

MADD CANADA

ALWAYS REMEMBERS

This information package has been designed to assist victims dealing with the aftermath of an alcohol or drug-related crash. It is our hope that this package will be of value to you and assist you in accessing additional support in your community.

The coming months may present you with a host of challenging questions. The distinct possibility also exists that you will become involved in some aspect of the criminal justice system, as well as in the process of insurance claims, all of which may be very confusing. While it will not necessarily be an easy time, we hope that the enclosed information will provide support and direction. This package cannot include all the available resources. Please call us if you have questions or concerns, or if you feel we can be of any further assistance. On occasion, we may suggest appropriate referrals.

MADD Canada (Mothers Against Drunk Driving) is a grassroots, charitable organization with Chapters and Community Leaders across the country. Our mission is to stop impaired driving and to support victims of this violent crime. Volunteers committed to our mission work hard to increase public awareness and to provide communities with victim support services.

Please don't hesitate to call us for information or support.

1-800-665-6233

We are here and WE CARE!

If you are in crisis and need help, please do one of the following immediately:

- **Contact a family member, friend or neighbour.**
- **Contact your family doctor.**
- **Contact a crisis/distress line.**
- **Go to the emergency room of your local hospital.**

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INJURY

Impaired drivers continue to inflict injury and death upon innocent victims at an alarming rate. Perhaps you are reading this because an impaired driver has injured you or someone that you care about. You may be experiencing physical pain unlike any you have felt before. Equally devastating, may be the emotional trauma that accompanies a sudden, preventable injury. Maybe recollections of the crash haunt you, or perhaps the psychological effects prevent you from remembering specifically what happened.

Besides coping with your physical injury, you may worry about the impact this will have on your family, your finances, your dreams, and your plans for the future.

All injured people experience grief to some degree. You may experience feelings of denial, guilt, anger, rage, and eventually even acceptance. These feelings can resurface each time you try to do something that you have done with relative ease in the past. You may feel a loss of contact with friends and family who seem unable to cope with your pain and injuries.

Recovering from the pain, sadness and rage you feel as you cope with your injury will be a long and trying process. The steps involved include:

- **Seeking medical treatment until you are as pain free and as mobile as possible.**
- **Coming to terms with new limitations in doing the everyday tasks that you did with ease before the crash.**
- **Working to construct your new self-image, and finding a renewed meaning in life.**
- **Dealing with your feelings as they come.**

Remember...you did not have control over being injured, but you do have control over what happens to you from this point on.

Goals in Supportive Contact with Injured People

When making supportive contact with an injured person, try not to say or do anything that might minimize the injury, loss, pain or stress. Be cautious about sharing too many details of your own loss. Share enough so that victims feel that you understand and that they are not alone. If you are not in control of your own emotions, the victims may feel that they should support you, even if they do not have the resources. They may also feel that their losses are trivial compared with the losses of other people, and that they don't deserve attention because they are "just" injured. Try not to force comparisons about losses, injuries or grief.

Don't talk about how lucky the injured party was. It is never lucky to have suffered an injury and to experience loss. Don't make them document and defend their pain.

Remember the possible operation of “survivor guilt”. Injured people may feel guilty that they lived when other people died, especially if others died in the same crash.

Try not to put words in the injured person’s mouth or over-direct the grieving process. Recovery can be a very vulnerable period. Avoid pressing toward a particular style, schedule, order, or language of grieving. This may divert the victim from his or her own best and most effective way of dealing with loss. You may have read self-help books which identify right and wrong in the grieving process or prescribe a formula for grief resolution. Most recent research literature suggests that grief is an individual process. As a support person, you should try to adapt your support to the injured person’s focus and style. Let the victims choose the path. Your job is to try to ease the process.

Be cautious in pressing for expressions of feelings. Some people are fearful of losing control or becoming overwhelmed. You have to expect that. Also, some people do not seem to require a lot of emotional ventilation in loss situations. The absence of a “traditional” grief reaction is not necessarily a problem or a deficiency. Try not to force an unemotional or resistant person, unless you have strong evidence that they are “stuck” in the grieving process (severe headaches, sleeplessness, heavy alcohol use, impulsive behaviour, major withdrawal etc.). Even then, it may be preferable to recommend professional assistance.

Let grief be a wandering process in the beginning. It is not necessary to have a particular chronology or order. Issues may surface, disappear and reappear later in other clothing. Areas that seemed resolved may reopen with new intensity or immediacy. There may be no clear beginning or end. Allow for a great deal of repetition. People come to terms with the reality of a tragedy by telling the story, and reviewing the details over and over in their minds. As time passes, the story should develop increasing richness, clarity and insight. If an injured person repeats the identical account in the same language month after month, you may want to get some professional advice.

Finally, don’t blame yourself (or the injured person) if she or he “shuts you out”, or gets upset or angry with you. Some grief is a very private experience, and a person’s wish for privacy must be respected. Remember, if you have an honest and solid relationship with another person, that relationship will survive mistakes and miscalculations, such as poor timing, an unfortunate choice of words or an insensitive comment.

In the Early Stages a Supportive Person Can Help the Victim:

- Acknowledge the losses and their reality – usually accomplished by having the victim tell the story, possibly over and over, and by asking “how are things going?”
- Express emotions regarding the losses and normalize his or her feelings.

- Receive understanding and sympathy for the various losses, including some calm acceptance of limitations and disfiguration.
- Appreciate that she or he is not alone in the loss.
- Take charge of urgent practical matters, such as insurance submissions, legal advice, personal expenses, and medical referrals.
- Find courage and hope for the future, or encourage victims to borrow some from you when they cannot find it in themselves.

In Later Stages, the Supportive Agenda Might be Expanded to Help the Victim:

- Avoid thinking or behaving in ways that make the loss even more painful.
- Take action to minimize or compensate for his or her limitations by encouraging him or her to use a cane, buy specialty scissors, order a phone with the memory or adopt other coping strategies.
- Set simple loss-related goals (make small decisions without advice, push limits on mobility by five feet, or resume a minor task of daily life).
- Appreciate the loss that other family members have suffered and temper the self-centeredness and introspection that often develops in injured people.
- Attempt to accurately label feelings, neither under or overestimating them.
- Resist any inclination toward an “invalid” status or secondary gain from the crash.
- Adopt a present and future orientation.
- Walk the fine line between being a “victim” of someone else’s negligence and not adopting a self-defeating “victim” stance.
- Identify serious stress symptoms and seek professional help for major depressive disorders, anxiety disorders, and post-traumatic stress disorders.

As a Victim

Be receptive to offers of support from other people who have had a similar experience. Seek them out if necessary. People really want to help. Support groups, although not for everyone, may provide a safe forum to deal with your pain and assist with recovery. Support groups may be facilitated through social service associations, religious institutions, counsellors in private practice, or a MADD Canada Chapter.

At the time of the crisis and immediately after, it is helpful to be active and to use physical exercise to help discharge the tension. It is important to look after your physical health so that you will have sufficient energy to deal with emotional stress. Get enough rest, eat nutritionally and avoid alcohol, caffeine, and nicotine as much as possible in order to reduce anxiety. Talk to your family and friends about the crisis and your feelings. It may seem that they do not attach much importance to what has happened. They may think that if they don't react too strongly it may help you get over it. It's hard for them to recognize and understand the depth of your experiences.

Recovery occurs in stages. Be prepared to experience some or all of the reactions outlined in this material. You may feel you've mastered the intensity of your feelings, only to find they will come back from time to time. This is to be expected. In time, you will become more detached from the event. You will be able to choose if and when you want to think about the crash. If you are still experiencing intense stress reactions 4 to 6 weeks after the crash, it may be helpful to seek professional trauma counselling.

Remember

- *You are having a natural reaction to an unnatural situation.*
- *You are not "losing it"; you are finding your sense of decency.*
- *You are not the only one experiencing these reactions right now.*
- *You are not less capable or less competent.*
- *You may trust your judgment.*
- *You are not weak or unstable.*

Support Resources

The following booklets are available under 'Victim Support' on our Web Site at www.madd.ca. Alternatively, you can call MADD Canada's National Office at 1-800-665-6233, and we will forward copies by mail.

- *Don't Call Me Lucky! - For Those Injured In Drunk Driving Crashes and Their Family & Friends*
- *Closed Head Injury: A Common Complication of Vehicular Crashes*

Below are some national organizations that you may find helpful and supportive. Begin by calling these numbers; they will certainly be a starting place and will likely point you in the right direction for accessing resources close to your home.

Canadian Centre for Occupational Health & Safety

1-800-668-4284

www.ccohs.ca

Canadian Mental Health Association

416-484-7750

www.cmha.ca

Toronto, Ontario

Council of Canadians with Disabilities

204-947-0303 1-866-947-0303

www.pcs.mb.ca/~ccd

Winnipeg, Manitoba

Canadian Paraplegic Association

1-877-422-1112

www.cpaont.org

The Association for the Neurologically Disabled of Canada

1-800-561-1497

www.AND.ca

FUNERALS

When your loved one dies suddenly and unexpectedly, there are many details that need to be attended to by family members. Whether or not prior discussions took place, you must now make arrangements with a funeral home.

Making funeral arrangements is an onerous task. There are many options to consider, including:

- **Burial or cremation**
- **Open or closed casket**
- **Whether the service should include religious or cultural practices**
- **Memorial donations specifying a supportive charity may be requested**

These are a few of the many decisions that will have to be made. Prior experience and reputation may dictate your choice of a funeral home. However, if you need to choose a funeral home, you might consider asking for a referral from a relative, close friend, victim services worker, police officer, or clergy person.

Once you have decided on a funeral home, call the funeral home to make an appointment with one of the Funeral Directors.

Funeral Directors will:

- **Compassionately help you through this difficult decision making process**
- **Help the family plan a personalized funeral that fits budgetary and spiritual needs**
- **Offer grief support services or make appropriate referrals to such services in your community**
- **Provide information about settling your loved one's estate and other relevant matters**

A Funeral Director can be a great source of support following a sudden death.

Support Resources

If you would like to receive a copy of the booklet *Multicultural Funeral Practices* (from Ontario Funeral Service Association), call MADD Canada's National Office at 1-800-665-6233.

YOUR GRIEF

Critical Incident Trauma and Post Traumatic Stress Disorder

Critical incident trauma arises in any situation that a person finds emotionally overwhelming and that attacks the person's ability to cope with it. Particularly, it results in coming face to face with one's own vulnerability.

Types of critical incidents include:

- **Serious injury or death of a family member, especially a child, under tragic circumstances**
- **Actual or perceived threats to one's own physical safety**
- **Mass casualty incidents**
- **Natural disasters**

Reactions are as varied and unique as the persons involved. The severity of the reaction is dependent upon:

- **Personality**
- **Current life situation**
- **Prior history of crisis**
- **Support systems**

There are some commonalities in the phases of Critical Incident Trauma, as outlined on the following Critical Incident Trauma Chart.

Phases of Critical Incident Trauma

Shock Phase (24 – 48 hours)

Emotional Reactions

Disbelief	Emotional numbing	Unresponsiveness
Fear	Sadness	Worry
Anger	Anxiety	
Guilt	Preoccupation	

Physical Reactions

Vomiting	Profuse perspiration	Irritability
Crying	Tremors	Agitation
Involuntary loss of bodily functions	Affected vision	Abruptness
	Perceptual distortion	
Dizziness	Isolation	
	Denial	

Impact Phase/Immediate Aftermath (6 – 8 weeks)

Flashbacks	Anger	Guilt
Second guessing	Concentration problems	Insomnia
Anxiety	Depression	Memory loss

Post Traumatic Long Term Effects (months to several years)

Chronic tension and irritability	Flashbacks	Sadness
Insomnia	Repetitive nightmares reliving incident	Possible loss of sexual interest/impotence
Impaired concentration and memory	Fatigue/Lethargy	Avoidance of scene of incident
Social withdrawal	Inability to tolerate noise	Nervousness
Survivor's guilt	Depression/Anxiety/	Denial

Recovery

Understand that your reactions are normal. People who have been involved in critical incidents have described experiencing at least some of the above-mentioned effects. It is important to remember that recovery is possible.

Things to Avoid

Denial of impact on your life

Social withdrawal

- Others are also affected including your spouse, children, and friends.

Impulsive self-gratification

- Drugs and alcohol.

Attempting to live up to a false image

- Feeling that you must be strong for everyone else.

Unwanted media interviews

- You are not required to grant interviews.

Being self-critical

- Punishing yourself.

The death of a parent, child, partner, sibling or friend is always devastating and difficult to endure. When the death is sudden and violent, it can be even more traumatic. The fact that the death could have been prevented is hard to accept. There are no rules governing the grief process that one experiences after the sudden death of a loved one. The endless list of feelings many bereaved experience is extremely complex and can, at times, seem overwhelming.

Hurt, anxiety, anger, sadness and frustration are just some of the emotions you may be feeling. The sudden death of a loved one from an impaired driving crash brings an abrupt end to all future dreams and aspirations. There was no chance to say, “good-bye,” “thank you,” “I’m sorry,” or “I love you.”

You may feel that you cannot get past the senselessness of the tragedy. The negligence or bad choices that caused this death simply cannot be comprehended. Knowing that it could have been prevented and that someone is clearly at fault is one of the most painful parts of grieving. You may feel intense anger and rage at the accused person. You may feel anger at the criminal justice system, and your family and friends who may not seem to understand. Remember that everyone around you will experience the death differently and may express their feelings in unique ways. A sudden death

typically causes family members to realize their own vulnerability, a concept that may have never been fully understood before. Often we hold on to the belief that “bad things don’t happen to good people” and, when that idea is abruptly destroyed, it undermines our stability and comfort in life, replacing it with a sense of powerlessness.

The road to feeling better and coping with grief is long and sometimes like a roller coaster ride. Life will not be the same as it was before your loved one was killed. You will always feel sadness, but there comes a time when it doesn’t overwhelm and control your entire life. Understand that it is possible to feel better. You will experience sorrow and grief throughout different times in your life, but at some point you can begin to feel better. How you cope will depend on many things, including the way you have coped with a crisis before, and the emotional support you have received from your family and friends.

Expected Emotions of Grief:

The emotions of grief will not be experienced in any given order. One day the griever will feel one emotion and the next he or she may feel others. The grief process takes longer than most people think. Researchers say that the process takes, on average, eighteen months to two years.

Shock:

“I just don’t believe it.”

Some never experience shock or numbness. The impact of the tragedy may take a few minutes or a few days to be realized.

Denial:

The disbelief that the pain of the death is now a reality.

Panic:

“Oh, what am I going to do?”

The fear of becoming chronically disoriented. The griever will wonder if he or she will ever feel “normal ”again.

Emotional Release:

“I can’t stop crying.”

Tears, screaming, wailing, etc. Tensions may be eased through the normal reactions of crying.

Loneliness:

“Without him I might as well be dead too.”

Every griever feels isolated in their grief “work”. If he or she is isolated socially then he or she will experience more loneliness.

Pain:

“I just can’t bear it.”

Anxiety and loneliness can create emotional pain. The strain of grief can even cause physical distress.

Physical Distress:

Such as tightness in the throat, shortness of breath, sighing, an empty feeling in the stomach, lethargy, or upset stomach. These symptoms may mimic those that the deceased suffered prior to death.

Guilt:

“I should have done more for him or her.”

There is often some sense of guilt in grief. The bereaved think of things they feel they should have done for the loved one but didn’t do. Often times, the more hostility in life the more guilt experienced after the death.

Anger:

“Oh God, why me?”

There is often a feeling of irritability and anger. These feelings may be surprising and inexplicable to the griever. Anger may be directed at the medical personnel, family, funeral director, clergy or God, or even toward the deceased.

Depression:

“Will life ever be worth living again?”

The griever may feel that there is no purpose in life and that nothing seems worthwhile.

Preoccupation:

Many times the bereaved person is unable to shift his or her mind from thoughts of the deceased.

Restlessness:

May be both physical and mental. An inability to sit still or concentrate on the simplest tasks can be very distressing. This requires patience.

Withdrawal:

From social relationships and/or daily routines. Sometimes withdrawal is beneficial, as it allows the person to store up emotional strength to re-establish relationships.

Illusions:

May be auditory or visual. Sometimes we think that we’ve heard or seen our loved one or felt his or her presence.

Idealization:

Of the loved one and life that he or she led. Viewing the deceased as “perfect” is a common coping mechanism.

Healing:

“I now realize the meaning of friends.”

A re-entry into life. The bereaved will accept the reality of the death and know that he or she will survive the life crisis.

Readjustment:

“Knowing I’m adjusting to life again would please him or her.”

The acuteness of the death diminishes as this begins. This stage may take time.

Planning for the future becomes realistic.

Non-Adaptive Grief

Even if a person goes through a “healthy” grief process, it is a long, gut-wrenching experience. Because it may last longer than family and friends acknowledge that it should, an adaptive grief process may be interpreted by some as non-adaptive. It is important to reassure survivors that their grief will last a long time and that there is nothing abnormal about their feelings.

Non-adaptive grief processes, however, do occur. It is important to be aware of the signs of non-adaptive grief. Some clues include:

- **Not progressing from the shock state**
- **Gross over or under activity**
- **Agitated depression**
- **Unresolved anger**
- **Pretending the deceased is still living**
- **Suicidal ideation or activity**
- **Loss of normal pattern of social relationships**
- **Psychotic behaviour**
- **Constantly acting out loss behaviourally (i.e. repeated failures in business, subsequent marriages, etc.)**
- **Break-down in family relations**
- **Severe guilt (resulting in constant blaming or punishing self physically and/or mentally)**

These signs may indicate that a person is not coping with his or her grief and may not ever fully recover without professional help. It is essential that this person receive assistance from some source. If you are unable to deal with the problem, refer the person to a psychologist, psychiatrist, social worker or other trained professional. It is important, however, if you have already established some relationship or if the person initiated the contact with you, that he or she doesn’t feel that you are another in a long list of people who have deserted him or her.

Support Resources

If you would like to receive copies of the following booklets, they are available under 'Victim Support' on our Web Site at www.madd.ca or call us at 1-800-665-6233 and we will forward copies by mail.

- *Your Grief: You're Not Going Crazy*
- *Holidays and Hope*
- *Men and Mourning: A Father's Journey Through Grief*
- *We Hurt Too – A Guide For Adult Siblings*
- *The Unique Grief Reactions of a Victim* (from Ontario Funeral Service Association)

You may decide that professional counselling or joining a support group will help you cope with your grief. MADD Canada Chapters may offer peer support groups. If you would like information on accessing counselling in your area, contact MADD Canada's National Office, the local MADD Chapter or your family doctor. Below are some national contacts that may also be able to refer you to emotional support in your community.

Canadian Mental Health Association

Toronto, Ontario
416-484-7750, www.cmha.ca

Compassionate Friends

Winnipeg, Manitoba
1-866-823-0141
Email: TCF/LAC@aol.com

Canadian Register of Health Services Providers in Psychology

www.crhspp.ca

Look in the front pages of your phone book for the Distress Line phone number in your area. Crisis lines are normally available 24 hours a day.

HELPING CHILDREN COPE WITH DEATH

Coping with grief following a sudden and violent death is an extremely difficult task for both adults and children. It is difficult for everyone to grasp the reality of uncontrollable danger in the world. This is particularly hard for adults because they want to protect young children from pain.

It is important to understand that an adult cannot grieve the death of someone close without the children sensing that something is wrong. Young children view adults as all powerful, all knowing beings. What you tell your children becomes permanently etched in their minds. Telling children half-truths or fairy tales about death, in an effort to protect them, may actually harm them in the long run. Children in North America are exposed to death on TV and in movies and will need adults to explain that this death is different from those they've "seen" before.

Talking to children about death should be the beginning, rather than the end, of a long process of sharing and healing.

Essentially, many things such as age, religion, culture, and relationship to the deceased person will influence children's concepts of death and their coping skills. However, the reactions of surviving family members and other caregivers, are the most important factors in determining how children will cope with the tragedy and how their lives will be changed by it.

Suggestions on how to explain death to children vary according to their age and level of understanding. There are some principles that can be very helpful:

- **Always respond to your children's feelings – it will help them feel comfortable about sharing their thoughts and feelings, and to ask any questions they may have.**
- **Children may talk about fears they are having. Some may seem rational and others irrational; reassure them directly and simply. Encourage the expression of their feelings, through play, drawing, and writing.**
- **Touching and holding may be physically comforting.**
- **While sharing as much detail of the family crisis as possible, try to protect the child from witnessing the emotional collapse of someone upon whom the child depends. Children can handle seeing and feeling sadness, loneliness, and anger, but to witness an emotional collapse may bring further anxiety and insecurity.**

- **Allow children to share in the experiences of memorial observances and visits to the cemetery. These activities all work towards feelings of acceptance and healing.**
- **Do not be afraid of crying and do not rush to stop the flow of tears when they start. It is expected that children, like adults, will wash away grief with tears.**
- **Talk about the death when the child expresses his or her concerns. Answer the child's questions with honesty based on his or her cognitive level of development.**
- **Remember that no matter how comfortable children become with an age appropriate explanation of death, they will periodically reprocess their feelings just like adults.**
- **It is important that other caregivers in the child's life know about the tragedy. Remember to inform teachers, coaches, babysitters etc. and ask them to be aware of possible behavioural changes.**

Caring for and supporting a bereaved child can be painful and time consuming. Remember that you too are moving through various phases of grief. It is important to remember to take care of your needs as the adult caregiver and process your feelings as well. The best thing you can do for a bereaved child is deal with your own bereavement in the healthiest way possible.

Support Resources

Remember that the trauma being experienced by your family can be overwhelming. Professional counselling or appropriate support groups may offer assistance. If you would like information on accessing counselling, contact MADD Canada, the school's guidance counselling services, your family doctor, clergy, the hospital's social work department, or social service agencies. Below are some national contacts for referral.

Copies of the following booklets are available under 'Victim Support' on our Web Site at www.madd.ca or call MADD Canada's National Office at 1-800-665-6233 and we will mail a copy.

Helping Children Cope with Death

Straight Talk About Death for Teenagers

Canadian Mental Health Association
Toronto, Ontario

416-484-7750
www.cmha.ca

Canadian Register of Health Services Providers in Psychology

613-562-0900
www.crhsp.ca

INSURANCE

Automobile insurance is mandatory in all Canadian jurisdictions. While the insurance legislation varies from province to province, many terms and conditions are similar. For example, in every jurisdiction except Quebec, automobile insurance policies must contain at least \$200,000 of third-party liability coverage. It should be noted that Quebec's no-fault system provides substantial compensation for third-party injuries.

To be sure which provisions apply in your jurisdiction, you should review a copy of your automobile insurance policy. Seek the advice of your insurance broker to answer specific questions.

The following is a brief explanation of some key legal concepts that are relevant to claims in those jurisdictions that have a fault-based automobile insurance system.

Fault-Based Insurance

a) Negligence: Negligence refers to an act or omission that fails to meet the standard of care that would be expected of a reasonable person in the circumstances. It may be helpful to think of negligence in terms of substandard conduct or carelessness. In the absence of a statute that provides otherwise, a person who negligently injures another person can be held civilly liable for those injuries.

b) The Burden of Proof: In a negligence action, the plaintiff has the burden of proving that the defendant was negligent, and that the defendant's negligence was a cause of his or her injuries or losses. The plaintiff is only required to prove these elements on a **balance of probabilities**. In most provinces, the highway traffic legislation contains a special provision that shifts the burden of proving negligence in cases where a motor vehicle collides with a pedestrian. In these cases, the statute requires the defendant motorist to prove on a **balance of probabilities** that he or she was not negligent.

c) Subrogation: Subrogation occurs when insured drivers collect from their insurance company for damages suffered in a crash that was not their fault. The insurance company then assumes the legal rights of its insured driver, and may pursue a civil action against the at-fault driver for the damages it has paid.

d) Contractual Limits: An automobile insurance policy is a contract between the insured and the insurance company, and is subject to certain terms and conditions. If the insured person breaks one of the conditions and an innocent third party is injured, the insurance company could be released from its obligation to pay benefits under the contract. This third party would then be required to sue the at-fault driver personally. Initiating a lawsuit is both expensive and time-consuming. Moreover, there is no guarantee that the at-fault driver would have sufficient assets to pay for any judgment that is awarded.

Consequently, insurance legislation typically extends some rights to third parties with respect to an insurance company's liability. Third parties are given a direct right of action against the insurer to have insurance money paid directly to them. Moreover, the insurance company is held liable, so that a breach of a condition by the at-fault driver does not negate the third party's right to compensation. Nevertheless, third party benefits are often limited to the minimum coverage required by statute, which in most jurisdictions is \$200,000.

No-Fault Insurance

Every Canadian jurisdiction provides some no-fault benefits. Under the comprehensive no-fault systems, injured parties cannot bring lawsuits against at-fault drivers. Instead, the insurance company pays compensation to anyone who is injured, killed, or whose property is damaged, regardless of who was at fault. Typically, the company then has a right to sue the person responsible for the crash to recover the money that it has paid. This system guarantees that innocent third parties will be compensated, but usually at rates that are below what would be awarded in a fault-based system. Since the no-fault provisions vary across the country, it is best to contact local officials or your broker to determine the provisions that apply in your jurisdiction.

Accident Benefits

Accident benefit coverage provides insured victims with limited compensation from their own insurance company. Except in very limited circumstances, the insured is entitled to these benefits, even if he or she was at-fault in causing the crash. This coverage is mandatory in all provinces except Newfoundland. Accident benefits typically include:

- **Income replacement benefits**
- **Caregiver benefits**
- **Medical, and rehabilitative benefits**
- **Funeral benefits**

Moreover, accident benefit coverage is limited to actual financial losses and out-of-pocket expenses. Since policies differ depending on the insurance company and the province, you should consult your insurance policy to determine what you are entitled to claim. For information on the insurance regulations in your province, call the Insurance Bureau of Canada at one of the phone numbers listed at the end of this section.

Uninsured Motorists

Most jurisdictions provide some compensation to individuals who are injured or killed by an uninsured or hit-and-run driver. Victims covered by an automobile policy

receive benefits from their own insurance company, up to the limits of their policy. The insurance company can then seek recovery from the responsible party. Victims may also sue the responsible party for any damages in excess of his or her own insurance coverage.

The provinces, but not the territories, have indemnity funds which provide limited compensation to individuals who are not covered by an automobile insurance policy and who are killed or injured by an uninsured or hit-and-run driver. In the territories, these victims would either go uncompensated or have to sue the responsible party.

Options for Victims

Victims should first report the claim to the insurance company responsible for providing compensation. Victims who are not satisfied with the response of the claims adjuster should ask to meet with the claims supervisor or manager. If the issue is still unresolved, the victim may contact the Consumer Centre at the Insurance Bureau of Canada, which can act as a liaison or mediator. In cases involving significant property losses or serious personal injuries, the victim should consult a lawyer.

Legal Advice

Some victims may decide to contact a lawyer at the beginning of the litigation process, particularly when serious injury or death is involved. For information on contacting a lawyer in your province, please consult the Civil Liability section of this package.

Right to Sue

The option of pursuing a civil suit following a crash is not available in every province. Quebec and Manitoba have eliminated such lawsuits with the introduction of comprehensive no-fault automobile compensation plans. Ontario has a modified no-fault compensation scheme, which eliminates civil actions except for serious injuries, and death. Saskatchewan has recently changed their system to allow victims to sue or to proceed under the provincial no-fault compensation system. For information specific to your province or territory, contact your regional office of The Insurance Bureau of Canada.

Support Resources

Regional Offices of the Insurance Bureau of Canada

Atlantic Provinces:	1-800-565-7189
British Columbia & Yukon:	(604) 684-3635 or 1-877-772-3777
Ontario:	(416) 362-9528 or 1-800-387-2880
Prairies and Northwest Territories:	1-800-377-6378
Quebec:	1-800-361-5131

FINANCES

Even though you have been injured or suffered the death of a loved one in an impaired driving crash, your usual financial obligations do not cease. In fact, you will now be forced to make vital decisions at a time when emotions are high and money is the last thing on your mind. It will be important for you to re-assess your financial affairs and the support systems available to you.

Expenses Associated with the Funeral

If your loved one was the main financial supporter in the household, his or her death (or injury) immediately changes the household finances. If your loved one provided day-care to your pre-school children, a new expense may be incurred. Grieving victims may also find it too hard to concentrate when they go back to work and consequently, job security may be jeopardized. Funeral expenses can vary greatly, depending on the choices made by the family. Retaining legal counsel, rehabilitation specialists, and settling estate matters may all involve costs. While some of these expenses may eventually be covered or partially covered through insurance or a civil settlement, you will undoubtedly incur many out-of-pocket expenses.

Resources

Assessing the financial concerns of an injured or deceased adult may include reviewing the following documents:

- **Wills**
- **Trusts**
- **Insurance policies**
- **Tax returns**
- **Bank accounts**
- **Employer provided benefits or pension plans**
- **All other financial assets**

Finding these documents may require considerable investigation and this task is best started soon after the crash date as some documents may be time sensitive. Be sure to check all insurance policies, particularly life insurance, and remember to file a final income tax return within six months of the death.

If your loved one is a minor child, a student or a disabled adult, review any group or individual life insurance policies under which he or she might be covered for relevant rehabilitation or death benefits.

The funeral home will provide copies of the proof of death certificate, which is necessary to settle insurance and estate matters. In some circumstances, it may be

necessary to obtain a certified death certificate. In order to obtain this document, a completed application form and the required fee must be forwarded to the appropriate provincial office: the Office of the Registrar General or the Office of Vital Statistics. This application form and address of the nearest Office can be obtained from the funeral director. It may take a minimum of six to eight weeks to process the request, or same day service may be available for an additional charge

Workplace Safety and Insurance Board/Worker's Compensation Board

These agencies provide benefits to those who worked for employers who contributed to the plan. Spouses, children and other legal dependents of workers who are killed on the job or who die from work-related related diseases, accidents, or conditions are eligible for benefits. Claims are limited to situations in which the death was a direct result of a work-related injury or health problem. Depending on the jurisdiction, the office may be known as the Workplace Safety and Insurance Board or the Worker's Compensation Board. The legislation typically gives them sole authority to assess claims and pay benefits. For further details and provincial specifics, contact their offices directly.

Auto Insurance

The rules surrounding auto insurance vary somewhat among the provinces and territories. Policies have different features as well. Read your policy with extreme care, and check with your agent to determine the benefits to which you are entitled. When in litigation, we suggest that you never sign papers that indicate your agreement to settle until **you are certain** all medical bills and other expenses are final. It is best to consult with your lawyer before signing any offers of settlement.

Mortgage and Loan Insurance

Many people opt to purchase insurance when they take out a mortgage or other loans through banks, credit card companies, automobile dealers, and mortgage companies. Usually, this insurance will pay the balance of the loan in the event of death. Check with all creditors to see if any such insurance was in place.

Savings and Investments

This will be the most readily available source of cash to cover expenses. There may be money in chequing or savings accounts, money market funds, mutual funds, stocks, and bonds. Carefully review all financial documents and arrange to meet with a representative of the banking institution(s) used by the deceased. Accounts registered in the deceased's name alone will be frozen for at least thirty days after death and are not

accessible to spouses, executors or other family. Bank accounts that are held jointly between two persons are fully accessible by the surviving individual.

Registered Retirement Savings Plan (RRSPs)

If you are a surviving spouse or executor of an estate, you can change the owner's name on the RRSP, or choose to roll the assets into a new or existing RRSP. There may be technical and complex tax issues to be dealt with and you may wish to consult a financial planner or an accountant before making such decisions.

Employee Benefits

Often employees pay into insurance plans that offer life insurance and other benefits. You should also check with the employer about unused sick days, vacation time, stock options, extended health care benefits, and any unpaid bonuses that may be owed to the estate of a deceased employee.

Canada Pension Plan (CPP)

Through the Canada Pension Plan, the estate of a deceased person may be entitled to a Death Benefit and/or Survivor's Benefit. This is a program implemented by the federal government for anyone who worked and contributed to CPP. An individual may qualify for disability and supplemental benefits under CPP. For application forms and advice call the CPP phone number under Support Resources at the end of this section.

Social Assistance

If the deceased lacked financial means and received social assistance benefits, the department of Social Services in the local municipality may provide benefits for funeral and burial expenses. The local office will determine eligibility upon receipt of the next of kin's application. The application must be made prior to the funeral arrangements being finalized with the funeral director. Criteria and benefits will vary from region to region. Terms are not usually negotiable. The funeral director may direct the family to the appropriate social services office.

Expenses Associated with Injury

The expenses associated with disability can be extensive, including medical and rehabilitative costs. Depending on the disability, there may be a loss of income as well.

The costs of renovating a home and replacing or modifying a vehicle to accommodate the victim's needs may also be expensive.

Support Resources

Your automobile insurance will likely be the primary source of compensation in the event of injury or disability. Check for disability benefits in mortgage insurance and the possibility of insurance on other loans. Remember to avoid signing a settlement until you are completely sure that all your medical bills and other expenses are final and only on the advice of your lawyer.

You may also be able to collect disability insurance if you are unable to work. Contact social services and CPP in your municipality for more information on the benefits to which you might be entitled. Medical verification will be required.

Income Security Programs – Canada Pension Plan

1-800-277-9914

Provincial & Territorial Governments: Listed below are contact numbers for provincial or territorial government offices. Most of the phone numbers are general inquiry lines. Check for touch tone codes, or have the operator put you in touch with the appropriate person or department.

Alberta

780-427-2711
www.gov.ab.ca

British Columbia

Vancouver: 604-660-2421
Outside Lower Mainland:
1-800-663-7867
www.gov.bc.ca

New Brunswick

506-684-7901
www.gov.nb.ca

Newfoundland

709-729-2480
www.gov.nf.ca

Northwest Territories

1-867-873-8921
www.gov.nt.ca

Nova Scotia

902-424-6762
www.gov.ns.ca

Nunavut

1-867-975-6000
www.gov.nu.ca

Ontario

1-800-267-8097
Toronto: 416-326-1234
www.gov.on.ca

Prince Edward Island

902-368-5050

Charlottetown: 902-368-5330

www.gov.pe.ca**Quebec**

Quebec City: 418-643-4721

Montreal: 514-873-2111

www.gouv.qc.ca**Saskatchewan**

306-787-3700

www.gov.sk.ca**Yukon**

867-667-5811

1-800-661-0408

www.gov.yk.ca**Communications Canada**

For information about all Canadian Government offices

1-800-OCANADA, 1-800-622-6232

Financial Planners Standards Council of Canada

416-593-8587 or 1-800-305-9886

www.cfp-ca.org

FLOW CHART OF THE CRIMINAL JUSTICE PROCESS

Under common law principles or provincial law, a police officer may order any vehicle to stop at random. The officer may then demand to see the driver's licence, registration and insurance.

If the officer has reason to suspect that the driver has alcohol in his or her body, the *Criminal Code* authorizes the officer to demand that the driver provide a breath sample for analysis on an approved screening device.

If the driver refuses without a reasonable excuse, he or she may be charged with the criminal offence of failing to provide a breath sample.

If the driver takes the screening test and registers a warn (typically set at a Blood-Alcohol Concentration (BAC) of 0.05%-0.10%), the officer may temporarily suspend the driver's licence under provincial law for 12 to 24 hours (Note, Quebec has no short roadside suspension legislation).

If the driver takes the screening test and fails (the device is set to register a fail at a BAC of 0.10%), the officer will have reasonable grounds to believe that the driver has committed the criminal offence of driving with a BAC above 0.08%.

The officer will demand that the driver come to the station to take a test on an approved instrument (many police use Intoxilizers).

If the driver refuses, without a reasonable excuse, to accompany the officer or take the test, he or she will be arrested for the criminal offence of failing to provide a breath sample.

If the driver takes the test and has a BAC of 0.10%, he or she will be charged with the criminal offence of driving with a BAC above 0.08%. (Most police will only lay a charge if the driver's BAC is 0.10% or higher.) Although the offence may be tried by summary conviction or indictment, almost all cases are processed as summary conviction offences.

If the offender is found guilty or pleads guilty, he or she will be fined a minimum of \$600, and prohibited from driving for a minimum of one year. The judge has the discretion to impose a longer prohibition, a heavier fine and a term of imprisonment. A lesser prohibition may be imposed where the offender has entered into an alcohol interlock program.

In addition to the federal driving prohibition, most provinces will suspend the offender's licence for a minimum of one year. Thus, the offender will be subject to both a federal driving prohibition and a provincial licence suspension, which run concurrently.

THE CRIMINAL JUSTICE SYSTEM

If an impaired driver survives a crash, the victim may find him or herself thrust into the criminal justice system. Understandably, victims want to see justice served. Nevertheless, it is generally felt that no sentence can truly compensate victims for what they have suffered or lost. It may provide some comfort to understand the system that is supposed to deter and punish the individual responsible for the victim's pain.

Federal and Provincial Power under the Constitution

Parliament has constitutional power over criminal law and procedure. The *Criminal Code* is a federal statute that sets out the drinking and driving offences, procedures for their enforcement, and penalties. The federal government also has the power to create new impaired driving offences.

Although the drinking and driving offences are created federally, the administration and enforcement of the federal law is a matter within provincial control.

Thus, the provinces play a vital role in the apprehension, prosecution and punishment of offenders. The provinces have also used their constitutional authority over the licensing of drivers to enact various provincial licence suspensions and other impaired driving countermeasures. Consequently, jurisdiction over drinking and driving is shared between the federal and provincial governments.

The Criminal Justice Process

The Role of the Coroner/Medical Examiner

There are different names for these officials - coroners or medical examiners are practising physicians who investigate deaths that may occur under special circumstances. The coroner or medical examiner also investigates all unnatural deaths, such as those where foul play, suicide, accident, negligence, and malpractice are suspected. The coroner/medical examiner must decide in each case the identity of the deceased and the facts about how, when, where, and by what means the death occurred. They may gather information from the victim's family, doctors, hospital records, and the police.

Autopsy/Post Mortem Examination

An autopsy/post mortem is a medical examination of the body after death. It is performed to determine the exact cause of death. In some circumstances, such as in crashes and other sudden unexpected deaths, a coroner/medical examiner **may** be required to investigate the death. In these cases, the coroner/medical examiner has the authority to order an autopsy/post mortem **without the consent of the family members**. The autopsy/post mortem is always performed in a hospital or at the coroner/medical examiner's office by a specialist in the field of pathology. To obtain information on the coroner's duties please contact the local coroner's office, the local police service, a victim services office, a funeral director, or MADD Canada. Each province and territory has an office of the Chief Coroner or Chief Medical Examiner.

Exact Medical Cause of Death

The physician provides the funeral director with a completed medical certificate of death, which in turn must be remitted to the local division registrar before the death can be officially registered and a burial permit issued. This information and the autopsy results may be made available to the immediate family by the attending physician or the coroner/medical examiner. However, it may take up to six weeks before the full autopsy report can be obtained.

The Role of the Police

The police are responsible for investigating crashes. They will focus on the circumstances that may have led to the collision. This process will include:

- **Interviewing witnesses, as well as the person(s) who may have been responsible for the collision**
- **Determining if alcohol was a factor in the collision**
- **Collecting and cataloguing evidence**
- **Undertaking a collision reconstruction**
- **Deciding if charges will be laid**
- **Determining appropriate charge(s)**
- **Laying appropriate charge(s)**

The victim has no official or formal say in the charges that are laid or whether they are subsequently altered or dropped.

The Role of the Crown Attorney

The lawyer who prosecutes the accused in a criminal proceeding is called the Crown attorney. The Crown has the burden of proving beyond a reasonable doubt that the accused is guilty. Once the police have laid charges against the accused, the Crown decides how to proceed with the case. The Crown may decide that there is not enough evidence to sustain the charge. If so, he or she may proceed on a lesser charge, or bring a motion to dismiss the charge. Conversely, the Crown may decide that additional charges are warranted, or request that the police investigate the matter further.

It may be helpful for the victim to contact the Crown attorney assigned to the case.

The Crown is responsible for prosecuting the accused. Make it clear that you would like to be kept informed as the case proceeds, and be provided with any relevant documents to which you may be entitled.

The Crown attorney is involved in any plea bargaining with the accused. A plea bargain is a negotiation between the Crown and defence counsel concerning the charge, plea and sentence submissions.

Ideally, the Crown should inform the victim if a plea bargain is being considered. Although victims have no power to approve or reject a proposed plea bargain, they can share their thoughts and feelings with the Crown.

The Role of the Defence Counsel

The defence counsel represents the accused's interests at trial. This lawyer has duties both as the accused's representative and as an officer of the court. It is essential in our justice system that the defence counsel vigorously defend the accused, regardless of innocence or guilt. Defence counsel have a duty to ensure that the Crown has proven every element of the offence beyond a reasonable doubt. However, the defence also has an obligation to the court to ensure that the interests of justice are served. Thus, the defence cannot mislead the court or call a witness he or she believes will not be truthful. A basic principle of criminal law is that everyone accused of a criminal offence is entitled to a full and fair defence, regardless of how unpopular that person may be, or how disturbing the alleged offence.

The Role of the Judge

Judges deal with a range of legal issues in the criminal process, in addition to presiding over trials. For example, judges decide whether to issue arrest or search warrants, and whether there is enough evidence to proceed with a trial. Judges also make decisions concerning the release of an accused on bail.

During a trial, the judge must ensure that proper procedures are followed and that both the Crown attorney and defence counsel act in accordance with their obligations to the

court. The judge must also rule on the admissibility of evidence and the capacity of witnesses to testify. In a trial by judge alone, the judge decides whether the accused is guilty or not guilty. The judge also decides on the appropriate sentence if the accused is convicted.

Purpose and Principles of Sentencing

As the following sections of the *Criminal Code* illustrate, the fundamental principle and purposes of sentencing are defined in open-ended and often conflicting terms.

PURPOSE.

718. The fundamental purpose of sentencing is to contribute, along with crime prevention initiatives, to respect the law and the maintenance of a just, peaceful and safe society by imposing just sanctions that have one or more of the following objectives:

- (a) to denounce unlawful conduct;
- (b) to deter the offender and other persons from committing offences;
- (c) to separate offenders from society, where necessary;
- (d) to assist in rehabilitating offenders;
- (e) to provide reparations for harm done to victims or to the community; and
- (f) to promote a sense of responsibility in offenders, and acknowledgment of the harm done to victims and to the community. 1995, c. 22, s. 6.

FUNDAMENTAL PRINCIPLE

718.1 A sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender. 1995, c. 22, s. 6.

OTHER SENTENCING PRINCIPLES

718.2 A court that imposes a sentence shall also take into consideration the following principles:

- (a) a sentence should be increased or reduced to account for any relevant aggravating or mitigating circumstances relating to the offence or the offender, and, without limiting the generality of the foregoing,
 - (i) evidence that the offence was motivated by bias, prejudice or hate based on race, national or ethnic origin, language, colour, religion, sex, age, mental or physical disability, sexual orientation, or any other similar factor,
 - (ii) evidence that the offender, in committing the offence, abused the offender's spouse or common-law partner or child,
 - (iii) evidence that the offender, in committing the offence, abused a position of trust or authority in relation to the victim,
 - (iv) evidence that the offence was committed for the benefit of, at the direction of or in association with a criminal organization,
 - (v) evidence that the offence was a terrorism offenceshall be deemed to be aggravating circumstances;

- (b) a sentence should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances;

- (c) where consecutive sentences are imposed, the combined sentence should not be unduly long or harsh;
- (d) an offender should not be deprived of liberty, if less restrictive sanctions may be appropriate in the circumstances; and
- (e) all available sanctions other than imprisonment that are reasonable in the circumstances should be considered for all offenders, with particular attention to the circumstances of aboriginal offenders.

The Role of the Jury

In a trial by judge and jury, the jury must decide if the accused is guilty on the basis of the evidence presented at the trial.

The Role of the Victim

The victim is an essential source of information for the investigating officer(s). It is important that the victim provide accurate information and an objective account of the events.

A witness, who overstates the facts, even unintentionally, will undermine his or her own credibility and may undermine the progress of the case.

The victim may be called to testify by either the Crown attorney or the defence counsel. Witnesses may appear voluntarily or may be served with a subpoena. If a person refuses to appear as a witness, a warrant can be issued for his or her arrest. Witnesses are not allowed in the courtroom prior to testifying. Victims should try not to discuss the case until a verdict has been reached.

Another important task for the victim is in providing a victim impact statement. These statements are discussed at length in the next section.

The Processing of Cases

Once a charge has been laid, the accused is required to appear in court to answer it. The accused will enter a plea of either guilty or not guilty. If the accused enters a guilty plea, a date for sentencing will be set. The victim may submit a victim impact statement to be considered prior to sentencing.

If the accused pleads not guilty, the next stage depends on whether the accused is charged with an indictable or summary conviction offence. With a summary conviction offence, once the accused has pleaded not guilty, a date for trial is set. However, in indictable offences, a preliminary inquiry may be held to determine if there is sufficient evidence to commit the accused for trial. If it is determined that there is insufficient evidence

to sustain the charge, the charge will be dropped and the accused will be released. If there is sufficient evidence, a date will be set for trial.

In cases tried by indictment, the accused typically has the right to be tried by judge and jury, or a judge alone. If the accused elects to be tried by a judge and jury, selecting the jury may take some time. Although frustrating to victims, it often takes considerable time for a case to get to trial.

At trial, the Crown presents its case first. The defence counsel may cross-examine all witnesses called by the Crown. After the Crown finishes presenting its case, the defence may or may not present evidence. The Crown may cross-examine any witnesses called by the defence. The accused is NOT required by law to give evidence or take the stand. Once all the evidence has been presented, it is considered in conjunction with the governing law and a verdict is given. If the verdict is not guilty, the accused is released immediately. However, if the verdict is guilty, a date for a sentencing hearing is set. Alternatively, sentencing may occur directly at the conclusion of the trial.

The judge alone determines the sentence, even if the offender was tried by a judge and jury. Both the Crown and defence are allowed to make submissions regarding the sentence. Generally, the Crown will speak to the sentence first. If the sentencing hearing is conducted separately from the trial, the Crown will usually set out the basic circumstances of the offence and the offender's prior record.

In addition to the Crown and defence submissions, the judge may also request that a pre-sentence report be prepared by a probation officer. This report contains personal information about the offender, such as his or her background, character and family obligations, and is designed to assist the judge in determining an appropriate sentence.

Finally, the judge must ask whether the victim has been informed of his or her right to present a victim impact statement, and must consider this statement in sentencing.

Many victims report surprise, frustration and even disillusionment with how long the criminal justice process takes from the date of the crash to sentencing. Please discuss this further with your MADD Canada Chapter representative.

Tips for Victims/Witnesses When Testifying

- **Relax. Witnesses are not expected to know the law or proper procedure. As a witness, your task is to provide evidence by answering the questions that are asked of you. You are not there to convict the accused or pass judgment on his or her conduct.**
- **Concentrate on the specific question asked. Wait until the lawyer has finished**

speaking before you respond. Take a few moments to think about the question and your answer. Speak loudly, clearly and slowly. Answer the question specifically. Do not elaborate unless asked to do so.

- **Do not overstate a matter. It is acceptable to say that you are unsure or do not know the answer to a question.**
- **If the Crown or defence counsel has called you as a witness, he or she may ask you open-ended questions that allow you to tell the story in your own words. Leading questions, (ones that generally require a simple yes or no answer), are only asked by the attorney in cross-examination.**
- **Once the Crown has completed the direct examination, the defence counsel will have the opportunity to cross-examine. The defence is allowed to ask leading questions. If the lawyer suggests that events occurred in a way other than how you perceived, it is important for you to point out that you disagree with the lawyer's suggestion.**
- **Regardless of the lawyer's tone, you should try to answer the questions politely. Do not be drawn into arguing with the lawyer or losing your temper. If the lawyer's conduct is inappropriate, it is the job of the Crown attorney or judge to address the matter.**
- **Focus on the question and your answer. As a victim, try to maintain your composure.**
- **While outbursts of anger against the accused are not appropriate, it is understandable that victims will be emotional when talking about their loss. Ask for a break if you need one.**

Courtroom Guidelines

Your behaviour outside the courtroom is important. The case should not be discussed in the halls or washrooms. Never speak to the judge or a jury member, even if you encounter them outside the courtroom. It is imperative that they remain free from bias, or even the appearance of bias. Furthermore, you should remind any persons planning to attend the proceedings that any disruption could result in the judge clearing the courtroom of spectators, including the victim's family.

Be prepared for an emotional reaction to hearing the accused say "not guilty." Although you may be aware of the plea in advance, many victims report a jarring, even alarming response when they hear the words spoken aloud. These are often the first words

that the victim has heard the accused speak. Be prepared to hear upsetting testimony. You may hear about gruesome details or see upsetting photographs for the first time. The defence counsel may even try to establish that you or your loved one was responsible for the crash. Remember that defence counsel have a responsibility to raise every issue that is relevant to the accused's defence. It is the function of the judge or jury to sift through the evidence and determine the facts.

Support Resources

If you have any questions, you may want to consult the Crown's Office or your MADD Canada victim advocate or victim services support worker. For a copy of MADD Canada's *Victim Information Pamphlet: A Guide Through the Criminal Justice System*, consult the web site at www.madd.ca or call the National Office at 1-800-665-6233. Many MADD Canada Chapters offer victim services, including accompaniment of family members and victims to court by a victim advocate.

VICTIM IMPACT STATEMENTS

What is a Victim Impact Statement?

The *Criminal Code* gives victims of crime the right to present a victim impact statement after the offender has pleaded guilty or been found guilty, and prior to sentencing. A victim impact statement is a personal account of the **physical, financial** and **emotional** effects of the crime on the victim and his or her family. If the victim of the crime has been killed or is incapable of preparing a statement, his or her spouse or another relative may write and present the statement.

Under the 1999 amendments to the *Criminal Code*, victims have the right to read their victim impact statement aloud in court. Alternatively, the victim may choose to submit

a written statement. Although no victim is required to present a statement, many victims feel that it is important to tell the court how the offence has changed their lives.

The judge is required to consider the victim impact statement in sentencing.

The purpose of a victim impact statement is to document the effects of the crime on the victim and his or her family. It is not a reiteration of the facts of the case. For example, the statement should not include information like “the crash occurred at 7:00 p.m.” or “the offender had a blood-alcohol concentration of 0.11%.” If the facts in the statement differed from those presented at trial, it would provide defence counsel with an opportunity to challenge the facts as they had been presented. Moreover, it is not advisable to recommend a sentence, repeat rumours, or make allegations about the offender. Consult with the MADD Chapter or the Crown for further guidance.

What do I include in my Victim Impact Statement?

A victim impact statement is normally divided into three sections: financial, physical and emotional impact.

To describe **financial impact**, you should include reference to or proof of all costs incurred as a result of the offence such as:

- **Medical bills**
- **Funeral expenses**
- **Costs of therapy**
- **Loss of income**

Wherever possible, the costs should be calculated on the basis of actual bills. However, it is appropriate to estimate future expenses. For this reason, it is advisable to accurately keep track of all expenses since the date of the crash.

The **physical impact** section of the statement should describe any injuries the victim and his or her family have suffered. It is important to explain whether the injuries are permanent or temporary, and whether the claims are based on medical advice or testing. You may also indicate whether future medical problems may develop as a result of the crash.

Finally, you may describe the **emotional impact** of the offence, including the distress experienced by the victim and his or her family. For example, they may have experienced:

Depression

Mood swings

Nightmares

To help prepare this section of the statement, some victims find it useful to keep a record or journal of their thoughts and feelings. If the victim or any family member has sought counselling as a result of the crash, it may be appropriate to include a statement from the therapist.

When will my Victim Impact Statement be used?

A victim impact statement is presented after the offender has pleaded guilty or has been found guilty, but prior to sentencing. The procedure for submitting a victim impact statement varies. Some jurisdictions provide forms to help victims write a statement. In some areas, the Crown is responsible for gathering the victim impact statement. In others, the police may give the forms to the victim, and then refer him or her to their victim services division. Often, the completed statement is submitted directly to the Crown, who is then responsible for submitting it to the court. Contact the Crown attorney, police services, victim services office, or MADD Canada or one of their chapters to obtain more information.

Under the 1999 amendments, the judge must ask whether the victim has been informed of his or her right to present a victim impact statement, and may adjourn the proceedings to allow the victim to prepare it.

Who gets to see my Victim Impact Statement?

Anything you submit to the Crown must be shared with the defence counsel. This means that the offender may see it. The offender and his or her lawyer are entitled to read and ask you questions about your victim impact statement. In addition, once the statement has been entered into evidence at the sentencing hearing, it becomes a matter of public record. Thus, the media and the general public can access it.

Can I update my Victim Impact Statement?

It may be useful to update your victim impact statement for use in parole or release hearings, particularly if there is new information about the effects of the crime. Victims may present a statement at National Parole Board hearings either in person or on an audio or videotape. Victims also have the right to be informed about all hearings that the offender will have. To register your interest in these proceedings, contact the National Parole Board. For more information on submissions to the Parole Board, consult the **Corrections and Conditional Release** section of this paper.

MADD Canada and its Chapters also provide supportive guidance with these proceedings.

CIVIL LIABILITY

Civil litigation involves the resolution of disputes between private individuals. Civil and criminal laws protect different interests. Criminal law is concerned with deterring and punishing offenders, and protecting society. If an individual is found guilty of a crime, he or she may be fined or imprisoned. While the offender's conviction may provide the victim with a sense of vindication, it does not address the victim's need for compensation. As criminal law is controlled by the state, the role of the victim in a criminal trial is limited to being a witness and providing a victim impact statement. Thus, a victim must sue the driver in order to obtain compensation. However, in provinces with comprehensive no-fault automobile compensation systems, this option may be unavailable or severely limited. Please check with MADD Canada as to the specifics in your province.

Victims may initiate a civil action following a crash to recover for their losses. These may include not only personal injuries and death, but also economic losses, such as lost earnings, medical bills, rehabilitation costs, and damages to the vehicle and other property. Legislation (statutes of limitation) in each jurisdiction imposes a time limit within which civil actions must be initiated. Consequently, it is important to obtain legal advice shortly after the crash to ensure that you do not miss the limitation period. Please consult your lawyer or the Provincial Trial Lawyers Association for specifics. The party who initiates a legal action is the "plaintiff" and the party being sued is the "defendant."

The procedure in a civil case is relatively complex. While the exact terminology varies, there are generally three parts to a civil case: pleadings, discovery and trial. The victim/family members must retain a lawyer, typically a specialist in civil litigation, to initiate a civil action.

Pleadings

An action begins when the plaintiff files a "statement of claim" or "writ of summons," depending on the province. This document sets out the basis of the claim against the defendant and the compensation that the plaintiff is seeking.

The court clerk "issues" the claim by affixing the seal of the court and signing on the court's behalf. A bailiff then serves a copy of the claim on the defendant so that he or she cannot evade the notice.

It is the defendant's responsibility to provide a "statement of defence" that clearly outlines the reasons why the defendant disagrees with the plaintiff's claim. If the defendant does not offer a defence, the court will automatically hold the defendant "liable" or responsible.

The statement of claim, the statement of defence and all other documents filed with the court are called pleadings. They define and narrow the disputed issues and assist the judge in understanding the case. Once all the pleadings have been filed, the discovery process begins.

Discovery

The “examination for discovery” is a pre-trial meeting where both parties may clarify issues and examine the witnesses and evidence that the other party intends to use at trial. Both parties must disclose all documents that are relevant to the lawsuit.

Either party can offer to “settle” the dispute at any point, rather than proceeding to trial. If a settlement is not reached, the parties must go to trial.

Trial

The procedure in a civil trial is somewhat similar to that in a criminal trial. The plaintiff’s case is presented first and witnesses may be called to testify. The plaintiff must prove on a balance of probabilities that the defendant was negligent and that his or her negligence caused the plaintiff’s loss. The plaintiff must also prove that he or she has suffered the losses that are being claimed. The defendant may cross-examine the witnesses called by the plaintiff’s lawyer. Once the plaintiff’s case has been presented, the defendant presents his or her case. The plaintiff’s lawyer is then given an opportunity to cross-examine the defendant’s witnesses.

When all of the evidence has been presented, both parties summarize their case for the judge or jury. They may focus on the weaknesses in the opponent’s argument, as well as highlight the strengths in their own. The judge or jury will then consider the evidence and make a decision. If the defendant is held liable, the judge or jury will also be responsible for assessing damages. Although other remedies are available in certain limited circumstances (such as injunctions and declaratory judgments), they are rarely relevant in litigation arising from crashes.

Damages

The most common remedy awarded in civil actions is damages. The goal of the damage award is, to the extent possible, to place the plaintiff in the position he or she would have been in had the wrong not been committed. Care costs, lost earnings, pain and suffering, property damages, and out-of-pocket expenses are all considered in assessing the compensation to be awarded to the plaintiff. Damage awards are intended to compensate plaintiffs for all the injuries and losses that they suffer both before and after trial.

It is important to note that a damage award does not guarantee that the plaintiff will receive payment. Rather, it gives the plaintiff the legal right to obtain money from the defendant. If the defendant has no assets, the plaintiff will not be able to collect the damage award.

In most provinces, there is some type of criminal injury fund, which provides limited compensation to victims of specific crimes, if there is no other source of compensation. However, these funds typically exclude compensation for victims of impaired driving. See the section on victims' rights legislation.

Civil Liability of Alcohol Providers

Bars and other licensed establishments have been held civilly liable as providers of alcohol for the losses caused or suffered by their intoxicated patrons, both on and off the premises. Similarly, social hosts have also been held liable for the conduct of their intoxicated guests. For a copy of MADD Canada's alcohol liability booklets or pamphlet, call the National Office at 1-800-665-6233.

Booklets:

- ***Being Sued Can Ruin a Good Party: A Social Host's Guide to Understanding and Avoiding Alcohol Liability***
- ***Alcohol, Teens and Catastrophe: What Every Parent Needs To Know About Avoiding Alcohol Liability***
- ***Keeping Good Company: An Employer's Guide to Understanding and Avoiding Alcohol Liability***

Pamphlet:

- ***Sobering Thoughts on Safe Partyng: A Guide to Avoiding Legal Liability***

Obtaining Legal Advice

When one encounters legal problems, obtaining legal advice is a critical consideration. Lawyers are qualified to advise and assist clients. If you do not have a lawyer, you might wish to speak to family and friends for recommendations. Alternatively, you can contact the Trial Lawyers Association in your province or the appropriate *Law Referral Centre* at one of the following numbers.

Support Resources

Alberta Civil Trial Lawyers Association
#550, 10055-106th Street
Edmonton, AB T5J 2Y2
780-429-1133 or 1-800-665-7248
www.actla.com

The Law Society of Alberta
600-919 11th Ave. SW
Calgary, AB T2R 1P3
403-229-4700 or 1-800-661-9003
www.lawsocietyalberta.com

Trial Lawyers Association of B.C.
Suite 1370 – 1100 Melville Street
Vancouver, B.C. V6E 4A6
604-682-5343 or 188-558-5222
Email:tla-info@tlabc.org

The Law Society of B.C.
845 Cambie Street
Vancouver, B.C. V6B 4Z9
604-669-2533 or 1-800-903-5300
www.lawsociety.bc.ca

Ontario Trial Lawyers Association
4 Hughson Street Osgoode Hall
Hamilton, ON L8N 3Z1
905-777-1777 or 1-800-567-3047
www.otla.com

Law Society of Upper Canada
130 Queen Street West Suite 301
Toronto, ON M5H 2N6
416-947-3300 or 1-800-668-7380
www.lsuc.on.ca

Saskatchewan Trial Lawyers Association
PO Box 1482
Saskatoon, SK S4P 3X2
306-955-7850
Email:otla@limk.ca

Law Society of Saskatchewan
1100 – 2500 Victoria Avenue

Regina, SK S7K 3P7
306-569-8242
Email:reception@lawsociety.sk.ca

Law Society of Manitoba
219 Kennedy Street
Winnipeg, MB R3C 1S8
204-942-5571

Law Society of New Brunswick
Suite 206-1133 Regent Street
Fredericton, NB E3B 3Z2
506-458-8540

Nova Scotia Barristers' Society
1645 Granville Street, Suite 1101
Halifax, NS B3J 1X3
902-422-1491
www.nsbs.ns.ca

Law Society of Prince Edward Island
PO Box 128
Charlottetown, PEI C1A 7K2
902-566-1666

Société de l'assurance automobile du Québec
955 King East
Sherbrooke, QC J1G1E3
418-643-7620 or 1-800-361-7620
www.saaq.gouv.qc.ca

Law Society of the Yukon
302 Steele Street, Suite 201
Whitehorse, YK Y1A 2C5
867-668-4231

Law Society of Nunavut
P.O. Box 149
Iqaluit, Nunavut X0A 0H0
(867) 979-2330

Law Society of Newfoundland
PO Box 1028
St. John's, NF A1C 5M3
709-722-4740

**Law Society of the Northwest
Territories**
4918 - 50th Street
PO Box 1298
Yellowknife, NWT X1A 2N9
867-873-3828
www.lawsociety.nt.ca

DRINKING AND DRIVING LEGISLATION

Federal Drinking and Driving Offences and Penalties

In Canada, the drinking and driving offences are contained in the *Criminal Code*, a federal law that applies in every province and territory. Similar criminal offences apply to those operating snow machines, water vessels, aircraft, or railway equipment. A drinking and driving incident may involve various criminal offences, including dangerous driving and leaving the scene of an accident. There are five specific types of offences related to impaired driving:

- **Operating or having care or control of a motor vehicle while one's ability to drive is impaired by alcohol or a drug;**
- **Impaired driving causing death or bodily harm;**
- **Operating or having care or control of a motor vehicle with a BAC over 0.08%;**
- **Failing to provide breath or blood samples for analysis, without a reasonable excuse;**
- **Driving while prohibited under federal law or while suspended under provincial law for a federal impaired driving offence.**

The offences of impaired driving, driving with a BAC over 0.08%, and failure to provide breath or blood samples are “dual procedure” or “hybrid” offences, which means that the Crown may proceed by summary conviction or indictment. The trial procedures used for indictable offences are generally more formal and complex than those that apply to summary conviction offences.

Dual procedure offences generally provide two maximum sentences: one, if the case is tried by summary conviction; and a second, usually heavier, maximum sentence if the case is tried by indictment.

**Impaired driving causing bodily harm or death are both indictable offences.
Thus, the Crown has no discretion in how to proceed.**

As the penalty chart at the end of this section illustrates, the impaired driving offences carry potentially severe penalties, particularly for repeat offenders. However, the maximum sentence is rarely imposed for any offence. Consequently, the high maximum penalties for the impaired driving offences can create a misleading impression of the actual sentences that are handed out. Judges have very broad discretion in sentencing. In addition to imposing driving prohibitions, fines and terms of imprisonment, a judge may require impaired driving

offenders to comply with a probation order. The terms of the order may include: abstaining from alcohol, seeking treatment, completing a set number of hours of community service, and participating in an alcohol interlock program. The judge may also impose any other reasonable conditions that he or she believes are “desirable”.

Provincial Laws Relating to Drinking and Driving

Although the impaired driving offences are created under federal law, the provinces play a vital role in the apprehension, prosecution and sanctioning of offenders.

- **First, the broad investigatory powers in provincial highway traffic legislation are critical to the ability of police to apprehend impaired drivers.**
- **Second, the provinces have constitutional authority to regulate the licensing of drivers, enact various licence suspensions, and impose other driving counter-measures.**
- **Third, because of increased premiums, the provincial insurance law may have a much greater financial impact on an offender than either the federal criminal sentence or the provincial sanctions.**

FEDERAL DRINKING AND DRIVING OFFENCES AND PENALTIES

<p>Impaired driving</p> <p>Driving with a BAC above .08%</p> <p>Failing to provide breath or blood samples without a reasonable excuse</p>	<p>MINIMUM PENALTY:</p> <ul style="list-style-type: none"> • First Offence: \$600 fine and 1-year driving prohibition.** • Second Offence: 14 days imprisonment and 2-year driving prohibition.** • Subsequent Offence: 90 days imprisonment and 3-year driving prohibition.** <p>MAXIMUM PENALTY:</p> <ul style="list-style-type: none"> • Summary Conviction: \$2,000 fine and 6 months imprisonment. <ul style="list-style-type: none"> - First Offence: 3-year driving prohibition. - Second Offence: 5-year driving prohibition. • Indictment*: 5 years imprisonment. <ul style="list-style-type: none"> - First Offence: 3-year driving prohibition. - Second Offence: 5-year driving prohibition.
<p>Impaired driving causing death</p>	<p>MAXIMUM PENALTY*:</p> <ul style="list-style-type: none"> • Life imprisonment and a driving prohibition of any length the court considers proper.
<p>Impaired driving causing bodily harm</p>	<p>MAXIMUM PENALTY*:</p> <ul style="list-style-type: none"> • 10 years imprisonment and 10-year driving prohibition.
<p>Driving while prohibited or suspended</p>	<p>MAXIMUM PENALTY:</p> <ul style="list-style-type: none"> • Summary conviction: \$2,000 fine, 6 months imprisonment and 3-year driving prohibition. • Indictment:* 5 years imprisonment and 3-year driving prohibition.

* In addition to these penalties, the offenders may be fined any amount that the judge believes is appropriate.

**The minimum driving prohibition for first, second and subsequent offences can be reduced to 3, 6 and 12 months respectively, if the offender agrees to participate in an alcohol ignition interlock program, where available.

Support Resources

To learn more about provincial alcohol interlock programs, see MADD Canada's *Rating the Provinces and Territories: The 2003 Report Card* at www.madd.ca, contact the provincial Attorney-General Office, or phone MADD Canada's National Office at 1-800-665-6233.

For more information on the federal impaired driving legislation, you may consult the Department of Justice web site at <http://www.canada.justice.gc.ca>. You could also call MADD Canada's National Office at 1-800-665-6233.

Information on the provincial driving legislation may be found on the following web sites:

Alberta	www.gov.ab.ca
British Columbia	www.gov.bc.ca
Manitoba	www.gov.mb.ca
New Brunswick	www.gov.nb.ca
Newfoundland	www.gov.nf.ca
Northwest Territories	www.gov.nt.ca
Nova Scotia	www.gov.ns.ca
Nunavut	www.gov.nu.ca
Ontario	www.gov.on.ca
Prince Edward Island	www.gov.pe.ca
Quebec	www.gov.qc.ca
Saskatchewan	www.gov.sk.ca
Yukon	www.gov.yk.ca

VICTIMS' RIGHTS – VICTIMS' LEGISLATION

The major piece of federal legislation that deals with victims' rights is the *Criminal Code*. Among other things, the *Criminal Code* imposes a victim surcharge on all offenders. The proceeds of this surcharge are used to fund victim assistance programs in the provinces. In addition, the *Criminal Code* allows judges to impose a restitution order that requires the offender to compensate the victim in certain circumstances. Finally, and perhaps most importantly, the *Criminal Code* gives victims the right to present a victim impact statement prior to the sentencing of the offender. For more information contact MADD Canada's National Office at 1-800-665-6233 or contact your local government bookstore.

Nevertheless, the majority of victims' issues in Canada are governed by provincial and territorial legislation. In most jurisdictions, there are two different statutes that relate to crime victims of crime.

Victims' Bill of Rights/Victims of Crime Act

Victims' rights legislation (often called a **Victims' Bill of Rights/Victims of Crime Act**) outlines how victims should be treated within the criminal justice system. For example, the legislation may state that victims should be treated with dignity and protected from retaliation. Victims' rights legislation also describes the information to which victims are entitled, and sometimes provides various victims' services. However, this legislation varies from province to province, and does not guarantee equal treatment of victims across Canada. Moreover, most of the so-called "rights" are dependent on the discretion of the police, Crown and other justice officials. Victims cannot enforce their rights, and there is little, if any, available recourse if victims' rights are violated.

Victims Compensation or Services Board

The name of the board or agency varies, but almost all jurisdictions provide limited benefits to victims of specified violent crimes. However, this legislation typically excludes the victims of impaired driving.

Information Provided to Victims

In some provinces, the government is required to provide victims of crime with specific information about the relevant case and general information about the criminal justice system. However, in most provinces, victims will not automatically be offered this information. The Crown attorney is not required to keep victims informed. Therefore, victims should make formal requests for information to the proper authorities. It is advisable to contact the investigating police officer to request a copy of the crash report and any other relevant documents. The investigating police officer or victim services support worker may also direct you to the Crown office for information. However, if you are also a witness, you may not be entitled to the same information as the other victims who will not be testifying.

Support Resources

For more information or a copy of your provincial Victims' Rights Bill or victim compensation program, call us at 1-800-665-6233, or contact your provincial or territorial government. The appropriate provincial contact information can be found in the Drinking and Driving Legislation section of this report. See also MADD Canada's *Rating the Provinces and Territories: The 2003 Report Card* at www.madd.ca or call MADD Canada's National Office at 1-800-665-6233 for a copy.

CORRECTIONS AND CONDITIONAL RELEASE

As a victim, it is important to understand how the Correctional Service of Canada and the National Parole Board operate. If the offender is sentenced to less than two years imprisonment, he or she will be sent to a provincial correctional facility. The provincial correctional service will then assess the offender and determine the institution in which he or she will serve the sentence. However, if the sentence is two years or more, the offender will be sent to a federal institution under the authority of the Correctional Service of Canada. The offender will be assessed, and a decision will be made as to whether the sentence will be served in a minimum, medium or maximum-security federal facility.

Information about the Offender

The National Parole Board and the Correctional Service of Canada do not automatically inform victims of when the offender is to be released. Like other members of the public, victims can apply for general information about the offender, including:

- **The length of the sentence**
- **The eligibility and review dates for temporary absences, and day and full parole**

Victims can apply to receive additional information beyond what is available to the public, if the Correctional Service of Canada and the National Parole Board believe that the victims' interests in this information outweigh the offender's privacy interests. The following information may be released to the victim:

- **Where the offender is imprisoned**
- **The date on which the offender is to be released on a temporary absence, day parole, full parole, or statutory release**
- **The conditions of the offender's parole**
- **The offender's destination upon release**

Victims can also request to be notified on an ongoing basis of information, such as the offender's transfer from one institution to another, and the granting of conditional release.

Conditional Release

There are various ways in which the offender can be reintegrated into society after serving all or part of his or her sentence. The National Parole Board's function is to make conditional release decisions for offenders sentenced to imprisonment for two years or longer. Conditional release acts as a bridge between incarceration and the offender's return to the community. There are four types of conditional release - temporary absence, day parole, full parole, and statutory release.

Temporary Absence

This allows the offender to leave the correctional facility temporarily for a specific reason, such as attending a funeral for an immediate relative or for a medical appointment. The offender may be escorted by an officer or unescorted. An offender's eligibility for a temporary absence is dependent on the type of crime committed and the length of his or her sentence. Typically, an offender becomes eligible to apply for a temporary absence after serving the longer of six months or one-half the time necessary to reach eligibility for full parole. Although the prison warden must consult with the National Parole Board, he or she is ultimately responsible for granting temporary absences.

Day Parole

Day parole prepares the offender for full parole or statutory release. Offenders on day parole are allowed to leave the facility during the day (usually to go to work or school), but they must return at night. Except for certain categories of offenders, a person typically becomes eligible to apply for day parole after serving one-sixth of his or her sentence. Day parole may be granted for a period not exceeding six months and may be continued for additional periods not exceeding six months. While the National Parole Board makes the decision to grant day parole, the Correctional Service of Canada supervises offenders in the program.

Full Parole

Full parole allows the offender to serve the remainder of his or her sentence in the community under the supervision of a parole officer. Parole is not granted automatically. An offender generally must serve one-third of the sentence before he or she can apply for full parole. Full parole may be suspended if the offender poses a risk to society or fails to comply with the conditions of his or her parole. Upon suspension or revocation of parole, the offender is returned to custody.

When an offender is released on parole, he or she is subject to mandatory conditions. These include:

- **Travelling directly to his or her place of residence and immediately contacting his or her parole supervisor**

- **Remaining within Canada**
- **Obeing the law and keeping the peace**
- **Informing the parole supervisor of being arrested or questioned by police**
- **Refraining from owning a weapon, except as authorized by the parole supervisor**
- **Advising the parole supervisor of any change in address or status**

The Correctional Service of Canada may recommend and the National Parole Board may impose additional conditions, such as prohibiting the offender from contacting the victim or abstaining from alcohol. However, the additional conditions must relate to the offender's previous criminal behaviour.

Statutory Release

The law allows most offenders to earn one day off of their sentence for every two days served with good behaviour. Thus, almost all federal inmates must be released under supervision after serving two-thirds of their sentence. Unlike parole, statutory release is not discretionary, except in very limited circumstances. However, the National Parole Board may impose conditions similar to those imposed with full parole. Statutory release can be revoked if the offender does not comply with the imposed conditions. The Correctional Service of Canada may recommend that an offender be denied statutory release if it believes that the offender is likely to commit:

- **an offence causing death or serious harm;**
- **a sexual offence involving a child; or**
- **a serious drug offence**

The Correctional Service of Canada is responsible for supervising offenders on conditional release from a penitentiary or institutions in provinces or territories without their own parole boards. Supervision is also provided under contract with provincial governments and non-government agencies, such as the John Howard, Elizabeth Fry or St. Leonard Societies. Offenders will be returned to prison if they present an undue risk to the public or do not abide by the conditions of release. More than half of the offenders returned to prison are returned for a violating a condition of their release, rather than for committing a new crime.

Support Resources

To obtain further information about conditional release or a specific offender, please contact the National Parole Board or the Correctional Service of Canada at one of the following numbers.

Correctional Service of Canada

National Office Headquarters, Ottawa, Ontario
(613) 954-6549, www.csc-scc.gc.ca

National Parole Board

Ottawa, Ontario
(613) 992-5891, www.npb-cnlc.gc.ca

Atlantic Regional Office

(506) 851-6056 or (506) 851-3361
Victim Information Line - 1-800-265-8744/8644

Ontario Regional Office

(613) 634-3857
Victim Information Line - 1-800-518-8817

Pacific Regional Office

(604) 870-2468
Victim Information Line - 1-888-999-8828

Prairies Regional Office

(306) 975-4228
Victim Information Line - 1-888-616-5277

Quebec Regional Office

(514) 283-4584
Victim Information Line - (514) 283-9925/4022

GLOSSARY OF TERMS

Abrogate: To annul, revoke or repeal. In law, abrogation is the annulment of a law formerly in force by legislative action, constitutional authority or usage.

Absolute Discharge: An offender who receives an absolute discharge is deemed not to have been convicted of the offence. However, since the offender pleaded or was found guilty, he or she will still have a federal criminal record. A judge can only order a discharge if it is in the offender's best interest and not contrary to the public interest. A discharge cannot be given if the offence carries a minimum punishment or is punishable by imprisonment for 14 years or life.

Accused: A person against whom a criminal proceeding is initiated.

Acquittal: A finding of not guilty in a criminal case.

Act: A law passed by Parliament or a provincial legislature. Acts are also called statutes.

Action: A judicial proceeding in either civil or criminal law.

Adjournment: A temporary postponement of court proceedings.

Affidavit: A sworn, written declaration that certain facts are true.

Affirmation: A non-religious oath given before testifying.

Allege: To suggest that something is true without necessarily being able to prove it.

Alternative or Extra-judicial Measures:

These programs are used most often for young offenders and provide an opportunity for a young person to avoid the formal justice system. They may include victim and offender reconciliation, community service, and the payment of a fine. Such programs are usually reserved for first time, non-violent offenders.

Appeal: Examination by a higher court of the decision of a lower court or tribunal. The higher court may affirm, vary or reverse the original decision.

Appearance Notice: A notice issued by a police officer requiring the accused's appearance before a judge or justice of the peace to answer a charge. An appearance notice is typically given instead of keeping the accused in custody.

Arraignment: The process in criminal law by which the accused's name is called, the charge is read, and the accused pleads guilty or not guilty. If the offence is one that gives the accused a choice, he or she will also elect at the arraignment to be tried by a judge in a lower court, or by a judge or a judge and jury in a higher court.

Blood-Alcohol Concentration (BAC Over 0.08%): A BAC is a weight of alcohol in a given volume of blood. In Canada, it is a federal criminal offence to drive with more than 80 milligrams of alcohol per 100 millilitres of blood. The concentration of alcohol in a person's

blood exceeds eighty milligrams in one hundred millilitres of blood.

Bail: Monetary or other security put up by the accused or by someone on the accused's behalf to ensure that the accused appears at trial.

Bench Warrant: A court order empowering the police to arrest a person. These warrants are most often issued in cases of contempt of court, failure to appear or where an indictment is being laid.

Beyond a Reasonable Doubt: This is the rigorous standard of proof that the Crown attorney is required to meet in a criminal case. This means that the evidence must be so complete and convincing that any reasonable doubts as to the guilt of the accused are erased from the mind of the judge or jury. The Crown must prove each element of the offence beyond a reasonable doubt.

Cause of Action: The legal basis of the plaintiff's civil suit against the defendant.

Challenge (jury challenge): To object to a juror selected for a criminal or civil action. In criminal actions, challenges may be made by both the Crown or the defence.

Challenge for Cause: The Crown and defence are entitled to an unlimited number of challenges for cause. These challenges may be based on: the fact that the juror's name does not appear on the panel; or that he or she is biased; has been convicted of an offence for which he or she was sentenced to more than 12 months imprisonment; is an alien; is physically unable to perform the duties

of a juror; or does not speak an official language of Canada.

Change of Venue: Generally, cases are tried in the courthouse nearest to where the offence took place. A change of venue involves moving the trial to a court in another place.

Charge: The term "charge" is used in at least two distinct senses. First, the term "criminal charge" refers to the underlying criminal offence in issue. Second, a "charge to the jury" is the statement or address that the judge makes to the jury at the end of the trial summarizing the legal principles that they must consider in reaching their decision.

Circumstantial Evidence: Evidence which may allow a judge or jury to infer certain facts from other facts, which have been proven. Circumstantial evidence may be critical if there is no direct evidence of key elements of the case. For example, assume that there was no eyewitness to a shooting. The fact that the suspect's fingerprints were found on the murder weapon is not direct proof that he or she was the murderer. Rather, it is circumstantial evidence from which a person may, along with the other evidence, infer that he or she committed the crime.

Class Action: An action or lawsuit brought by a representative plaintiff on behalf of a group of people who have been similarly affected.

Community Council: Alternative form of justice practiced by First Nation people.

Compensation: A financial award for loss.

Complainant: The person who initiates the complaint in an action or proceeding.

Conditional Discharge: Similar to an absolute discharge, except that the offender must comply with the conditions contained in a probation order. If the offender violates these conditions, the discharge may be revoked. A conviction will then be entered, and an appropriate sentence imposed.

Conditional Sentence: A conditional sentence allows an offender to serve his or her term of incarceration in the community, rather than in prison. Conditional sentences can only be imposed if an offender is sentenced to less than two years imprisonment, and the judge believes that serving the sentence in the community would not pose a risk to the public and is consistent with the fundamental purpose and principles of sentencing. Conditional sentence orders are subject to both mandatory and optional conditions. The optional conditions may include curfew, house arrest, community service, and abstention from alcohol and drugs. An offender who breaches a condition may be ordered to serve the remainder of the sentence in prison.

Confession: A suspect's or accused's out of court statement acknowledging responsibility made to an authority figure.

Contempt of Court: A criminal offence that typically involves interfering with the administration of justice, ignoring a court order or defying a judge.

Conviction: The formal finding of a court that the accused committed a criminal offence. A conviction will be registered if the accused pleads guilty or is found guilty following a trial.

Corroborating Evidence: Evidence that confirms or strengthens evidence already presented to the court.

Counterclaim: An action brought by a defendant against a plaintiff. The defendant's counterclaim is dealt with in the same trial as the plaintiff's claim.

Criminal Code: The federally enacted statute that sets out criminal offences, procedures and sentences.

Cross-Examination: In trials, each party may call witnesses and question the other party's witnesses. The term cross-examination refers to the lawyer's questioning of the other party's witnesses. Lawyers are given greater latitude in cross-examination than in examining their own witnesses (direct examination or examination-in-chief).

Crown Attorney: The lawyer representing the state in a criminal prosecution.

Damages: Monetary compensation for financial or property losses, emotional or physical injuries, loss of earnings, and costs of care.

Dangerous Offender: A dangerous offender is an individual who has been convicted of a serious personal injury offence and found by the court to be a danger to society. If a court determines that an individual is a dangerous

offender, he or she will be sentenced to an indeterminate period of incarceration.

Defence Counsel: The lawyer representing a suspect or the accused in a criminal matter.

Defendant: The person sued in a civil action.

Diversion: In some jurisdictions an accused, rather than being tried, can enter a diversion program. These programs are often used for young, native or other suspects who may have special needs. If the suspect successfully completes the diversion program, the criminal charges are stayed.

Docket: A list of cases scheduled for a particular court calendar.

Dual Procedure Offence: In Canada, all criminal offences are divided into one of three categories: summary conviction, indictable and dual procedure offences. In a dual procedure (hybrid or Crown electable) offence, the Crown attorney has the choice to proceed by summary conviction or indictment. The distinction between summary conviction and indictable offences is based on the formality of the procedures used to try them. Once the Crown has made its decision, the offence is subject to the normal rules of procedure for a summary conviction or indictable offence.

Election by the Accused: The *Criminal Code* gives an accused charged with certain offences the choice of being tried by a judge in a lower court, a judge in a higher court, or by a judge and jury in a higher court.

Election by the Crown: In cases involving dual procedure offences, the Crown has discretion to prosecute a case by summary conviction or by indictment. The Crown is more likely to proceed by indictment if the circumstances are more serious than a typical case, or if the accused is a repeat offender.

Examination for Discovery: In civil actions, the parties are given an opportunity to question each other's witnesses prior to trial. The examination for discovery allows the parties to narrow the issues and focus the trial on contested matters.

Examination in Chief: The term examination in chief (direct examination) refers to a lawyer's questioning in court of his or her own witnesses.

Exclusion of Witnesses: In a criminal trial, the witnesses are excluded from the court during the testimony of other witnesses. This is done to prevent witnesses from being influenced by the testimony of others.

Exhibit: A document or object shown to the court as evidence in a trial. The court clerk assigns each exhibit a number or letter as they are introduced to facilitate future reference during the trial.

Garnishment: The seizing of a person's property, or salary, as set out by statute, for the purpose of paying off a debt.

Hearing: A legal proceeding held by a judicial, quasi-judicial or administrative tribunal.

Impaired Driving: this term is often used to refer to the *Criminal Code* offence of operating or having care or control of a motor vehicle when one's ability to do so is impaired by alcohol or a drug.

Indictable Offences: The category of criminal offences that are tried by indictment. As indicated, the procedures used in processing indictable offences are more complex than those used to try summary conviction offences. For example, in most indictable offences, the accused has the right to elect to be tried by a higher court by a judge, or by a judge and jury. Generally, the indictable offences are more serious than summary conviction offences, and carry lengthier maximum sentences.

Information: An accusation made under oath before a judge or justice of the peace that an individual has committed an offence. Typically, it is the police who "lay" or "swear" the information. If the judge or justice of the peace concludes that there is sufficient evidence of an offence, he or she may issue either a summons or warrant for the accused's arrest.

Injunction: A court order restraining a party from performing some act (prohibitory injunction), or requiring the performance of some act (mandatory injunction). Injunctions may be permanent or temporary.

Intermittent Sentence: A sentence of imprisonment that is served in intervals (usually weekends). Judges can only impose an intermittent sentence if the term of imprisonment is 90 days or less. Offenders serving an intermittent sentence must comply with the

conditions of a probation order when not confined.

Judgment: The decision or determination of a court on a matter submitted to it.

Judicial Interim Release: A judicial order releasing the accused from custody prior to trial. The release is unconditional, unless the prosecutor shows cause why certain conditions should be imposed. A judicial interim release cannot be granted for certain serious criminal offences, such as murder, mutiny or treason.

Justice of the Peace: A judge appointed by the provincial Lieutenant Governor to perform a number of limited functions, such as issuing summons and warrants.

Legal Aid: A program that assists those who require a lawyer, but cannot afford one. In some provinces, legal aid may only be available for more serious criminal offences.

Litigation: The process of trying a dispute in court.

Mandatory Parole (statutory release): Inmates are generally credited with one day of earned remission for every two days served with good behaviour. Mandatory parole is the term used to describe situations in which the inmate is released as a result of his or her accumulated earned remission. Inmates released under mandatory parole are supervised by a parole officer.

Occurrence Number: The identification number assigned by the police to a particular crime under investigation.

Offence: The term offence is typically used to refer to both federal crimes and violations of provincial or territorial law.

Offender: A person who has pleaded guilty to or found guilty of an offence.

Parole: The release of an offender from prison prior to the end of his or her sentence. Offenders on parole continue to serve their sentence outside the prison under the supervision of a parole officer.

Perjury: An intentionally false statement made under oath or in a sworn affidavit.

Plaintiff: The person who initiates a civil suit.

Plea-Bargaining: Negotiations between the defence counsel and the Crown attorney concerning the charges and pleas of the accused. The Crown may accept a guilty plea to a lesser charge rather than incurring the expense of a trial on the original charge. The Crown may also agree to make a joint submission on sentence to the judge, if the accused agrees to plead guilty.

Preliminary Hearing: A hearing to determine if there is sufficient evidence to commit an accused for trial. Offenders who are tried by indictment are typically entitled to a preliminary hearing.

Pre-Sentence Report: Prior to sentencing, the judge may order a probation officer to prepare a pre-sentence report. The report summarizes the accused's family life, personal situation and background. Judges use pre-sentence reports to assist them in determining an appropriate sentence.

Probation: A sentence that requires the offender to obey certain stipulated conditions. Some conditions, such as keeping the peace and being of good behaviour, are compulsory in every probation order. Other conditions are left to the judge's discretion. Probation is only available if the offence does not carry a mandatory jail term. The probation order can be no more than three years in duration. It is a federal criminal offence to violate any term of probation without a reasonable excuse.

Psychiatric Assessment: An assessment of an accused by a qualified medical professional to determine if the accused is fit to stand trial.

Recognizance: A formal promise made by the accused to appear for a specified legal proceeding. Depending on the circumstances, the accused may enter the recognizance before a police officer or a judicial officer.

Regulation: Legislation enacted under the authority of a statute. The enabling statute typically delegates authority to enact regulations to the Governor-General in Council (the federal cabinet), the Lieutenant Governor in Council (a provincial cabinet), a Minister, government official, or an administrative board. Typically, the regulations will set out detailed provisions that are not essential to include in the statute. The power to enact regulations permits the government to act quickly in introducing changes without having to enact a new statute.

Remand: To adjourn a hearing or proceeding to a later date, requiring the

accused to be held in custody unless granted bail.

Restitution Order: An order issued by a judge requiring an offender to return property obtained by crime to the original owner.

Search Warrant: A warrant issued by a judge authorizing the police to enter and search a place for evidence of an offence.

Sentence: The punishment imposed on an offender.

Solicitor-client privilege: A client's right to demand that no statement made to his or her lawyer will be disclosed without his or her consent. The client may, expressly or impliedly, waive the privilege. Solicitor-client privilege is not absolute and a lawyer may breach the privilege to prevent a serious crime.

Statute of Limitations: A statute that sets out the period of time within which a civil action must be initiated.

Subpoena: An order of the court which typically compels an individual to hand over certain documents or come to a legal proceeding and testify.

Summary Conviction Offences: The category of offences that are tried by summary conviction. These offences are tried in the lower courts and involve less serious behaviour than indictable offences. Similarly, the sentences for summary conviction offences are typically far less onerous than those for indictable offences.

Suspended Sentence: If an individual is convicted of an offence that does not

have a minimum penalty, the judge may suspend the passing of sentence and order him or her to be released on probation. If the offender breaches probation, the judge may order the offender returned to court and sentence him or her for the original offence. As well, the offender may be charged with the federal criminal offence of breaching probation. In deciding whether to impose a suspended sentence, the judge must consider the offender's age and character, the nature of the offence and the circumstances surrounding its commission.

Testimony: Statements made in court by a witness under oath or affirmation.

Tort: A civil wrong arising from an act or omission.

Transcript: An official typed copy of the statements made during a legal proceeding.

Verdict: A verdict is the jury or the judge's finding in a case. In criminal cases, the jury's verdict must be unanimous.

Victim Surcharge: A victim surcharge is a monetary penalty imposed on offenders, in addition to any other punishment. It is paid to the provincial and territorial governments to provide victims programs, services and assistance.

Voir Dire: A hearing held during a trial on the admissibility of contested evidence, or the competency of a witness.

Writ: A written command or formal order in the name of the Queen.

Young Offenders Act: A federal statute that established how young people were to be treated, tried and sentenced for criminal offences. This statute was replaced by the *Youth Criminal Justice Act* which came into force on April 1, 2003.

MADD CANADA VICTIM SERVICES

MADD Canada offers the following free services to Victims of Impaired Driving:

(Victims are defined as anyone impacted by impaired driving.)

Emotional Support

- Victim advocates and victims from the chapter offer one-to-one peer support.
- Some chapters run victim support groups.

Court Accompaniment and Support – Criminal Trial Process

- Local chapter members volunteer to go to court with a victim or the victim's family.

Helping Victims Know Their Legal Rights

- Volunteers assist victims in understanding their right to submit a victim impact statement and help them prepare the statement if necessary.

Victims' Weekend and Candlelight Vigil

- These combined events are offered free of charge and provide the chance for victims to come together to honour and remember their loved one(s).
- The Victims' Weekend includes educational presentations by professionals on grief, bereavement, coping with injury, and related issues. It also provides time for reflection in a supportive environment.

Free Brochures

Victim Information Pamphlet: Your Guide to the Criminal Justice System

Your Grief: You're Not Going Crazy

Helping Children Cope with Death

Straight Talk About Death for Teenagers

Don't Call Me Lucky: For Those Injured in Drunk Driving Crashes and their Family and Friends

Holidays & Hope

Closed Head Injury: A Common Complication of Vehicular Crashes

Men and Mourning: A Man's Journey Through Grief

Your Loved One Drinks and Drives

We Hurt Too – A Guide for Adult Siblings

The Real Facts on Alcohol Use, Injuries and Deaths

The Unique Grief Reactions of a Victim of Crime

A National Resource Guide contains federal and provincial resources for all victims of crime, as well as resources specifically for victims of impaired driving.

Victim Support Training MADD Canada is in the process of revamping its victim support training in conjunction with Toronto Advanced Professional Education.

Referrals to other community groups and agencies for assistance, such as counselling and legal assistance.

Court Monitoring

- Volunteers attend court, and keep track of how impaired driving charges are handled.
- Court monitoring is conducted to encourage the justice system to recognize the seriousness of impaired driving and to sentence offenders accordingly.

Advocating for Victim Rights

- Volunteers and National Staff advocate for a stronger voice for victims of impaired driving within the criminal justice system.

Victim Impact Panels

- Victims share their experiences in a panel discussion in front of offenders, who are required to attend as part of their sentences.

On-Line Victim Tribute

- Tributes are posted through our internet website – victims and their families can have a picture of their loved one(s) placed on the site with a short memorial message.

On-Line Victim Message Board

- Victims can post messages and support each other online through our internet website. The site is for victims only and is monitored by MADD Canada Victim Services.

Memorial Wall

- This is located at the National MADD Canada Office at 6507C Mississauga Road in Mississauga, Ontario – victims and their families can have a picture of their loved one(s) placed on the wall in honour, tribute and remembrance.

CASE INFORMATION SHEET

Use this form to keep track of information relevant to your case

Accused's Name: _____

BAC Reading: _____

Police Occurrence Number: _____

Investigating Officer(s) Name: _____

Coroner's/Medical Examiner's Name: _____

Crown Attorney's Name: _____

Defence Counsel's Name: _____

Court Dates:

Judge's Name

Final Case Disposition:

