper administration of justice.</p>	<p>A victim may submit a written Victim Impact Statement for presentation during a Review Board hearing. In most cases, Crown counsel presents the Victim Impact Statement to the Review Board on the victim's behalf.</p> <p>The Review Board decides how a Victim Impact Statement will be presented during a Review Board hearing. The Review Board may order that the statement be considered in written rather than oral form or may limit the amount of time a victim or the victim's representative has to make an oral presentation.</p> <p>If the victim wants to present his or her written statement at a Review Board hearing, the victim's request to present should be included in the covering letter that accompanies the Victim Impact Statement and be received by the Review Board at least twenty eight days before the accused's next scheduled hearing.</p> <p>By appearing and presenting the Victim Impact Statement in person, the victim may be subject to questions from parties or panel members.</p>
<p>Inquiry by court or Review Board</p> <p>(15.2) The court or Review Board shall, as soon as practicable after a verdict of not criminally responsible on account of mental disorder is rendered in respect of an offence and before making a disposition under section 672.45 or 672.47, inquire of the prosecutor or a victim of the offence, or any person representing a victim of the offence, whether the victim has been advised of the opportunity to prepare a statement referred to in subsection (14).</p>	<p>Before the Review Board conducts its first hearing for an accused found not criminally responsible on account of mental disorder, the Review Board asks the prosecutor, the victim or the victim's representative whether the victim wishes to prepare a Victim Impact Statement.</p> <p>A victim is not required to make a statement and is not required to participate in a Review Board hearing. Both the making of the statement and the appearance of a victim in person at a Review Board hearing are entirely voluntary.</p>

Criminal Code Requirements	Review Board Practice/Procedure
<p>Adjournment</p> <p>(15.3) On application of the prosecutor or a victim or of its own motion, the court or Review Board may adjourn the hearing held under section 672.45 or 672.47 to permit the victim to prepare a statement referred to in subsection (14) if the court or Review Board is satisfied that the adjournment would not interfere with the proper administration of justice.</p>	<p>Before the Review Board's first disposition hearing, a victim may request an adjournment to prepare a Victim Impact Statement.</p> <p>The request for an adjournment must be received by the Review Board at least 10 days before the accused's scheduled hearing date and the request should include the reasons for the adjournment. An adjournment will only be granted in circumstances beyond the victim's control.</p> <p>If the Review Board decides to grant an adjournment, the Victim Impact Statement must be provided to the Review Board at least fourteen days before the next hearing so that it can be distributed to the other participants before the hearing.</p> <p>The Review Board cannot grant adjournments for more than 30 days in total. (see also adj – at (13.1) above)</p>
<p>Definition of "victim"</p> <p>(16) In subsection (14) and (15.1) to (15.3), "victim" has the same meaning as in subsection 722(4).</p>	<p>This is the section of the Code which authorizes a relative or guardian of a victim to prepare or present a Victim Impact Statement on behalf of a victim is who is not able to prepare or present the statement without assistance.</p>

**Appendix 2:
Suggested Form of Victim Impact Statement**

Victim Impact Statement of: _____
(name of victim)

ORIGINAL STATEMENT _____ UPDATE _____
(date) (date)

CASE IDENTIFICATION
Regina v. _____ (name of accused)
COURT FILE # (if known): _____
VERDICT: NOT CRIMINALLY RESPONSIBLE ON ACCOUNT OF MENTAL DISORDER
DATE OF VERDICT: _____

My Instructions to the Review Board: Until otherwise requested, I request:

- Notice of the next and any subsequent Review Board disposition hearings
- Notice of subsequent disposition hearings if a change in the custody status of accused is recommended
- The opportunity to present a written statement in person at the Review Board hearing
- No notice of any further Review Board hearings for the accused.

Statement of Relative or Guardian (where required):

I, _____ have completed this statement on behalf of the victim because (Name)

My relationship to the victim is: _____
Date: _____ Signature: _____

The Review Board is required by law to provide a copy of your Victim Impact Statement to Crown counsel, defence counsel and the accused. You may be asked questions about the contents of this document.

Please sign below to allow this Victim Impact Statement to be given to Crown counsel, defence counsel and the accused.
Signature: _____

Please send this page with your Victim Impact Statement and deliver both by mail, fax or hand to your local Crown counsel office or the British Columbia Review Board.

VICTIM IMPACT STATEMENT

Regina v. _____
(name of accused)

Name of Victim: _____

1. Physical Impact (See Note 1): _____

2. Emotional Impact (See Note 2): _____

3. Other Harm (including any safety concerns about future contact with the accused if the accused is released into the community (See Note 3): _____

Date: _____

Signature of Victim

(If you need more space, attach, number and initial each additional page)

NOTES

In describing the effect the offence has had on you, you may wish to consider the following:

- 1. Physical Impact – Have you suffered any physical injuries or disabilities as a result of the offence:**
 - have you suffered pain, discomfort, illness, scars or physical restriction;
 - was any medical treatment, hospitalization, surgery, physiotherapy and/or medication required; or
 - will further treatment be needed?

- 2. Emotional Impact – Has the offence affected your:**
 - emotions and reactions;
 - lifestyle and activities;
 - relationship with your partner, spouse, friends, family or colleagues;
 - ability to work or study; or
 - need for counselling or emotional support?

- 3. Other Impacts – Has the offence caused other harm to you or your family**
 - time lost from work;
 - relocation expenses;
 - temporary housing, food, child care or transportation expenses;
 - any safety concerns about future contact with the accused if the accused is released into the community?