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A HANDBOOK

FOR POLICE AND CROWN PROSECUTORS ON

CRIMINAL HARASSMENT

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1 Introduction

Criminal harassment, which includes "stalking," is a crime. While many crimes are defined by conduct that results in a very clear outcome (for example, murder), criminal harassment generally consists of repeated conduct that is carried out over a period of time and that causes victims to reasonably fear for their safety but does not necessarily result in physical injury. It may be a precursor to subsequent violent acts.

Purpose of Handbook

1.1 Purpose of This Handbook

The purpose of this handbook is to provide police and Crown prosecutors with guidelines for the investigation and prosecution of criminal harassment cases and to promote an integrated criminal justice response to stalking. *It is intended to be a starting point for police and Crowns. Police and Crowns are encouraged to adapt these guidelines to reflect the particular needs and circumstances of each jurisdiction and each case.*

The Handbook was developed by a working group of federal/provincial/territorial criminal justice officials in consultation with criminal justice professionals, and it was first published in 1999. These guidelines support a commitment by Federal/Provincial/Territorial Ministers Responsible for Justice to strengthen the criminal justice system's response to criminal harassment. The development of these guidelines was prompted by the findings and recommendations of the 1996 Department of Justice Canada review of the criminal harassment provisions in the *Criminal Code*.

Legislative History of Criminal Harassment

1.2 Legislative History of Criminal Harassment

Criminal harassment is not new, but recognition of it as a distinct criminal behaviour is recent. Before 1993, persons who engaged in stalking conduct might have been charged with one or more of the following offences: intimidation (section 423 of the *Criminal Code*); uttering threats (section 264.1); mischief (section 430); indecent or harassing phone calls (section 372); trespassing at night (section 177); and breach of recognizance (section 811).

On August 1, 1993, the *Criminal Code* was amended to create the new offence of criminal harassment. It was introduced as a specific response to violence against women, particularly to domestic violence against women. However, the offence is not restricted to domestic violence and applies equally to all victims of criminal harassment.

The relevant sections of the *Criminal Code* have since been amended twice: once, effective May 26, 1997, to make murder committed in the course of criminally harassing the victim a first degree murder offence, irrespective of

whether it was planned and deliberate, and to make the commission of an offence of criminal harassment in the face of a protective court order an aggravating factor for sentencing purposes; and the second time, effective July 23, 2002, to double the maximum sentence for the offence of criminal harassment to 10 years' imprisonment for an indictable offence.

What do we Know About Criminal Harassment in Canada?

1.3 What do we Know About Criminal Harassment in Canada?

The most current Statistics Canada police and court data relating to criminal harassment[1] reveal the following facts for 2002.

- In total, 9,080 criminal harassment incidents were reported to a sample of 123 police forces in Canada in 2002. This number accounts for slightly over 4% of all violent incidents reported to those police forces that year.
- Of those 9,080 incidents, 4 in 10 (45%) were cleared by charge and the complainant declined to lay charges in 1 in 6 (16%).
- Of the victims, 3 in 4 were female (76%).
- Female victims tended to be younger than male victims. Of the female victims, 4 in 10 (42%) were under 30 years of age, compared to 27% of male victims.
- Of the accused, 8 out of 10 were male (84%).
- Of the female victims, 1 in 3 (31%) was criminally harassed by a current or former intimate partner; slightly fewer female victims were harassed by an acquaintance or a friend (23% each).
- Of the male victims, 4 in 10 (39%) were criminally harassed by a casual acquaintance, while only 13% were stalked by a current or former intimate partner.
- Two thirds (66%) of all criminal harassment incidents occurred at the victim's home.
- Although victims almost always suffered emotional harm, physical injury was recorded by the police in less than 2% of all cases.

From 1995 to 2001, the number of criminal harassment incidents reported to a sample of 179 police respondents increased by 40%, from 3,030 incidents in 1995 to 4,252 incidents in 2001.[2] Such an increase is not uncommon following the introduction of a new law. It is difficult to assess, however, whether the

[1] Aggregate Uniform Crime Reporting (UCR1) Survey and Revised Uniform Crime Reporting (UCR2) Survey, Canadian Centre for Justice Statistics, 2002.

[2] Revised Uniform Crime Reporting (UCR2) Survey, Trend Database, Canadian Centre for Justice Statistics, 2001.

rise is due to an increase in the number of criminal harassment incidents, increased reporting by victims or a change in how police record such incidents.

1.4 Impact of Criminal Harassment on the Victim

Impact of Criminal Harassment on the Victim

The cumulative effect of harassing behaviour and actions causes victims to experience intimidation, as well as psychological and emotional distress. The psychological effect of stalking on victims can produce an intense and prolonged fear. This fear usually includes an increasing fear of the escalation of the frequency and nature of the conduct (for example, from non-violent to life-threatening) and is accompanied by a feeling of loss of control over the victim's life.

Some common responses by victims to the trauma of being stalked include the following:

- self-reproach;
- a tendency to downplay the impact of the stalking;
- interpretation of the stalking as a "private matter";
- a sense of betrayal and stigma;
- anxiety and fear, due to the unpredictability of the stalker's conduct;
- feelings of being helpless and unable to control their lives;
- lack of confidence in police, resulting in a failure to report;
- inaction, due to a lack of awareness that the conduct is criminal; and
- denial or embarrassment.

1.5 What do we Know About Stalkers in Canada?

What do we Know About Stalkers in Canada

Criminal harassment or "stalking," as it is commonly called, is not a psychiatric diagnosis. No single psychological profile exists for stalkers. Stalking and harassing behaviour can take many forms. A popular portrayal of criminal harassment is the stalking of a celebrity or public figure. In Canada, however, it appears that the primary motivation for stalking another person relates more to a desire to control a former partner.

Individuals who harass and stalk can possess one or more of a variety of psychological difficulties, ranging from personality disorders to major mental illnesses. Since the introduction of the first anti-stalking law in the United States, there have been a number of attempts to create stalking typologies from both the psychiatric and the law enforcement perspectives. Regardless of the typology, however, most individuals who stalk are engaging in obsessional behaviour. They are obsessional in the sense that they have persistent thoughts and ideas regarding the victim. They do not necessarily fulfil the

diagnostic criteria for any serious psychiatric disorder. However, many have prior criminal, psychiatric and drug abuse histories that fall under Axis 1 diagnosis. The most common include alcohol dependency, mood disorders and schizophrenia.

Although no typology is all-inclusive, the one developed by the Los Angeles Police Department (LAPD) Threat Management Unit is used as a theoretical framework in threat assessments by both the Behavioural Sciences Branch of the Royal Canadian Mounted Police and the Behavioural Sciences Section of the Ontario Provincial Police.[3] It proposes three types of stalking behaviour: simple obsessional, love obsessional and erotomanic stalker.

Erotomania is a delusional disorder in which the central theme is that another individual is in love with the stalker. The **erotomanic stalker** is convinced that the object of their attention, usually someone of the opposite sex, fervently loves them and would return the affection if it were not for some external influence. The person about whom this conviction is held is usually of a higher status than the stalker but is often not a celebrity. The victim could be their supervisor at work, their child's paediatrician, their church minister or the police officer who stopped them for a traffic violation but did not charge them. Sometimes it can be a complete stranger.

Love obsessional stalkers, on the other hand, can be obsessed in their love without possessing the belief that the victim loves them.[4] Very often, the love obsessional stalker suffers from a major psychiatric illness, such as schizophrenia or mania, and wants to "win" the love of their victim.

The **simple obsessional stalker** is similar to what has been described, in other typologies, as the intimate partner stalker. Most of these stalkers have been in some form of relationship with the victim. The contact may have been minimal, such as a blind date, but more commonly it is a prolonged dating relationship, common-law union or marriage. The perpetrator refuses to recognize that the relationship with the other person is over and the prevailing attitude is "If I can't have her (or him), then no one else will." The stalker mounts a campaign of harassment, intimidation and psychological terror. The motivation for the harassment and stalking varies from revenge to the false belief that they can convince or coerce the victim back into the relationship.

Most simple obsessional stalkers are not mentally ill. Many have longstanding personality disorders. Department of Justice Canada research found that of 601 cases examined, 91% of the accused were male and 88% of the victims

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[3] M.A. Zona, K.S. Sharma, & J. Lane, "A Comparative Study of Erotomanic and Obsessional Subjects in a Forensic Sample" 38:4 (July 1993) Journal of Forensic Sciences 894-903.

[4] *Ibid*.

[5] R. Gill, & J. Brockman, *A Review of Section 264 (Criminal Harassment) of the Criminal Code – Department of Justice Canada Working Document 1996-7e* (October 1996) unedited.

were female.[5] Analysis of the accused-victim relationship showed that a large proportion of female victims were stalked by an ex-husband or ex-boyfriend.[6] In many respects, intimate partner stalking is an extension of domestic violence and relates to a desire to control a former partner.

A consultant criminologist with the Federal Bureau of Investigation has developed what he regards as a preliminary typology of stalkers. It resolves some of the deficiencies of the above-noted LAPD typology but has not been subjected to the same empirical examination. It is intended to be developmental and heuristic, recognizing that the danger of typologies lies primarily in the likelihood that they may be viewed as an absolute classification schema.[7]

This preliminary typology proposes seven types of stalkers: the random target stalker; celebrity stalker; single-issue stalker; casual acquaintance stalker; co-worker stalker; intimate partner stalker; and domestic violence stalker. The intimate partner and domestic violence stalkers are the most similar to the simple obsessional stalker.

Another recognized but not well-studied group of stalkers stalk as a component of their paraphilic (sexually deviant) focus. Some rapists and paedophiles have stalked because stalking is incorporated into their sexually deviant fantasies and offending.[8] Some sexual sadists will go through "behavioural try-outs" that will include stalking.[9]

Investigators and Crown prosecutors are encouraged to contact one of the police experts listed in Appendix D if they need assistance in determining the type of stalker with which they are dealing.

1.6 Cyber-Stalking and Online Harassment

Criminal harassment can be conducted through the use of a computer system, including the Internet.[10] Although this type of conduct is described in various

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6 *Ibid.*, at 26-27.

7 C. Mahaffey-Sapp, & Sapp. "An Analysis and Preliminary Typology of Stalkers" [unpublished] at 1-34. Personal communication with Dr. Alan Sapp at FBI Academy, Quantico, Virginia, March 1998 and at Ontario Provincial Police General Headquarters, Orillia, Ontario, September 1998.

8 P.I. Collins, "The Psychiatric Aspects of Stalking" in J. Cornish, K. Murray, & P.I. Collins, eds., *The Criminal Lawyers' Guide to the Law of Criminal Harassment and Stalking*. (Aurora, Ontario: Canada Law Book, 1999).

9 M.J. McCullough, P.R. Snowden, P.J.W. Woods, & H.F. Mills, "Sadistic Fantasy, Sadistic Behaviour and Offending" (July 1983) 143 British Journal of Psychiatry at 20-29.

10 A useful definition of "cyber-crime" is used in a 2002 Statistics Canada publication on cyber-crime: "a criminal offence involving a computer as the object of the crime, or the tool used to commit a material component of the offence." See Melanie Kowalski, *Cyber-crime: Issues, Data Sources, and Feasibility of Collecting Police-Reported Statistics*. (Ottawa: Statistics Canada, 2002), online: <http://www.statcan.ca/english/freepub/85-558-XIE/free.htm>.

Advice to Give to Victims for Safe Internet Use:

- Be careful about posting personal or private information.
- Check the harassment policies of your Internet Service Provider (ISP).
- Do not use your full name for your user ID, and change your password often.
- Report harassing e-mail or chat room abuse to your ISP. If you know the ISP of the person, tell that ISP too. They can cut off the person's account if it is being used to harass others. Ask about tools to block unwanted communication.
- Do a Web search on cyberstalking. You will find many sites with tips and information. Some can help track down harassers, document their origin and send reports to you or the police.

Source: "Stalking is a Crime Called Criminal Harassment" (Ottawa: Department of Justice Canada, 2003), online: <http://canada.justice.gc.ca/en/ps/fm/harassment.html> at 10.

ways, not all such conduct falls within Canada's definition of criminal harassment. For example, "cyber-stalking" or "on-line harassment" is often used to refer to (1) direct communication through e-mail; (2) Internet harassment, where the offender publishes offensive or threatening information about the victim on the Internet; and (3) unauthorized use, control or sabotage of the victim's computer.[11] In some cyber-stalking situations, criminal harassment charges may be appropriate; however, depending on the activity involved, charges under sections 342.1 (unauthorized use of a computer), 342.2 (possession of device to obtain computer service) and subsection 430(1.1) (mischief in relation to data) should also be considered. Activities that can be considered cyber-stalking can include delivering threatening or harassing messages through one or more of the following:

- e-mail;
- chat rooms;
- message boards;
- newsgroups; and
- forums.

Other variations of cyber-stalking include the following:

- sending inappropriate electronic greeting cards;
- posting personal advertisements in the victim's name;
- creating Web sites that contain threatening or harassing messages or that contain provocative or pornographic photographs, most of which have been altered;
- sending viruses to the victim's computer;
- using spy-ware to track Web site visits or record keystrokes the victim makes; and
- sending harassing messages to the victim's employers, co-workers, students, teachers, customers, friends, families or churches or sending harassing messages forged in the victim's name to others.[12]

Some 20% of the cases referred to the Threat Management Unit of the LAPD involve stalking through electronic mail. One out of four of the 600 cases referred to the Sex Crimes Unit of the NYPD in a recent study involved cyber-stalking.[13]

[11] Richard Gill & Kelly Watson, "Review of Recent Literature on Criminal Harassment" (Ottawa: Department of Justice Canada, forthcoming in 2004); and Louise Ellison & Yaman Akdeniz, "Cyber-stalking: the Regulation of Harassment on the Internet" [1998] Criminal Law Review (December special edition: crime, criminal justice and the Internet) 29.

[12] J.A. Hitchcock, "Cyberstalking and Law Enforcement" (2003) LXXX:12 Police Chief 16-27.

[13] M. Nair, "Stalking" in R. Rosner, ed., *Principles and Practice of Forensic Psychiatry* 2nd ed. (London: Holder, 2003).

2 Guidelines for Police: Investigating Criminal Harassment

The investigation of criminal harassment cases involves basic case development as well as the use of crime detection strategies. The objective of a police investigation in these cases is two-fold: (1) to stop the harassment, as well as any other acts of violence, at an early stage; and (2) to collect evidence to present a compelling case for prosecution. Since criminal harassment is a crime that may include a pattern of behaviour carried out against the victim over an extended period of time, an investigation can be time consuming and may involve numerous police reports.

See Appendix A for examples of criminal harassment cases that police may encounter.

Police practices and policies may vary from one jurisdiction to another. *These guidelines should be considered in conjunction with other applicable policies (including provincial policies relating to spousal assault), as well as other remedial legislation (such as provincial legislation for victims of family violence)*. Keeping the victim informed and involved in the investigation is important in any offence, in particularly in cases involving partner or spousal abuse.

The police guidelines in this handbook are based on strategies developed by the Vancouver Police Department's Criminal Harassment Unit. This unit has found that police intervention is most effective once the nature of the stalking case has been identified and a strategy has been developed to manage and, ideally, resolve the problem.

2.1 Victim Interview

- ❏ Interview the victim thoroughly. Advise the victim to be specific and accurate and to neither minimize nor exaggerate. Police also must not minimize the situation. The possibility of stalking and the future risk of physical violence should be considered whenever a harassing-type offence is reported (such as harassing or obscene phone calls, following, or unusual incidents involving mischief or vandalism).
- ❏ Be sensitive to the personal situation of the victim and their state of mind, including the psychological and emotional distress that they are likely experiencing. The victim may require the assistance of a support person and/or interpreter.
- ❏ Inform the victim that criminal harassment is a criminal offence. Emphasize the seriousness of the offence. Be clear with the victim regarding the potential threat.

- ❑ Obtain a detailed chronology of all relevant incidents, including words uttered or gestures made by the suspect, and conversations and other communications with the suspect. Complainants usually need sufficient time, a calendar, and access to their own papers and documents to produce a clear chronology. Determine whether and how the victim has directly or indirectly, through family or friends, indicated to the suspect that any contact is unwelcome. Ascertain where and when the conduct occurred, as these factors can affect the victim's fear.
- ❑ Ascertain whether the incident(s) involved others or occurred in the presence of others (such as family, friends, co-workers and/or neighbours).
- ❑ Obtain background information on any previous relationship with the suspect (such as whether there have been any previous incidents of domestic violence; whether the victim has communicated to the suspect any interest in a reconciliation; or whether any friends or family have been pressuring the victim to reconcile with the accused or to not contact the police).
- ❑ Obtain information about the impact that the suspect's conduct has had on the victim. For example, has the conduct caused the victim to fear for their safety or that of someone known to them and if so, how? Has the victim taken any security or preventative measures, such as getting an unlisted telephone number, or changing their residential or work address? Has the victim sought medical treatment or counselling? (See generally Part 2.12 – Report to Crown Counsel.)
- ❑ Where the victim and suspect had a prior intimate relationship involving children, ask the victim if they are currently involved in a custody/access legal action. Determine what, if any, custody or access terms and conditions apply.
- ❑ The interview with the victim is an important source of information that will help police complete a thorough background check on the suspect.[14] Ask, the following questions, for example.
  - Is the suspect subject to any peace bonds; civil restraining orders; recognizance, bail or probation conditions; or weapons or firearms prohibition orders? If so, can the victim provide a copy of the order(s) and/or the relevant details?
  - Does the suspect have any guns, or any access to other firearms or other weapons? Does the suspect have a licence, registration certificate or authorization, or a document issued under the former *Criminal Code* provisions? Has the suspect ever had a licence, registration certificate or authorization for a firearm revoked?

[14] Note that this is merely in addition to a thorough police records check. Sometimes, the victim may be able to provide information that may not appear in a police records check, such as the existence of a civil protection order.

2.2 Advice to the Victim

- ❑ Remind the victim that the potential threat remains, even if they have reported the incident to police and/or have obtained a restraining order. Advise the victim that they have a primary role to play in ensuring their own safety. Recognize that although it is not fair, the victim may be required to alter their lifestyle and usual routines, schedules, transportation routes and places regularly frequented.
- ❑ Advise the victim not to initiate contact with the suspect, or agree to such contact.
- ❑ Advise the victim to maintain a log of all contact (date, time, nature and summary of contact) with the suspect, including drive-bys and all unusual events, no matter how trivial they seem or whether they can be definitively attributed to the suspect. Advise the victim to retain for police all notes, gifts, telephone answering machine tapes and messages, and electronic mail and postings, and any other evidence related to the investigation. Ask the victim not to handle or open any items received from the suspect, in order to prevent further distress to themselves and to ensure that they do not contaminate the evidence for purposes of forensic analysis.
- ❑ Advise the victim to use available telephone services that may help police trace telephone calls. Such pay-per-use services may include "last call return" (which enables the victim to find out who called last by entering the appropriate tracing code immediately after every call and before any other call is received) and "name that number" (which enables the victim to obtain the name and locality associated with a given telephone number). The victim should be advised to consider subscribing to other telephone services, including call screening and call display. Whether a victim should change their phone number or get an unlisted one can be controversial. For example, some victims would rather get the unwanted calls than change their number as they feel more secure being able to track and record phone calls, rather than just having the suspect show up unexpectedly on their door-step. Investigating officers should consult the telephone company for current services and tracing codes. The victim should also consider acquiring a telephone answering machine that uses cassette tapes so that the tapes can be saved as evidence.
- ❑ Suggest that the victim inform relatives, neighbours, friends, co-workers, employers, property managers and doormen of the on-going harassment and, if possible, provide them with a photograph of the suspect. These people should alert the victim and/or police about any contact. This will enhance the victim's safety and provide a larger potential pool of witnesses.
- ❑ Help the victim contact victim services for support and assistance as soon as practicable after the complaint has been made. Early intervention by victim services enhances the victim's safety and increases the likelihood of

cooperation with the criminal justice system. Victim service workers play a significant role in helping victims to identify risks and to develop and implement a personal safety plan for themselves and their children. Referrals should be made as soon as possible to allow the victim to receive emotional support, appropriate referrals, information about the justice system and assistance in developing a safety plan.

- ❑ Provide the victim with an occurrence report or incident number, and advise the victim to quote that number when making future complaints or inquiries. Provide the name of one officer who will be responsible for coordinating the investigation, even if other officers become involved. Advise the victim of the decision to lay charges.
- ❑ Advise the victim to carry a copy of any criminal or civil protection/restraining order at all times.

2.3 Victim Welfare

- ❑ Take appropriate action to increase the victim's security, such as the following.
  - Inform the victim about the importance of security measures, such as making safety or contingency plans; carrying a cellular phone; installing better locks, improved lighting and a security system; getting a guard dog; and identifying safe places, including police stations, domestic violence shelters and busy public areas.
  - Have a panic alarm installed, either privately or through local victim protection programs.
  - Flag the victim's address on police databases (such as premise history on CAD systems).
  - Request special attention from area patrols, parade briefings, and notify the watch commander.
  - If the suspect does not have any firearms, apply for a preventative prohibition order under section 111 of the *Criminal Code*. If the suspect does have firearms, seize the firearms pursuant to section 117.04[15] of the *Criminal Code*.

[15] In *R.* v. *Hurrell* (2002), 60 O.R. (3d) 161, the Ontario Court of Appeal found that s. 117.04 violates s. 8 of the *Canadian Charter of Rights and Freedoms*. The resulting declaration of invalidity was suspended for six months, and Moldaver J.A., writing for the Court, advised that any warrants issued within the six-month exemption period should require "that a justice is satisfied by information on oath that there are reasonable grounds to believe that the person possesses a weapon," or device "in a building, receptacle or place" and that such possession is "not desirable in the interests of the safety of the person, or of any other person." The Supreme Court of Canada has granted leave to appeal this decision and has stayed the declaration of invalidity until the final termination of proceedings in that Court ([2002] S.C.C.A. No. 370 (Q.L.)). Bill C-32, *An Act to amend the Criminal Code and other Acts*, proposed a legislative response to this case. Bill C-32 died on the Order Paper on November 12, 2003, with the prorogation of Parliament. On February 12, 2004, Bill C-32 was re-introduced in the House of Commons, as Bill C-14, and was deemed read the third time and passed.

- Relocate the victim when the threat level is high or, in extreme cases, suggest that the victim consider seeking a new identity.
- Address the special needs of victims who face particular barriers. Cultural, communication, mobility, age and other barriers can increase the victim's risk.[16]
- Help the victim protect their children. Children's safety and emotional health are affected, whether or not they witness the threats or violence.

Note that stalker violence is usually affective, as opposed to predatory, so victims and officers need to be aware of dramatic moments, such as the termination of a relationship; the arrest of the suspect; court dates, particularly those when court orders are made and sentences are rendered; custody proceedings; and release or escape from custody.[17]

2.4 Collecting Evidence – Information to Investigate and Document

❑ Ask the victim about, and query all relevant databases for, information on the suspect. Search under known aliases as well. Databases queried should include CPIC, CFRO,[18] SIP, FIP, local and provincial information systems, and available probation information (for summary conviction offence details not captured by CNI/Level II). Where applicable, immigration and refugee authorities may have relevant information. These queries should include searches for criminal records, prior contact with police and contact with police in communities where the suspect may have previously lived. If the criminal record indicates similar charges determine the identity of the victim in those cases and the nature of their relationship with the accused.[19] These queries should cover the following:

- the nature, frequency, and specific details of threats and actual violence against the victim or someone known to the victim (note whether they are increasing in frequency and intensity);
- any prior threats against the victim or someone known to the victim;

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16 BC Protective Measures for Women's Safety: An Operational Framework for Justice System Intervenors, 2004 [unpublished].

17 It's important to keep in mind that stalkers, especially obsessional ones, often do not have extensive criminal histories. As such, "light" criminal records do not necessarily indicate that the stalker is not dangerous.

18 Note that the Restricted Weapon Registration System (RWRS) is no longer available through CFRO. It is now available only through CFRS terminals, which CFOs can search.

19 In other words, an assault conviction may not tell the whole story. The victim of an assault may have been a previous partner whom the accused stalked and assaulted; plea negotiations often result in pleas to less stigmatizing offences and a previous conviction may not convey the seriousness of the context of the offence.

- any actual pursuit or following of the victim or someone known to the victim;
- any history of violence (including sexual assault) against the victim or someone known to the victim;
- any violations of civil restraining orders, peace bonds, recognizances, or bail or probation conditions;
- any information on the suspect's tendency toward emotional outbursts or rage;
- other incidents involving threatening, violence or pursuit, including cruelty to animals;
- homicidal or suicidal behaviour or threats;
- major stress factors, such as loss of employment or termination of a relationship;
- vandalism to the victim's property;
- intense jealousy, including sexual jealousy;
- a history of mental illness; and
- substance abuse problems.

❑ In the case of former intimates involving children, include any history of involvement with child protection authorities.

❑ Determine possession of or interest in weapons or access to weapons (search CPIC including CFRO and FIP, as outlined in Appendix B). Determine the following, for example:

- whether there are any weapons prohibition orders flowing from conviction or discharge, as a condition of bail or recognizance, or in preventative prohibition orders;
- the type of firearms documentation the person has (for example, does the suspect have restricted firearms, and how many firearms does the suspect have?); and
- whether authorities have ever refused or revoked of a licence, registration certificate or authorization (or Firearms Acquisition Certificate, permit or registration certificate under the former firearms provisions of the *Criminal Code*).

Any information discovered should be entered into the FIP database. This would include any conduct that gives rise to concerns about violence, including criminally harassing behaviour. If the information is not entered in FIP, then Chief Firearms Officers (CFOs) will not be advised. They will not know whether to consider revoking existing licences and will not have this information when considering new applications. This type of information is crucial when CFOs are deciding whether to issue or revoke a licence.

2.5 Additional Investigative Techniques

Investigative techniques to gather corroborative evidence might include the following.

- ❑ Photograph any items vandalized, damaged or written on.
- ❑ Check for fingerprints on vandalized items or other objects sent to or left for the victim.
- ❑ Obtain telephone and cellular[20] phone records of the victim and suspect, which may provide evidence of calls.
- ❑ Have the victim obtain a telephone answering machine and retain recorded messages.
- ❑ Interview any potential witnesses, such as neighbours, family members, friends and co-workers.
- ❑ Research the suspect's whereabouts during times of alleged acts to rebut or verify "alibi defences."
- ❑ In serious cases, consider surveillance, which may include static surveillance of the victim's residence or other locations where harassment is occurring, mobile surveillance of the victim at points of vulnerability (such as times when they are travelling between home and work) to gather evidence that the suspect is following the victim, and surveillance of the suspect.

2.6 Physical Evidence

- ❑ Seize all physical evidence; do not leave this evidence with the victim. Common sources of evidence include the following:
  - taped phone messages (record all relevant voice mail messages);
  - letters, notes, documents, photographs, diaries and any other record or item made by the suspect regarding the victim;
  - documents containing the signature and handwriting or hand printing of the suspect;
  - computer hard drives and computer disks containing, for example, e-mail messages and poems by the suspect that concern the victim or were sent to the victim; and
  - hard copies of e-mail messages from the suspect to the victim.

[20] Note that an expert may be able to give evidence as to where the cell phone was situated when a call was placed. A statement such as "If you don't pick up your phone right now I'm going to come in there…" is much more threatening if it is made when the accused is out front in his car than when he is calling from further away.

2.7 Search Warrants

❑ If necessary, seek advice from experts (listed in Appendix D) to assess the type of stalking behaviour in question, in order to determine what collateral material might be included in the warrant, and whether to seek a public safety warrant under s. 117.04 of the *Criminal Code* or a weapons search warrant under s. 487.

❑ Where reasonable grounds exist, consider executing search warrants of the suspect's residence, vehicle and any recreational property to seek the following:

- photographs of the victim;
- photographs, diagrams or drawings of the victim's home or workplace;
- writings, logs or diaries kept by the suspect that describe stalking activities or thoughts or fantasies about the victim or other victims, including information contained in computer files or on diskettes;[21]
- personal items belonging to the victim;
- video or audio tapes that might contain information concerning the stalking, such as surveillance footage;
- any collateral material—including books, journals, or other materials and electronic documentation or data—describing stalking techniques or containing subject matter dealing with stalking, harassment or violence;
- any equipment that appears to have been used to "stalk" the victim, such as cameras, binoculars, video recorders, computer hard drives and computer disks;
- clothing worn by the suspect during the stalking episodes; and
- firearms, weapons, knives and ammunition belonging to the suspect.

Note that firearms and weapons are treated separately under the *Criminal Code*, as shown by the following examples.

— **Section 117.02** authorizes a warrantless search for weapons, except in a dwelling house, where an offence has been committed and the grounds for obtaining a warrant exist but, because of exigent circumstances, it is not practicable to obtain the warrant.

— **Section 117.03** allows police to seize firearms and other items if they find someone in possession of such an item without proper documentation.

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[21] Also consider looking for materials in the suspect's handwriting for the purpose of handwriting analysis or comparison.

— **Subsection 117.04(1)** enables police to apply to a justice for a warrant to search for and seize any weapon (including firearms), prohibited device, ammunition, prohibited ammunition or explosive substance, as well as any licences, registration certificates or authorizations held by or in the possession of the suspect, if there are reasonable grounds to believe that continued possession of weapons by the suspect poses a risk to public safety.[22]

— **Subsection 117.04(2)** authorizes such a search and seizure without a warrant in exigent circumstances. If police do not find any documents relating to seized weapons, all such documents held by the suspect at that time are automatically revoked.

❑ See sample language for an Information and an Information to Obtain a Search Warrant in Appendix C. Specific requirements for each jurisdiction may vary.

2.8 "Expert" Assistance

When dealing with cases involving criminal harassment or stalking, investigators may wish to seek the assistance of experts in this area, who may include forensic psychologists and psychiatrists, criminal police threat specialists, computer forensic specialists and firearms investigation specialists. Expert assistance can include the following:

- risk assessment (see also Part 2.9 – Threat and Risk Assessments, and Level of Intervention);
- risk management strategies;
- assistance in obtaining search warrants,[23] public safety warrants, or weapons prohibition orders;
- interview strategies;
- intervention strategies;
- expert evidence;[24] and
- determination of characteristics and traits of an unidentified or unknown suspect (suspect profiling).

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22 See footnote 15 regarding a recent Ontario Court of Appeal ruling on the constitutionality of s. 117.04 of the *Code*.

23 This means warrants under s. 117.04 of the *Code* to search for and seize weapons to decrease risks to public safety.

24 Such evidence can include expert interpretations of cell phone records. When this handbook went to press, most such experts were located in the Toronto area, although they were often willing to travel to give evidence.

See Appendix D for police agencies with expert personnel who provide additional guidance in criminal harassment cases where required.

2.9 Threat and Risk Assessments, and Level of Intervention

The safety of the victim is of paramount concern at all times and takes priority over "evidence-gathering" or "making a case." Each case must be treated seriously until evidence indicates otherwise. It is crucial to keep in mind that threat/risk assessments are contextual[25] and only relevant for a specific period of time. Factors should be updated and re-evaluated as needed for subsequent decision-making. Furthermore, although this process can help the parties make decisions, the absence of "identified risk markers" does not mean that violence will not occur.[26]

The appropriate level or type of intervention in a given case cannot be determined until a threat assessment or risk assessment has been made. The term "threat assessment" is used to describe the process of assessing the risk of violence that the suspect poses to the victim and assessing the potential impact of the type of intervention on the victim's safety. "Risk assessment" refers more specifically to a developing body of research and tools aimed at improving the ability of various professionals in the criminal and civil (forensic) justice systems to evaluate "individuals to (a) characterize the risk that they will commit acts of violence and (b) develop interventions to manage or reduce that risk …"[27] Many jurisdictions in Canada have developed or are developing risk assessment protocols for use by police, prosecutors and victim services providers.[28] However, both terms are often used interchangeably.

Threat assessment, which need not be "formal," should consider the typology of the stalker and the history or nature of the relationship between the suspect and the victim (for example, it should consider all acts of violence,

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[25] P.R. Kropp, S.D. Hart, & D.R. Lyon, "Risk Assessment of Stalkers: Some Problems and Possible Solutions" (2002) 29:5 Criminal Justice Behavior 590 at 600.

[26] Ad Hoc Federal-Provincial-Territorial Working Group Reviewing Spousal Abuse Policies and Legislation, *Final Report: Spousal Abuse Policies and Legislation* (Ottawa: Department of Justice Canada, March 2003), online: <http://canada.justice.gc.ca/en/ps/fm/reports/spousal.html> at 73: "The science of predicting domestic violence is in its infancy. Data on the reliability, validity and predictive accuracy of risk assessment tools are so scarce to be practically non-existent." Data in relation to predicting criminal harassment violence are even scarcer.

[27] P.R. Kropp, S.D. Hart, & D.R. Lyon, "Risk Assessment of Stalkers: Some Problems and Possible Solutions" (2002) 29:5 Criminal Justice Behavior, 590.

[28] As of March 2004, the Department of Justice Canada is in the process of supporting the development of a revised risk assessment tool to be piloted in three sites. This tool is for assessing risk for spousal assault in criminal and civil justice settings, however, it will likely also be informative in criminal harassment cases involving former domestic relationships.

including threats, damage to property and harm to the victim's pet). Assessment tools for one type of offence may not be applicable to another offence. Threat assessment should involve considering all available evidence, as well as all records of police action. It should take into account relevant research findings, such as the facts that the risk of physical harm to a victim fleeing domestic violence is highest during the first three months of separation, and that such violence often arises from longer term problems or a history of violence.[29]

Once the threat assessment has been completed, the investigation and case management strategy should be formulated and implemented. Options are listed below; however, these are not exclusive and can be used in combination, depending on the situation.

2.9.1 No Intervention

In a small number of cases, it may be best to monitor the situation without taking action. This is particularly true for cases involving mentally disordered stalkers who may escalate their activity if the victim or police respond. While monitoring the situation, consider consulting criminal police threat specialists (or profilers), forensic psychiatrists, or other professionals who can provide insights and additional information.

2.9.2 Face-to-Face Deterrence

A meeting with police may affect the suspect's state of mind, as well as the victim's safety. This level of intervention should be carried out only after considering all known facts and evidence, and at the appropriate stage of the investigation. Warning the alleged offender shows the victim that the police have taken their complaint seriously, and informs the offender that the behaviour is inappropriate. It also gives the offender an opportunity to explain their conduct at an early stage, so that police can make more informed case management decisions.

Many stalkers may be deterred by a face-to-face meeting with police in which the consequences of continuing the behaviour—that is, that criminal charges will be laid—are clearly set out. Any warning must be documented so that this information is accessible to future investigators, should the warning be ineffective. Warnings should be written whenever possible. However, it is crucial that the language used is carefully considered. A written warning is a constant reminder that establishes boundaries for the offender. It can also provide evidence of the exact wording used to warn the accused. Although

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[29] For a more information on risk assessment in relation to criminal harassment and stalking, including the relevance of typology to assessment and the process of constructing a menu of risk factors, see P.R. Kropp, S.D. Hart, & D.R. Lyon, "Risk Assessment of Stalkers: Some Problems and Possible Solutions" (2002) 29:5 Criminal Justice Behavior 590-616.

the warning is not legally binding, it does serve as evidence, if the accused continues the harassment, that the accused knew that the victim was harassed, or that the accused was reckless or wilfully blind to that fact. It is counterproductive to give multiple warnings to a suspect.

An interview-like meeting can provide information about the suspect's thinking and behaviour patterns, and can provide admissions or corroboration. Any interview with the suspect should be conducted in accordance with the usual cautions and should also be documented. Experience has shown that the most common psychological defences of a stalker involve denial, minimization and projection of blame onto the victim. Keeping this in mind can help investigators develop interrogation themes and establish a rapport with the offender.

2.9.3 Sections 810 and 810.2 Peace Bonds, and Civil Protection Orders

This level of intervention should be considered when the victim fears for their safety and the suspect poses a risk of physical violence, but there is insufficient evidence to support a charge. Peace bonds and civil protection orders[30] are not substitutes for criminal charges. Charges should be laid where there is evidence to support the charges.[31]

An application for an order under s. 810.2 should be considered where there is fear that the suspect will commit a "serious personal injury offence." In appropriate cases, consideration may be given to bringing a dangerous offender application.[32] Note that the definition of "serious personal injury offence" in s. 752 includes "severe psychological damage." More extensive conditions are available for a recognizance under s. 810.2 than under s. 810, including a condition that prohibits the defendant from being in possession of

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30 That is civil protection orders made under provincial and territorial legislation on domestic violence.

31 If domestic violence is an issue, applicable spousal abuse pro-charging policies in each jurisdiction require charges to be laid where there are reasonable grounds to believe that an offence has been committed; peace bonds and civil protection orders are not an appropriate alternative response where this test has been met. See Ad Hoc Federal-Provincial-Territorial Working Group Reviewing Spousal Abuse Policies and Legislation, *Final Report: Spousal Abuse Policies and Legislation* (Ottawa: Department of Justice Canada, March 2003) at 21, online: <http://canada.justice.gc.ca/en/ps/fm/reports/spousal.html>. The Working Group recommended retaining the current pro-charging policies for spousal abuse cases. The current test should continue to apply—namely, that a charge should be laid where there are reasonable grounds to believe that an offence has been committed and, in jurisdictions with Crown pre-charge approval (British Columbia, New Brunswick and Quebec), when it is in the public interest to lay a charge.

32 Bill C-15A, *An Act to amend the Criminal Code and to amend other Acts*, proclaimed into force on July 23, 2002, increased the maximum penalty to 10 years such that it could meet the criteria of a "serious personal injury offence" in s. 752.

firearms or ammunition, and a condition that requires the offender to report to police or a correctional authority. Section 810.2 has been particularly useful in cases where prior incidents of physical harm resulted in a sentence that is now finished, and the accused has contacted the victim again.

Eight provinces and territories have now passed civil domestic violence legislation: Saskatchewan (1995), Prince Edward Island (1996), Yukon (1999), Manitoba (1999), Alberta (1999), Ontario (2000), Nova Scotia (2001) and Northwest Territories (2003).[33] Most provincial domestic violence legislation applies to cohabitants, family members or individuals who are living together in a family, spousal or intimate relationship, and to persons who are parents of children, regardless of their marital status or whether they have lived together. This legislation generally provides for two types of protective orders: a short-term emergency intervention or protection order, and a longer term victim assistance order, sometimes called a protection or prevention order.[34]

All section 810 peace bonds are tracked through CPIC; civil restraining orders are not necessarily recorded on CPIC.[35] Civil restraining orders, peace bonds, and conditions of bail and probation are more effectively enforced if they are readily accessible to police agencies that are called to intervene in domestic disputes. The Chief Firearms Officer in each jurisdiction has immediate access to court orders issued in family violence or stalking cases where an individual's privilege to possess a firearm is curtailed. Note that although subsection 810(3.1) requires the justice to consider whether a firearms or weapons prohibition is desirable as a condition of the

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[33] *Victims of Domestic Violence Act*, S.S. 1994, c.V-6.02; *Victims of Family Violence Act*, R.S.P.E.I. 1988, c.V-3.2; *Family Violence Prevention Act*, R.S.Y. 2002, c.84; *Domestic Violence and Stalking Prevention, Protection and Compensation Act*, C.C.S.M. 1998, c.93; *Protection Against Family Violence Act*, R.S.A. 2000, c.P-27; *Domestic Violence Protection Act*, S.O. 2000, c.33 (yet to be proclaimed); *Domestic Violence Intervention Act*, S.N.S. 2001, c.29 (yet to be proclaimed); *Family Violence Prevention Act*, S.N.W.T. 2003, c.F-24 (yet to be proclaimed). Note that at the date of this handbook's publication, Ontario, Nova Scotia and Northwest Territories had passed but not yet proclaimed their domestic violence legislation.

[34] Nova Scotia's legislation only provides for the short-term emergency protection order. Manitoba's legislation allows a judge to issue a protection order if the respondent is stalking the subject, and their relationship need not have been intimate (s. 6). Stalking is defined in almost exactly the same language as in s. 264 (ss. 2(2) and (3)). Ontario and Nova Scotia include in their definition of "domestic violence" the following: "a series of acts that collectively causes the victim to fear for his or her safety, including the following, contacting, communicating with, observing or recording the person." (Nova Scotia, s. 5(1)(e) and Ontario s. 1(2)(6)). For more information on domestic violence legislation, see the Ad Hoc Federal-Provincial-Territorial Working Group Reviewing Spousal Abuse Policies and Legislation, *Final Report: Spousal Abuse Policies and Legislation* (Ottawa: Department of Justice Canada, March 2003) at 48 ff, online: <http://canada.justice.gc.ca/en/ps/fm/reports/spousal.html>.

[35] For example, British Columbia has a Protection Order Registry, which is a computer database of all criminal and civil protection orders issued by British Columbia courts. In Manitoba, all Protection Orders (the *ex parte* orders pronounced by the provincial court judges) are registered on CPIC, if counsel or the party provides the Court with the required information for registration.

recognizance, it is important to specifically ask for one where appropriate and to provide the justice with any relevant information.

Advise the victim to immediately report *any*[36] breach of conditions of the peace bond or civil protection order so that prompt action can be taken against the suspect. Also advise the victim of the limitations of a peace bond and remind them of the continuing need to take precautionary measures.

2.9.4 Prohibition Against Possessing Weapons

Where appropriate, obtain a weapons prohibition order as a preventive measure.

If the suspect does not currently possess weapons and police want to prevent the suspect from obtaining them in the future, police can apply to a provincial court judge for an order under section 111 of the *Criminal Code* prohibiting the person from possessing weapons where they have reasonable grounds to believe that it is not in the interests of public safety for the person to possess weapons. This prohibition may last up to five years.

If the suspect possesses weapons and police have seized them, there will be a disposition hearing (provided the Return to a Justice was made immediately after the seizure[37] and the Application for Disposition[38] was made within 30 days of the seizure). At the hearing, the judge may impose a weapons prohibition order lasting up to five years.

Consider, as well, an application under section 117.011 of the *Criminal Code*. When a person is prohibited from possessing weapons, this provision is designed to limit their access to weapons belonging to someone with whom they live or associate. Accordingly, even if the suspect is already prohibited by a court order from possessing weapons for up to five years, if the suspect lives with another person who is not prohibited from possessing weapons and who has several firearms, an application can be brought to a provincial court judge for an order against this other person to restrict the suspect's access to the firearms. While these orders must be minimally intrusive, they are still an important preventive measure that may require the other person to either add to the storage security requirements already in place or to store the firearms at another location for a period of time.

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[36] Be sure that the victim understands that it is imperative to report all breaches in order to maintain offender accountability. Letting "little" breaches slide can entrench the offender in increasingly serious conduct.

[37] Required under s. 117.04(3); see the applicable sample form in Appendix C.

[38] Required under s. 117.05; see the applicable sample form in Appendix C.

2.9.5 Arrest and Charges

Police lay charges in all provinces, with the exception of British Columbia and Quebec where the decision to lay charges is made by the Crown. In New Brunswick, the decision to lay charges is made by police after receiving advice from the Crown. (See also Part 4.3 – Approval or Review of Charges.)

A strong and consistent response to criminal harassment requires that all allegations of criminal harassment be taken seriously. If there are reasonable and probable grounds to believe that the suspect has committed the offence of criminal harassment, arrest and charge(s) should likely result in all but the most exceptional circumstances (keeping in mind that different considerations apply in determining whether to make an arrest versus whether to lay charges). Arrest will often be necessary under subsection 495(2)(iii) in order to prevent the continuation or repetition of the criminal harassment, either by having the suspect enter into an undertaking to abide by certain conditions, or by seeking to have the suspect detained in custody. (See also Part 2.11 – Release from Custody, and Part 4.4 – Pre-Trial Release.)

Where one or more of the incidents giving rise to the complaint of criminal harassment can be construed as a single criminal offence other than criminal harassment, consider laying both the separate charge and the inclusive count of criminal harassment. Examples of other criminal offences include the following:

- intimidation (section 423);
- uttering threats (section 264.1);
- mischief (section 430);
- indecent or harassing telephone calls (section 372);
- trespassing at night (section 177);
- assault (section 265);
- assault with a weapon or causing bodily harm (section 267);
- aggravated assault (section 268);
- aggravated sexual assault (section 273);
- first degree murder (subsection 231(6));
- failure to comply with a condition of undertaking or recognizance (subsection 145(3));
- disobeying court order (section 127);
- breach of recognizance (section 811); and
- failure to comply with a probation order (section 733.1).

Consideration should also be given to laying charges relating to serious incidents in the past.

An accused who has outstanding charges against them and (a) has contravened, or was about to contravene, their form of release,[39] or (b) has committed an indictable offence after having been released in any of the manners described in subsection 524(8), should be arrested under section 524, as well as under the provisions related to the breaches. Being arrested under section 524 gives the accused notice that any previous forms of release may be cancelled. (See Part 4.5.5 – Breach of Bail Conditions.)

Promptly advise the victim of the decision to lay charges and of the outcome of any judicial determination in relation to the charges.

2.10 Coding or Scoring Files/Incidents

Many police agencies collect statistical information on the occurrence of criminal harassment incidents. The Royal Canadian Mounted Police collect statistical information on the incidence of crimes using the Operational Statistical Reporting (OSR) system.[40] Police agencies using the OSR system of coding or scoring files for incidents of criminal harassment should follow the OSR tables, as follows:

- Code: AC41
- Nature of Event: criminal harassment or stalking crimes
- Effective Date: 1993-08-01

Officers using systems other than the OSR system should consult the appropriate people in their agencies to determine the appropriate coding to use in reporting incidents of criminal harassment.

2.11 Release from Custody

(See also Part 4.4 – Pre-Trial Release.)

Given the nature of criminally harassing conduct, when an officer in charge determines that it is appropriate to release the accused pursuant to section 499 or subsection 503(2.1) of the *Criminal Code*, such a release should normally be made subject to the suspect entering into an undertaking prohibiting contact with, or proximity to, the complainant or other witnesses. If possible, the police should speak to the victim before deciding whether to release the suspect; such a discussion will help the officer assess the risk to the victim and determine which conditions might decrease that risk if the suspect is released. The following undertakings should be considered:

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[39] See section 524(8) of the *Criminal Code* for applicable forms of release.

[40] The data collected by the RCMP and other agencies are forwarded to Statistics Canada for inclusion in the Revised Uniform Crime Reporting Survey.

- abstaining from communicating, directly or indirectly, with the victim or other specified person;
- abstaining from going within 200, 500 or 1000 metres of any specified places, such as the victim's residence and place of work;
- abstaining from consuming alcohol or other intoxicating substances or drugs, except in accordance with a medical prescription;[41]
- abstaining from possessing firearms, and surrendering any licence, registration certificate or authorization;[42] and
- reporting at specified times to a peace officer or other designated person.

Where the accused is released on a recognizance, forward the Report to Crown Counsel as soon as possible so that Crown counsel can address any application by the accused to change bail conditions before the first appearance.

Advise the victim of the fact of the release and any release conditions.

2.12 Report to Crown Counsel

The Report to Crown Counsel must clearly address and document the key elements of the offence (see also Part 3.4 – Key Elements). Practices vary among jurisdictions. However, police agencies and prosecution services that work together should use an agreed-upon format or checklist of information that will provide Crown counsel with the information they need to deal with various stages of court proceedings, including the following details.

❑ Information on the prohibited conduct.

❑ Reasons why the victim reasonably fears for their physical, emotional or psychological safety. Include all historical information that has contributed to the fear, such as details of previous incidents of domestic abuse.

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41 This condition is only appropriate where there is evidence that such substances were involved in the offence.

42 This provision does not allow for as comprehensive a prohibition order as that which can be made by a justice. For more information relating to firearms prohibitions, forfeiture, amendment and revocation of authorizing documentation, and partial lifting of a prohibition order, see Part 4.4 – Pre-Trial Release. It does not appear that the forfeiture provisions in s. 115 of the *Criminal Code* apply to police undertakings to abstain from firearms possession. First, section 115 specifically refers to prohibition "orders," as opposed to undertakings or recognizances issued by police. Secondly, s. 115 was recently amended by Bill C-10A (*An Act to amend the Criminal Code (firearms) and the Firearms Act*) to specify that it does not apply to judicial interim release orders under s. 515. The amendments came into force August 15, 2003.

- ❑ Details of changes the victim has made in response to the fear. For example, note whether the victim has done any of the following:
  - moved to a new location or obtained a new phone number;
  - recorded all telephone conversations and messages;
  - told friends, family, co-workers or building security of the harassment and given photos of the suspect to these persons;
  - arranged escorts to their car and work site;
  - changed their work schedule or route to work;
  - stopped visiting places previously frequented;
  - taken a self-defence course;
  - installed a security system;
  - acquired a guard dog;
  - received counselling or other psychotherapy; or
  - altered their behaviour in any other ways.
- ❑ Evidence of the suspect's intent to harass the victim, or of the suspect's recklessness as to whether the victim was harassed. For example, did the victim indicate to the suspect their displeasure with the suspect's conduct, either directly or indirectly? For example, did someone else advise the suspect of the victim's displeasure, on the victim's behalf? Did the suspect continue to engage in the conduct after such communication, or after contact with the police? Did the suspect engage in the conduct in contravention of an existing peace bond, civil restraining order, recognizance, bail condition or probation condition?
- ❑ Any steps the accused has taken since the incident to address emotional, attitudinal or other problems. What factors in the accused's life tend to show either stability or instability (for example, place to live, family support, job changes, and stability of employment)? If the accused is experiencing a number of stressors, they may be less able to control their impulses and may pose more risk to the victim. Are there suitable people in the accused's life who could act as effective sureties?
- ❑ All available information necessary for a bail application hearing relating to a detention order or to pre-trial release conditions. This information should specifically address the risk to the victim if the accused is released. Consider recommending appropriate or necessary conditions that the Crown should seek at a pre-trial release hearing. (See Part 4.4 – Pre-Trial Release for a list of possible bail conditions.)

3 The Law

3.1 Prohibition of Criminal Harassment

As outlined in Part 1.2, the criminal harassment provisions have only been in force since 1993. A significant factor in the swift enactment of section 264 was the increasing concern among criminal justice personnel that existing *Criminal Code* provisions did not adequately capture "stalking" conduct, which was emerging as a new form of violence against women.

The need for the criminal law to evolve and address new forms of criminal conduct such as criminal harassment was expressly recognized by Madame Justice L'Heureux-Dubé in ***R. v. Hinchey*** (1996), 142 D.L.R. (4th) 50 at 66 (S.C.C.):

> The notion of criminality, thus, is not a static one, but one which very much changes over time. As society changes, the conception of what types of conduct can properly be considered criminal evolves. There are a myriad of different activities which at one point in time were considered legal, but which we now consider criminal. The offence of criminal harassment is one obvious example. For many years, it was not recognized as criminal to persistently follow someone and cause them to fear for their safety, so long as no contact was made. Now, that has distinctly changed with the addition of s. 264 of the Code, which makes this conduct a crime.

3.2 *Criminal Code* Provisions

CRIMINAL HARASSMENT

264(1) No person shall, without lawful authority and knowing that another person is harassed or recklessly as to whether the other person is harassed, engage in conduct referred to in subsection (2) that causes that other person reasonably, in all the circumstances, to fear for their safety or the safety of anyone known to them.

Prohibited Conduct

(2) The conduct mentioned in subsection (1) consists of

(a) repeatedly following from place to place the other person or anyone known to them;

(b) repeatedly communicating with, either directly or indirectly, the other person or anyone known to them;

(c) besetting or watching the dwelling-house, or place where the other person, or anyone known to them, resides, works, carries on business or happens to be; or

(d) engaging in threatening conduct directed at the other person or any member of their family.

Punishment

(3) Every person who contravenes this section is guilty of

(a) an indictable offence and is liable to imprisonment for a term not exceeding ten years; or

(b) an offence punishable on summary conviction.

Factors to be Considered

(4) Where a person is convicted of an offence under this section, the court imposing the sentence on the person shall consider as an aggravating factor that, at the time the offence was committed, the person contravened

(a) the terms or conditions of an order made pursuant to section 161 or a recognizance entered into pursuant to section 810, 810.1 or 810.2; or

(b) the terms or conditions of any other order or recognizance made or entered into under the common law or a provision of this or any other Act of Parliament or of a province that is similar in effect to an order or recognizance referred to in paragraph (a).

Reasons

(5) Where the court is satisfied of the existence of an aggravating factor referred to in subsection (4), but decides not to give effect to it for sentencing purposes, the court shall give reasons for its decision.

MURDER IN COMMISSION OF OFFENCE

Criminal Harassment

231(6) Irrespective of whether a murder is planned and deliberate on the part of any person, murder is first degree murder when the death is caused by that person while committing or attempting to commit an offence under section 264 and the person committing that offence intended to cause the person murdered to fear for the safety of the person murdered or the safety of anyone known to the person murdered.

3.3 Charter Challenges

Charter challenges have argued unsuccessfully that section 264 is vague and overly broad and therefore void under sections 2(b) (freedom of expression) and 7 (life, liberty and security of the person). See ***R. v. Hau***, [1994] B.C.J. No. 677 (Prov. Ct.) (QL), (see also ***R. v. Hau***, [1996] B.C.J. No. 1047 (S.C.) (Q.L.), which upheld the constitutionality of the section but allowed an appeal and ordered a new trial). In ***R. v. Sillipp*** (1997), 120 C.C.C. (3d) 384 (Alta. C.A.), leave to appeal to S.C.C. refused, [1998] S.C.C.A. No. 3 (QL), Berger J.A. found that s. 2(b) of the *Charter* does not apply to ss. 264(2)(a) or (c) of the *Code*, and denied a s. 7 argument that s. 264 allows the morally innocent to be punished. At trial, in justifying any 2(b) violations under s. 1, Murray J. had characterized this form of "expression" as "attempts by persons to convey meanings of latent physical violence and direct psychological violence to other persons" (***R. v. Sillipp*** (1995), 99 C.C.C. (3d) 394 at 413 (Alta. Q.B.)). In ***R. v. Doody***, [2000] Q.J. No. 934 (C.A.) (QL), Michaud C.J.A. dismissed an application for leave to appeal, finding, among other things, that there was no merit to a constitutional challenge of s. 264(2)(c) of the *Code*.

In ***R. v. Davis*** (1999), 143 Man. R. (2d) 105 (Q.B.), aff'd (2000), 148 Man. R. (2d) 99 (C.A.), the Court followed ***Sillipp*** with respect to the s. 7 challenge on vagueness of the *mens rea* component of the offence and found that the legislation does not violate rights of association under s. 2(d) of the *Charter*. While accepting the Crown's concession that the communication component of the provision violates s. 2(b), the Court found "that the laudable objective of the criminal harassment legislation far outweighs the negative impact that it has on freedom of expression." In ***R. v. Krushel*** (2000), 142 C.C.C. (3d) 1 (Ont. C.A.), leave to appeal to S.C.C. refused, [2002] S.C.C.A. No. 293 (QL); the Ontario Court of Appeal also followed the Alberta Court of Appeal decision in ***Sillipp*** with respect to s. 7 challenges for vagueness and insufficient *mens rea* requirements, and the ***Sillipp*** Queen's Bench decision in relation to the freedom of expression challenge. See also ***R. v. Cloutier***, [1995] Montreal No. 500-01-005957 (Qc. (Cr. Div.)).

In responding to a *Charter* challenge, Crown counsel may also wish to review the legislative history of the criminal harassment provisions.

House of Commons

- First Reading of Bill C-126 *(An Act to amend the Criminal Code and the Young Offenders Act)* – April 27, 1993
- Second Reading – May 6, 1993 (see Hansard, *House of Commons Debates*, at 19015–19019 for the Minister of Justice's Second Reading Speech)

- *Minutes of Proceedings and Evidence* of the Legislative Committee on Bill C-126 – Issue No. 1 (May 11 and 25, 1993); Issue No. 2 (May 26, 1993); Issue No. 3 (May 27, 1993); Issue No. 4 (June 1, 1993); Issue No. 5 (June 2, 1993); and Issue No. 6 (June 2, 1993)
- Report of Legislative Committee – June 3, 1993
- Third Reading – June 10, 1993

Senate

- First Reading – June 14, 1993
- Second Reading – June 17, 1993
- *Proceedings of the Standing Senate Committee on Legal and Constitutional Affairs* – Issue No. 50, First Proceedings (June 21, 1993); and Issue No. 51, Second and Final Proceedings (June 22, 1993)
- Report of Committee – June 22, 1993
- Third Reading – June 23, 1993

Royal Assent received on June 23, 1993, and proclaimed into force on August 1, 1993. See S.C. 1993, c. C-45.

See also Nicholas Bala, "*Criminal Code* Amendments to Increase Protection to Children and Women: Bills C-126 and C-128" (1993) 21 C.R. (4th) 365.

1997 Amendments – Bill C-27

The 1993 criminal harassment provisions were amended by Bill C-27, *An Act to amend the Criminal Code (child prostitution, child sex tourism, criminal harassment and female genital mutilation)*, to make murder committed in the course of criminally harassing the victim a first degree murder offence, irrespective of whether it was planned and deliberate; and to make the commission of an offence of criminal harassment in the face of a protective court order an aggravating factor for sentencing purposes.

House of Commons

- First Reading of Bill C-27 *(An Act to amend the Criminal Code (child prostitution, child sex tourism, criminal harassment and female genital mutilation))* – April 18, 1996
- Second Reading – June 10, 1996
- *Minutes of Proceedings and Evidence* of the Standing Committee on Justice and Legal Affairs – Issue No. 4 (October 1, 1996); and Issue No. 6 (November 1, 5, 7, 19, 21, 26, 27, and 28, and December 3 and 4, 1996)
- Report of Committee (Sessional Paper No. 8510-352-63) – December 5, 1996

- Debated at report stage – April 7 and 8, 1997
- Third Reading – April 14, 1997

Senate

- First Reading – April 15, 1997
- Second Reading – April 15 and 16, 1997
- *Proceedings of the Standing Senate Committee on Legal and Constitutional Affairs* – Issue No. 59, First and Final Proceedings (April 17, 1997)
- Report of Committee – April 17, 1997
- Third Reading – April 21, 1997

Royal Assent received on April 25, 1997, and proclaimed into force on May 26, 1997. See S.C. 1997, c. 16.

2001 Amendments – Bill C-15A

The criminal harassment provisions were further amended by Bill C-15A, *An Act to amend the Criminal Code and to amend other Acts*, which doubled the maximum sentence for criminal harassment from 5 to 10 years' imprisonment when proceeding on indictment.[43]

House of Commons

- First Reading of Bill C-15A, then named Bill C-15, *(An Act to amend the Criminal Code and to amend other Acts)* – March 14, 2001 (see Hansard, *House of Commons Debates*, at 1646 for the Minister of Justice's First Reading Speech)
- Second Reading – May 3 and 7, and September 20 and 26, 2001 (see Hansard, *House of Commons Debates*, at 3581 for the Minister of Justice's Second Reading Speech)
- *Minutes of Proceeding and Evidence* of the Standing Committee on Justice and Human Rights – Issues No. 21 and 22 (October 2, 2001); Issue No. 23 (October 3, 2001); and Issue No. 24 (October 4, 2001)
- Bill divided into C-15A and C-15B – October 3, 2001
- Report of the Committee – October 5, 2001 (Sessional Paper No. 8510-371-74); concurred in October 18, 2001

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[43] This amendment was originally introduced in the House of Commons on June 8, 2000, in Bill C-36, *An Act to amend the Criminal Code (criminal harassment, home invasions, applications for ministerial review – miscarriages of justice, and criminal procedure) and to amend other Acts*. Bill C-36 died on the Order Paper with the prorogation of Parliament on October 22, 2000. It was reintroduced as part of Bill C-15 on March 14, 2001, which, in turn, was subsequently split into Bill C-15A (which included the criminal harassment amendment) and Bill C-15B.

- Third Reading – October 18, 2001 (see Hansard, *House of Commons Debates*, at 6312 for the Minister of Justice's Third Reading Speech)

Senate

- First Reading – October 23, 2001
- Second Reading – November 6, 2001
- *Proceedings of the Standing Senate Committee on Legal and Constitutional Affairs* – Issue No. 20, First Proceedings (December 5, 2001); Issue No. 21, Second Proceedings (December 6, 2001); Issue No. 22, Third Proceedings (December 12, 2001); and Issue No. 24, Fourth and Final Proceedings (February 7, 2002)
- Report of Committee – February 19, 2002; debated and adopted February 20, 2002
- Third Reading – February 21, and March 5, 12, 13, 14 and 19, 2002

Royal Assent received on June 4, 2002, and proclaimed into force on July 23, 2002. See S.C. 2002, c. 13.

2002–2004 Proposed Amendment

Bill C-12, *An Act to amend the Criminal Code (protection of children and other vulnerable persons) and the Canada Evidence Act*, includes amendments to the *Criminal Code* that seek to facilitate testimony by children and other vulnerable persons, including victims of criminal harassment. Specifically, proposed subsection 486.3(4) would require the trial judge to appoint counsel for a self-represented accused to conduct the cross-examination of the victim, thus preventing any continuation of the harassment that might occur if the accused is permitted to personally cross-examine the victim.[44]

House of Commons

- First Reading of Bill C-20 *(An Act to amend the Criminal Code (protection of children and other vulnerable persons) and the Canada Evidence Act)* – December 5, 2002 (see Hansard, *House of Commons Debates*, at 2291 for the Minister of Justice's First Reading Speech)
- Second Reading – January 27; February 3, 20 and 27; March 21 and 31; and April 1, 2003 (see Hansard, *House of Commons Debates*, at 2689 for the Minister of Justice's Second Reading Speech)
- *Minutes of Proceedings and Evidence* of the Standing Committee on Justice and Human Rights – Issue No. 63 (September 25, 2003); Issues No. 66 and 67 (October 7, 2003); Issue No. 68 (October 8, 2003); Issue

[44] This amendment was originally introduced in the House of Commons on December 5, 2002, in Bill C-20, *An Act to amend the Criminal Code (protection of children and other vulnerable persons) and the Canada Evidence Act*. Bill C-20 died on the order paper with the prorogation of Parliament on November 12, 2003. It was reintroduced as Bill C-12 on February 12, 2004, in the same form as Bill C-20 at the time of prorogation of the previous session.

No. 69 (October 9, 2003); Issue No. 71 (October 21, 2003); Issues No. 73 and 74 (October 23, 2003); and Issue No. 77 (October 29, 2003)

- Report of Committee – October 30, 2003; debated November 6, 2003

Bill C-20 died on the order paper with the prorogation of Parliament on November 12, 2003. It was reintroduced as Bill C-12 on February 12, 2004, in the same form as Bill C-20 at the time of prorogation of the previous session.

- First Reading of Bill C-12 (*An Act to Amend the Criminal Code (protection of children and other vulnerable persons) and the Canada Evidence Act*); deemed read the second time and referred to a committee; deemed considered in committee and reported – February 12, 2004
- Debated at report stage – February 18 and 23, 2004
- Concurred in at report stage with amendments – February 24, 2004[45]

3.4 Key Elements

The offence of criminal harassment contains the following key elements.

1. The offender engaged in **conduct** described in subsection 264(2).
2. The offender did not have **lawful authority** to engage in the prohibited conduct.
3. The offender knew that the victim was **harassed** or he/she was **reckless or wilfully blind** as to whether the victim was harassed.
4. The conduct caused the victim to **fear for their safety** or that of someone known to them.
5. The victim's **fear was reasonable** in all of the circumstances.

See also the Alberta Court of Appeal's summary of the elements of the offence in ***R. v. Sillipp*** (1997), 120 C.C.C. (3d) 384; leave to appeal to S.C.C. refused, [1998] S.C.C.A. No. 3 (QL).

[45] Bill C-12 was awaiting third reading in the House of Commons when this handbook went to print.

3.4.1 Prohibited Conduct

The accused must be shown to have engaged in any of the conduct prohibited in subsection 264(2). See as well ***R. v. Ladbon***, [1995] B.C.J. No. 3056 (Prov. Ct) (QL), where the accused, who was subject to a no-contact order, hired a private detective to follow his estranged wife, the victim. The court found that the accused had engaged in the prohibited conduct through his agent, the private detective. See also ***R. v. Detich***, [1999] Q.J. No. 25 (C.A.) (QL), where the offender's repeated attempts to communicate with the victim included such an attempt through a private detective.

Repeatedly Following from Place to Place – Subsection 264(2)(a)

"Repeatedly" refers to "conduct that is engaged in on more than one occasion." This conduct must be viewed in its context to determine whether it is "repeated": ***R. v. Ryback*** (1996), 105 C.C.C. (3d) 240 (B.C.C.A.), leave to appeal to S.C.C. refused, [1996] S.C.C.A. No. 135 (QL) (interpreted three communications in that context as amounting to "repeatedly" under subsection 264(2)(b)); ***R. v. Lafreniere***, [1994] O.J. No. 437 (Prov. Div.) (QL) (conduct that is engaged in persistently by the accused is repeated); ***R. v. Belcher*** (1998), 50 O.T.C. 189 (Gen. Div.) (determined that the repeated conduct does not have to occur on a number of occasions separated by time); and ***R. v. Gerein***, [1999] B.C.J. No. 1218 (Prov. Ct.) (QL) (following the victim in three segments over a one-hour period constituted repeated following). See also ***R. v. Dupuis***, [1998] O.J. No. 5063 (Gen. Div.) (QL).

Repeatedly Communicating – Subsection 264(2)(b)

"Repeatedly" means many times over. It means more than once or twice: ***R. v. Hertz*** (1995), 170 A.R. 139 (Prov. Ct.); ***R. v. Theysen*** (1996), 190 A.R. 133 (Prov. Ct.); ***R. v. Lafreniere***, [1994] O.J. No. 437 (Prov. Div.) (QL); and ***R. v. States***, [1997] B.C.J. No. 3032 (Prov. Ct.) (QL) (e-mail and written notes). See also ***R. v. M.R.W.***, [1999] B.C.J. No. 2149 (S.C) (QL), where the accused was convicted of criminally harassing the victim by repeatedly communicating with persons known to the victim (at least six communications over two days). The accused had been convicted approximately 16 years earlier of attempted murder of the victim and was allegedly attempting to re-establish contact with their two children. See also ***R. v. Davis*** (1999), 143 Man. R. (2d) 105 (Q.B.), aff'd (2000) 148 Man. R. (2d) 99 (C.A.), where the accused harassed the complainant through his contact with her friends; and ***R. v. Scuby***, 2004 BCCA 28, where the Court held that the trial judge must consider both "the content and the repetitious nature" of the communication, in the context in which it is made.

Besetting or Watching – Subsection 264(2)(c)

"Watching" is to be given its ordinary dictionary meaning: ***R. v. Dupuis***, [1998] O.J. No. 5063 (Gen. Div.) (QL). Watching can be non-criminal, but if it is done in circumstances and to an extent that are objectively capable of demonstrating an intention to harass and generating reasonable fear, it can fall within subsection 264(2)(c): ***R. v. Belcher*** (1998), 50 O.T.C. 189 (Gen. Div.).

R. v. Vrabie, [1995] M.J. No. 247 (Prov. Ct.) (QL) applied an ordinary dictionary meaning to "besetting" and held that besetting includes "to harass" (in other words, the conduct must be so blatant or vexatious as to constitute besetting). The Court took judicial notice of the fact that the incidents took place in an extremely public location in a small town. For example, one of the incidents was alleged to have taken place at a bakery that was across the street from the only post office in Flin Flon.

R. v. Diakow, [1998] M.J. No. 234 (Prov. Ct.) held that besetting required at least some knowledge or awareness on the part of the victim that she was the subject of the besetting.

Subsection 264(2)(c) does not require that the watching or besetting be "repeated": ***R. v. Belcher*** (1998), 50 O.T.C. 189 (Gen. Div.). See also ***R. v. Kosikar*** (1999), 138 C.C.C. (3d) 217 (Ont. C.A.), leave to appeal to S.C.C. refused (2000), [1999] S.C.C.A. No. 549 (QL).

Engaging in Threatening Conduct – Subsection 264(2)(d)

Subsection 264(2)(d) is not ambiguous and can be given its ordinary meaning. One incident of threat is sufficient and need not be of a repetitive nature to satisfy subsection 264(2)(d): ***R. v. Riossi*** (1997), 6 C.R. (5th) 123 (Gen. Div.). In ***Riossi***, Boyko, J. considered and rejected the reasoning in ***R. v. Johnston***, [1995] O.J. No. 3118 (Prov. Div.) (QL), which held that subsection 264(2)(d) required a pattern of conduct and not just a single discrete incident. Boyko, J. accepted the decision in ***R. v. Zienkiewicz***, [1994] B.C.J. No. 3141 (Prov. Ct.) (QL) that realistic fear can arise from a single incident. See also ***R. v. Fuson***, [1998] B.C.J. No. 1441 (Prov. Ct.) (QL); and ***R. v. Ryback***, [1997] B.C.J. No. 2824 (S.C) (QL). See also ***R. v. Lamontagne*** (1998), 129 C.C.C. (3d) 181 at 187 (Qc. C.A.), which accepted that a single incident ("You will see, tomorrow I will be out and you are going to regret it, God damn it") could be viewed by a reasonable person in the victim's situation as a threat or a "tool of intimidation which is designed to instil a sense of fear in the recipient."

See also ***R. v. Kosikar*** (1999), 138 C.C.C. (3d) 217 (Ont. C.A.), leave to appeal to S.C.C. refused (2000), [1999] S.C.C.A. No. 549 (QL) (one letter by the offender to the victim that contained sexual innuendoes, considered together with the offender's past conduct towards the victim, constituted threatening conduct); and ***R. v. George*** (2002), 162 C.C.C. (3d) 337 (Y.C.A.).

Evidence of Pre-charge Conduct/Similar Fact Evidence

R. v. Ryback (1996), 105 C.C.C. (3d) 240 (B.C.C.A.), leave to appeal to S.C.C. refused, [1996] S.C.C.A. No. 135 (QL), held that evidence of prior conduct by the accused may be relevant to two elements of the charge of criminal harassment: whether the victim had a reasonable fear for her safety; and whether the defendant knew or was reckless as to whether his conduct harassed the victim.

In ***R. v. J.G.T.*** (1999), 257 A.R. 251 (Q.B.), aff'd (2003), 320 A.R. 251 (C.A.), the trial judge admitted evidence concerning unrelated allegations by two different complainants, as "internal similar fact evidence for a number of purposes: as evidence of the accused's intent with respect to the assault, harassment and confinement charges; to support or corroborate the complainants' evidence; to put into context the complainants' fear; and to assist in assessing the accused's knowledge of the effect of his conduct in relation to the allegations of criminal harassment"(para. 70). The trial judge stated that he had attributed little weight to the evidence, but nonetheless had found that its probative value outweighed its prejudicial effect on the basis that there were "sufficient similarities to establish a pattern of behaviour"(para. 71).

In ***R. v. Henson***, [1994] O.J. No. 1767 (Prov. Div.) (QL), similar fact evidence was allowed to rebut the defendant's defence of accident and to address the issue of motive. See also ***R. v. Hau***, [1996] B.C.J. No. 1047 (S.C.); and ***R. v. Zunti*** (1997), 161 Sask. R. 55 (Q.B.). In ***R. v. Archer***, [1999] O.J. No. 950 (Gen. Div.) (QL), Killeen, J. applied ***R. v. Arp***, [1998] 3 S.C.R. 339, by treating some of the evidence (relating to numerous counts of arson) as "similar fact evidence with cross-corroboration effects."

R. v. S.B., [1996] O.J. No. 1187 (Gen. Div.) (QL) held that in domestic violence cases, evidence of pre-charge conduct is frequently admissible to provide narrative context or background to the charges before the court.

3.4.2 Without Lawful Authority

The defendant must engage in the prohibited conduct without lawful authority. ***R. v. Shapira*** (1997), 203 A.R. 299 (Prov. Ct.) held that the phrase "without lawful authority" must be restricted to authority that emanates from the state through a court order, legislative approval or some other executive power of the state. It could not be construed to include the victim's permission to the accused to contact the victim by telephone where the telephone calls amounted to "harassment."

See also ***R. v. Browning*** (1995), 42 C.R. (4th) 170 (Ont. Ct. Prov. Ct.), which held that in determining whether there is any lawful reason for the accused to

communicate with the victim, the nature of the relationship between the two is relevant (in this case, the parties had a working relationship). However, marriage or cohabitation is not a bar to a conviction under section 264: ***R. v. Skoczylas*** (1997), 99 B.C.A.C. 1 (C.A.); and ***R. v. Sanghera***, [1994] B.C.J. No. 2803 (Prov. Ct.) (QL). See also ***R. v. Rahman*** (1999), 97 O.T.C. 32 (Sup. Ct.) (section 264 can apply to a case where the offender and victim are members of a subsisting family).

In ***R. v. Sousa***, [1995] O.J. No. 1435 (Gen. Div.) (QL), Cusinato, J. did not accept the defendant's evidence that he had a legitimate purpose in following the victim (his estranged wife) in order to see his children. If the defendant had really wanted to see his children, he should have followed the terms and conditions of the existing access order.

3.4.3 Knowingly or Recklessly Harassed

Knowingly or Recklessly

The Crown must prove that, by engaging in the prohibited conduct, the accused intended to harass the victim or that the accused was in fact reckless as to whether the conduct harassed the victim: ***R. v. Lafreniere***, [1994] O.J. No. 437 (Prov. Ct.) (QL). ***R. v. Yonik***, [1996] O.J. No. 3765 (Prov. Div.) (QL) applied ***Sansregret's*** definition of recklessness at para. 12: "The conduct of one who sees the risk (of a result prohibited by criminal law) and who takes the chance." It is not necessary that the Crown prove that the defendant knew that the victim feared for her safety: ***R. v. Pierce*** (1997) N.S.R. (2d) 183 (C.A.).

The victim does not have to be forceful in rebuffing the defendant's attention: ***R. v. Ryback*** (1996), 105 C.C.C. (3d) 241 at 248 (B.C.C.A.), leave to appeal to S.C.C. refused, [1996] S.C.C.A. No. 135 (QL); and ***R. v. Hau***, [1996] B.C.J. No. 1047 (S.C.) (QL). See also ***R. v. Rehak*** (1998) 125 Man. R. (2d) 181 (Q.B.), which in considering whether the defendant was wilfully blind to the fact that he was engaging in prohibited conduct, held that "[a] party need not be warned that his or her conduct is criminal before that conduct actually becomes criminal." In this case, the victim had indicated by her actions and gestures that she was displeased with the defendant's attention.

The test is whether it would be reckless or wilfully blind for a reasonable person not to believe that their conduct might harass the victim: ***R. v. Dupuis***, [1999] O.J. No. 1860 (Gen. Div.) (QL), as per ***R. v. Sillipp*** (1997), 120 C.C.C. (3d) 384 (Alta. C.A.), leave to appeal to S.C.C. refused, [1998] S.C.C.A. No. 3 (QL). ***Sillipp*** was followed recently on this issue in ***R. v. Rivet***, [2002] O.J. No. 4863 (Sup. Ct. J.) (QL), aff'd [2003] O.J. No. 502 (C.A.) (QL). In ***R. v. Gerein***, [1999] B.C.J. No. 1218 (Prov. Ct.) (QL), the offender followed the victim in her car in three segments over a one-hour period. The victim drove at high speed,

making random turns, to lose the offender. The Court held that in such circumstances it was not possible for the offender to have been unaware of the effect of his conduct on the victim: "his mental state went beyond being reckless as to the effect of his conduct on [the victim] and amounted to actual knowledge of the obvious."

See also ***R. v. Shadwell***, [1997] O.J. No. 3340 (Prov. Div.) (QL).

In ***R. v. Kosikar*** (1999), 138 C.C.C. (3d) 217 (Ont. C.A.), leave to appeal to S.C.C. refused (2000), [1999] S.C.C.A. No. 549 (QL), the Court upheld the dismissal of an appeal against conviction under subsection 264(2)(d) (letter to the victim containing sexual innuendoes). The trial judge appropriately relied on the history of the offender's conduct towards the victim (which included a previous conviction for criminal harassment) as relevant to the offender's intention and knowledge/recklessness of the harassment.

Harassment

As to whether the conduct constitutes "harassment," ***R. v. Sillipp*** (1995), 99 C.C.C. (3d) 394 (Alta. Q.B.), aff'd (1997), 120 C.C.C. (3d) 384 (Alta. C.A.), leave to appeal to S.C.C. refused, [1998] S.C.C.A. No. 3 (QL), held at trial that harassment implies "being tormented, troubled, worried continually or chronically, being plagued, bedeviled and badgered." This definition was accepted in ***R. v. Ryback*** (1996), 105 C.C.C. (3d) 241 at 248 (B.C.C.A.), leave to appeal to S.C.C. refused, [1996] S.C.C.A. No. 135 (QL); ***R. v. Lamontagne*** (1998), 129 C.C.C. (3d) 181 (Qc. C.A.) (which held that "harass" can also signify the fact of "bothering someone with requests, solicitations, incitements ... which conveys rather well the idea that the conduct must have the effect of bothering someone because of its continuity or its repetition"); and ***R. v. J.G.T.*** (1999), 257 A.R. 251 (Q.B.), aff'd (2003), 320 A.R. 251 (C.A.). See also ***R. v. M.R.W.***, [1999] B.C.J. No. 2149 (S.C.) where the Court found that the accused was "reasonably sure" that his six separate inquiries to persons known by the victim would be communicated back to the victim (the accused had been convicted of attempted murder of the victim approximately 16 years earlier).[46]

3.4.4 Fear for Safety

The victim must actually fear for their safety or that of someone known to them as a result of the defendant's conduct: ***R. c. Josile***, [1998] A.Q. No 1280 (C.S. crim.) (QL); and ***R. v. Barnard***, [1998] O.J. No. 3304 (Gen. Div.) (QL).

The victim's fear for their "safety" or that of someone known to them is not restricted to fear of physical harm but rather, includes fear for their mental,

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[46] See also Nicholas Bala, "*Criminal Code* Amendments to Increase Protection to Children & Women: Bills C-126 and C-128" (1993) 21 C.R. (4th) 365 at 379.

psychological and emotional safety: ***R. v. Hau***, [1996] B.C.J. No. 1047 (S.C.); ***R. v. Skoczylas*** (1997), 99 B.C.A.C. 1 (C.A.); ***R. v. Lafreniere***, [1994] O.J. No. 437 (Prov. Ct.) (QL); ***R. v. Hertz*** (1995), 170 A.R. 139 (Prov. Ct.)); and ***R. v. Gowing***, [1994] O.J. No. 1696 (Prov. Div.) (QL). ***R. v. Goodwin*** (1997), 89 B.C.A.C. 269 (C.A.) held that victims of harassment do not have to "suffer ill health or major disruption in their lives before obtaining the protection of section 264."

Someone Known to the Victim

The victim may be harassed by the defendant and may be found to hold a reasonable fear for the safety of someone known to the victim where the defendant engages in prohibited conduct in relation to the victim's daughter: ***R. v. Dupuis***, [1998] O.J. No. 5063 (Gen. Div.) (Q.L.). See also ***R. v. Dunnett***, [1999] N.B.J. No. 122 (Q.B. (T.D.)) (QL), where the victim—the offender's ex-wife—feared for the emotional health of the couple's daughter as a result of the offender's repeated telephone calls to the daughter (hundreds of calls a day).

3.4.5 Reasonableness of Fear

The victim must reasonably, in all of the circumstances, fear for their safety or that of someone known to them.

In determining the reasonableness of the victim's fear, all of the evidence must be taken into account, including, "the gender of the victim and the story and circumstances surrounding the relationship which existed or which had existed, if any, between the accused and the victim. As per ***Lavallee***, it is legitimate to take gender into account due to the differences which recognizably exist between the size, the strength, and the socialization of women when compared to their male counterparts" (per Greco Prov. Ct. J., in ***R. v. Lafreniere***, [1994] O.J. No. 437 (Prov. Div.) (QL) and applied in ***R. v. Hertz***, [1995] 170 A.R. 139 (Prov. Ct.). See also ***R. v. Sousa***, [1995] O.J. No. 1435 (Gen. Div.) (QL), in which Cusinato, J. held that in assessing the reasonableness of the victim's fear, consideration may be given to the victim's sex, race and age, but that section 264 did not require that the victim have knowledge of the defendant's capabilities. Conclusions regarding the reasonableness of a complainant's fear are "predicated on the findings of fact": ***R. v. Bourque*** (1999), 140 C.C.C. (3d) 435 (Nfld. C.A.).

In ***R. v. Martynkiw*** (1998), 234 A.R. 185 (Q.B.), an appeal was allowed from a conviction for watching and besetting the defendant's neighbours. In this case, the defendant and the victim were engaged in a property dispute. As part of this dispute, the defendant stared at the neighbours from his property and took pictures of their activities as they concerned the property line. The Court held that while the neighbours were justifiably upset by the defendant's rude and annoying conduct, their fear for their safety was not reasonable in all of the circumstances. See also ***R. v. Geller***, [1994] O.J. No. 2961 (Prov. Div.)

(QL), which came to a similar conclusion regarding the victim's fear for her safety arising from an ongoing dispute with her neighbour regarding the victim's dogs.

3.5 Murder Committed in the Course of Criminal Harassment

Subsection 231(6) of the *Criminal Code*, which came into effect in 1997,[47] makes murder committed in the course of criminally harassing the victim a first degree murder offence, irrespective of whether it was planned and deliberate. (See the *Criminal Code* provisions in Part 3.2 for the full text of this subsection.)

The first reported reference to subsection 231(6) was in ***R. v. Russell***, [2001] 2 S.C.R. 804, where the Court noted the distinction between subsections 231(5) and 231(6). In order for subsection 231(6) to apply, the murder victim must be the same person who was being criminally harassed. In contrast, the constructive murder provisions in s. 231(5) do not contain this limitation and did apply in ***Russell*** where the murder victim was not the same person who was unlawfully detained.

R. v. Bradley (2003), 223 Nfld. & P.E.I.R. 225 (P.E.I.S.C. (T.D.)) is the first reported case of a successful prosecution under s. 231(6), although the trial judge also found that the murder was otherwise first degree because it had been planned and deliberate. In ***R. v. Zasidko***, [2003] O.J. No. 1942 (Ct. J.) (QL), at a preliminary inquiry on a charge of first degree murder, the Court committed the accused for trial for second degree murder, rather than first degree murder pursuant to s. 231(6), where it found that the following test in ***Bradley*** was not met.

> [T]he relevant inquiry breaks down into four parts:
>
> (i) At the time of the murder, was the accused engaged in any conduct that would constitute criminal harassment, as set out in section 264(2)?
>
> (ii) If so, did the accused know that the victim was harassed or was the accused reckless as to whether or not the victim was harassed by such conduct?
>
> (iii) Did the accused have any lawful authority for such conduct?
>
> (iv) Did any such conduct cause the victim, reasonably in all the circumstances, to fear for their safety or the safety of anyone known to them? (para. 234)

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[47] Bill C-27, *An Act to amend the Criminal Code (child prostitution, child sex tourism, criminal harassment and female genital mutilation)*, proclaimed in force on May 26, 1997. See S.C. 2001, c. 13, s. 10.

4 Guidelines for Crown Prosecutors

The Department of Justice Canada's 1996 research report, *A Review of Section 264 (Criminal Harassment) of the Criminal Code of Canada*, reviewed the implementation of the 1993 criminal harassment provisions in six cities (Vancouver, Edmonton, Winnipeg, Toronto, Montreal and Halifax). The report identified a number of barriers to effective implementation and made several recommendations to enhance the effectiveness of the existing provisions. The following guidelines were developed to address these findings and recommendations, as well as to reflect consultations with Crown prosecutors and the developing case law to date.

Crown practices and policies vary from one jurisdiction to another, including in the use of Victim Witness Assistance programs, for example. *These guidelines should be considered in conjunction with other applicable legislation and policies, including provincial policies relating to spousal assault and to diversion/alternative dispute resolution.* A primary objective in criminal harassment cases should be to keep the victim safe, informed and involved.

4.1 Process Considerations

- ❑ Where possible, make the same Crown counsel (and any Victim Witness Assistant) responsible for carrying a criminal harassment case from start to finish.
- ❑ Document all actions in each criminal harassment case through a Case Record Sheet. This task includes identifying all actions taken and reasons for Crown decisions (see Appendix E for a sample Crown Case Record Sheet).
- ❑ Ensure sufficient time for case preparation.
- ❑ Seek early hearing dates and oppose unreasonable adjournment requests. Although not all delays are avoidable, "delays" can affect different victims differently: they may increase stress for some people and decrease stress for others. Note that it is always important to assess/re-assess the ongoing safety of the victim, and the adequacy of any no-contact conditions and other measures, during these intervening periods.

Statistics Canada's Adult Criminal Court Survey (ACCS) data for 2001–2002 include the following fact.

- The majority (31%) of criminal harassment cases took less than four months to process, from the date of the offence to the last appearance; 27% took between four and six months to process and 24% took over a year.

Please note that in the ACCS data cited in this handbook, a "case" refers to "one or more charges against an accused person … where the charges receive a final disposition on the same date." Where a case has more than one charge, they are reported based on the most serious case outcome (for example a finding of guilt) and the most serious charge.

4.2 Victim Interview

- ❑ Involve the victim throughout the process. For example, consult with the victim, and provide the victim with timely information, particularly with respect to the release of the accused on bail and to the results of the trial and sentencing.
- ❑ Where possible, interview the victim before the date of the accused's first court appearance.

- ❏ Prepare the victim for testifying in court. Be sensitive to the victim's personal situation and their state of mind, including the psychological and emotional distress they are likely experiencing. The victim may require the assistance of a support person and/or an interpreter. If the victim has not yet been referred to victim services, help them contact victim services for support and assistance as soon as practicable.
- ❏ Crown counsel should ensure that the following critical information is documented in the file:
  - description of all incidents of prohibited conduct in which the accused is alleged to have engaged;
  - details of any words uttered or gestures made by the accused during the conduct;
  - the nature of the location and the time of day when the conduct occurred (these factors can affect the victim's fear);
  - whether the incidents involved others or occurred in the presence of others, such as family, friends, co-workers and neighbours;
  - whether the victim communicated—either indirectly through an intermediary, or directly—of their displeasure with the accused's conduct (in other words, whether there is any direct evidence that the accused had actual knowledge of the harassing nature of the conduct or was reckless as to the effect of the conduct on the victim);
  - whether the victim has been required to alter their lifestyle or actions because of the accused's conduct;
  - the history of any prior relationship between the victim and the accused, particularly details of past incidents of abusive or violent behaviour towards the victim, and criminal convictions for violence against the victim; and
  - the physical stature and gender of the victim and the accused.

4.3 Approval or Review of Charges

Police lay charges in all provinces with the exception of British Columbia and Quebec, where the decision to lay charges is made by the Crown. In New Brunswick, the decision to lay charges is made by police after receiving advice from the Crown. (See also Part 2.9.5 – Arrest and Charges.)

When deciding whether to lay charges, consider the following.

- Is there independent evidence supporting the charges?

- Consider laying both the separate charge and the inclusive count of criminal harassment, where one or more of the incidents giving rise to the complaint of criminal harassment can be construed as a single criminal offence. For example, where appropriate, consider also laying the following charges:
  - Intimidation (section 423);
  - Uttering threats (section 264.1);
  - Mischief (section 430);
  - Indecent or harassing telephone calls (section 372);
  - Trespassing at night (section 177);
  - Assault (section 265);
  - Assault with a weapon or causing bodily harm (section 267);
  - Aggravated assault (section 268);
  - Aggravated sexual assault (section 273);
  - First degree murder (subsection 231(6));
  - Failure to comply with condition of undertaking or recognizance (subsection 145(3));
  - Disobeying court order (section 127);
  - Breach of recognizance (section 811); and
  - Failure to comply with probation order (section 733.1).
- Consider laying counts relating to serious incidents in the past.
- In cases involving domestic violence, decisions to stay or withdraw charges should only be made after due consideration of all relevant facts, such as the history of violence between the accused and the victim, and whether the accused is influencing the victim's willingness to testify. While all victims want the harassment to stop, a complex array of factors may result in their reluctance to cooperate with the prosecution. Some of these factors particular to situations involving former intimates include the following: fear of the offender, perceived powerlessness, low self-esteem, social and economic dependency, lack of confidence in the justice system's ability to protect them, fear of authority and fear of child apprehension. The impact of these factors may be compounded by other experiences for Aboriginal women, poor women, refugee or immigrant women, or women with disabilities. "Victim reluctance is considered by experts to constitute a significant risk factor warranting more, rather than less criminal justice intervention."[48] Victim services play a central coordinating role in the provision of information and support to victims.

Statistics Canada's Adult Criminal Court Survey (ACCS) data for 2001–2002 include the following facts.

- One in two (50%) accused persons was found guilty of criminal harassment and 8% were acquitted.
- Conviction rates were slightly higher for robbery (55%), common assault (54%) and major assault (52%) cases. In contrast, attempted murder (14%), homicide (31%) and sexual assault (42%) cases had significantly lower conviction rates than criminal harassment cases.
- One in three (38%) criminal harassment cases was stayed or withdrawn.

Statistics Canada's Youth Court Survey (YCS) data for 2001–2002 include the following facts.

- One in two (51%) accused persons was found guilty of criminal harassment and 6% were acquitted.
- Conviction rates were considerably lower for homicide (26%) and attempted murder (30%) cases. Common assault (65%), robbery (63%), major assault (62%) and sexual assault (60%) cases had considerably higher conviction rates than criminal harassment cases.
- Two in five (42%) cases were stayed, dismissed or withdrawn.

[48] Victim Services Division, BC Ministry of Public Safety and Solicitor General.

- Diversion or alternative measures are generally not appropriate in criminal harassment cases, particularly in cases involving intimates. In jurisdictions where alternative processes are available, such processes should only be used where proper safeguards are in place. Alternative measures may be appropriate where all of the following circumstances are in place:
  i. the referral to the alternative justice process is made *post-charge on Crown approval*;
  ii. trained and qualified personnel, using validated risk assessment tools, determine that the case is not high-risk (in other words, if after a consideration of a variety of factors, including any history of violence, threats of serious violence, prior breaches of protective court orders, the use or presence of weapons, employment problems, substance abuse and suicide threats, the offender is assessed to be at low risk of re-offending and therefore of low risk of harm to the victim's safety, as well as that of her children and other dependents, both throughout and after the process);
  iii. the alternative justice process offers the same or greater measure of protection of the victim's safety as does the traditional criminal justice process;
  iv. the victim is fully informed of the proposed alternative justice process and her wishes are taken into consideration. In addition, victim consent is required and victim support must be provided where the victim will be asked to participate in the alternative justice process;
  v. the offender fully accepts responsibility for his action;
  vi. the alternative justice process is part of a program approved by the Attorney General for the purpose of providing alternative justice responses to spousal abuse and is overseen by the Attorney General or the court;
  vii. the alternative justice process is transparent (that is, it maintains formal records of the actions taken by those engaged in the process) and it is undertaken in a timely and reasonable manner;
  viii. the alternative justice process has the capacity to deal with spousal abuse cases and is delivered and supervised by persons possessing the requisite skill, training and capacity, including the ability to recognize and address any power imbalances, as well as cultural differences; and

ix. the possibility of criminal conviction and sentence remains if the process fails.[49]

- Consider seeking a recognizance order under sections 810 or 810.2 of the *Criminal Code* where there is insufficient evidence to support charges; however, peace bonds are not normally an alternative to criminal charges where there is sufficient evidence to support the charges. (See also Part 2.9.3 – Sections 810 and 810.2 Peace Bonds, and Civil Protection Orders.)

❑ Inform the victim, police and victim services of any decision to reduce, withdraw or stay charges.

❑ Ensure that disclosure procedures are set up so that any information that would reveal a new address, phone number, location, or workplace of the victim or others involved is not disclosed.

4.4 Pre-Trial Release

(See also Part 2.11 – Release from Custody.)

4.4.1 Where the Accused is Not in Custody

❑ Where the accused is not in custody when charges are approved, Crown counsel should seek a warrant for the arrest of the accused, either to seek the detention of the accused or to ensure that protective conditions of release are imposed. On the issuance of the warrant, Crown counsel may oppose any endorsement of the warrant authorizing the release of the accused pursuant to section 507.

❑ Where the accused has been released by police, Crown counsel may consider seeking a warrant for the arrest of the accused under section 512, if it is necessary in the public interest.

4.4.2 Evidence at Bail Application Hearing

Before the show-cause hearing, Crown counsel should consider consulting with the police and/or the victim regarding any missing information from the file, as well as any new developments or concerns regarding risk factors. When necessary to obtain complete information, the Crown should request an adjournment of the proceedings under subsection 516(1) of the *Code*.

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[49] See Ad Hoc-Federal-Provincial-Territorial Working Group Reviewing Spousal Abuse Policies and Legislation, *Final Report: Spousal Abuse Policies and Legislation* (Ottawa: Department of Justice Canada, March 2003), online: <http://canada.justice.gc.ca/en/ps/fm/reports/spousal.html> at 32-33. The majority of the Working Group recommended against the use of alternative justice processes in spousal abuse cases except in the circumstances listed above.

At a bail application hearing, Crown counsel should do the following.

- ❑ Oppose pre-trial release where
  - the accused poses a danger to the safety of the victim or a witness; or
  - the accused has breached a previous or existing no-contact order or condition.
- ❑ Present evidence of the history of the harassment, as well as of any past incident of abuse or criminal convictions.
- ❑ Advise the Court of any indicators of high risk as reflected in the circumstances of the allegations, the relationship between the accused and the victim, and the background of the accused. Where possible, a risk assessment should be completed before an accused applies for judicial interim release. See, for example, ***R. v. Fuson***, [1998] B.C.J. No. 1441 (Prov. Ct.) (QL) where bail was denied to an accused with a serious criminal record, which included sexual assault. A psychological assessment showed that the accused was at a high risk of re-offending. Cf. ***R. v. Lepore***, [1998] O.J. No. 5824 (Gen. Div.) (QL).
- ❑ Present evidence of prior breaches of no-contact orders or conditions. Consider calling the charging police officer as a witness.
- ❑ Present evidence of the victim's concerns for their personal safety if the accused is released on bail.
- ❑ Emphasize that the victim's rights must also be considered. Bill C-79[50] amended subsection 515(10)(b) in 1999 to make clear that bail decisions must take the safety of the victim into account. ***R. v. Mills***, [1999] 3 S.C.R. 668, can be cited, if necessary, as standing for the proposition that the court must also consider the victim's *Charter* rights, in addition to those of the accused, in making its decisions.
- ❑ Present any evidence that the accused possesses firearms, weapons, or a related licence, registration, certificate or authorization.
- ❑ Where the accused is ordered detained in custody, seek a direction from the justice that the accused abstain from communicating, directly or indirectly, with the victim, witness or any other person named in the order (subsection 515(12)). Crown counsel should also request such an order for an accused who has been remanded into custody prior to the commencement/completion of their judicial interim release hearing (subsection 516(2)).

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[50] Bill C-79, *An Act to amend the Criminal Code (victims of crime) and another Act in consequence*, proclaimed into force December 1, 1999.

4.5 Conditions for Release

4.5.1 Mandatory Consideration

When the accused is released on bail, the court shall consider whether it is desirable, in the interests of the safety and security of any person, particularly a victim or witness, to include conditions prohibiting the accused from doing the following:

- possessing any firearm, cross-bow, prohibited weapon, restricted weapon, prohibited device, ammunition, prohibited ammunition, explosive substance or all such things (the condition should also address the method and time of surrendering any of these items);[51]
- communicating, directly or indirectly, with the victim, a witness or any other person expressly named in the order (subsection 515(4.2)); and
- going to any place within 200, 500 or 1000 metres of any specified places, such as the victim's residence and place of employment (subsection 515(4.2)).[52]

4.5.2 Firearms/Weapons Prohibition

(See also Part 2.9 – Threat and Risk Assessments, and Level of Intervention)

Where the conditions of judicial interim release include a weapons prohibition, the following points apply.

- ❑ The justice must specify what is to be done with the weapons the accused already possesses, as well as how weapons-related documents are to be surrendered (subsection 515(4.11)).
- ❑ Section 115 provides that the weapons in the possession of the accused are forfeited unless the prohibition order states otherwise. In the past, there was some confusion about whether this provision also applied to bail conditions under s. 515; however, this uncertainty has now been clarified by Bill C-10A, which amended s. 115 to specify that it does not apply to judicial interim release orders under s. 515.[53]

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[51] Under subsection 515(4.1), this condition is mandatory for the offence of criminal harassment, unless the justice decides that it is not necessary.

[52] Caution should be used to ensure that no-contact or radius clauses do not reveal a new address, phone number, location or workplace of the victims or other involved.

[53] Bill C-10A, *An Act to amend the Criminal Code (firearms) and the Firearms Act*, s. 5 proclaimed into force August 15, 2003.

- ❑ Section 116 provides that when someone is prohibited from possessing weapons, any documents relating to those weapons are revoked or amended when the prohibition order commences. However, pursuant to subsection 116(2), created by Bill C-10A, when the prohibition order is made under s. 515, the revocation or amendment applies only "in respect of the period during which the order is in force."[54]
- ❑ Section 113 allows for the partial lifting of a prohibition order where the person establishes that they require a firearm or restricted weapon for sustenance hunting or employment purposes.
- ❑ If the justice does not impose a weapons prohibition as a condition of release, the justice must give reasons for this decision (subsection 515(4.12)).
- ❑ Where a court makes, varies or revokes a firearms prohibition order, the court must notify the Chief Firearms Officer without delay (section 89 of the Firearms Act).

4.5.3 Additional Conditions

- ❑ A justice may impose other reasonable conditions, and Crown counsel should consider seeking other conditions necessary to reflect the specific needs of the victim and accused, including the following:
  - abstain from the consumption of alcohol or other intoxicating substances or drugs, except in accordance with a medical prescription;[55]
  - report at specified times to a peace officer or other designated person;
  - notify a peace officer or other designated person of any change in their address, employment or occupation. Consider requiring/seeking the condition that the accused is "not to move without receiving prior permission of the court." This gives the court some control over where the accused might move. It sometimes happens that an accused notifies the designated person that they have moved to an address that is close to the complainant's residence or place of work, but not so close that they are breaching another condition. When the accused is required to come to court to change an address, the police or the Crown can check the proposed address against those frequented by the complainant to ensure some element of safety and peace of mind for the victim;
  - abstain from driving a motor vehicle (where one has been used in committing of the offence of criminal harassment);
  - obey a curfew requiring the accused to be in their place of residence between specified hours, unless they obtain written permission from

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[54] Bill C-10A, *An Act to amend the Criminal Code (firearms) and the Firearms Act*, s. 6 proclaimed into force August 15, 2003.

[55] This condition is only appropriate where there is evidence that such substances were involved in the offence.

a designated person (where the criminal harassment occurred during the night);

- require/request that responsible sureties come forward to closely supervise the accused. This condition is often the most significant factor the Crown considers when deciding whether to consent to release or oppose bail. However, it is very important to thoroughly assess the suitability and capabilities of proposed sureties. Such an assessment should normally include a criminal record check of the proposed surety, an inquiry into what knowledge the surety has of the accused (including criminal history), an inquiry into whether the surety fully appreciates the responsibilities of a surety, and general information about the surety, including their availability to supervise the accused.[56]
- Where the accused is also bound by a civil court order that imposes different conditions from those imposed at the bail application hearing, ask the justice to advise the accused that they are obliged to obey the most restrictive aspects of the two orders.
- In cases involving former intimates with children, consider whether the exercise of the accused's rights to child access may conflict with a no-contact order with the victim. Recommend that, in the event of any such conflict, the accused shall forgo exercising their access rights.

4.5.4 Follow-up with Victim and Police

❑ Advise the victim, police and victim services of the date of the bail hearing and the outcome of the hearing, including any conditions imposed as part of the pre-trial release or detention. Ask police to input any information relating to release conditions, including weapons prohibitions, on CPIC.

4.5.5 Breach of Bail Conditions

Given the nature of the threat to criminal harassment victims, pre-trial release is typically opposed where the accused breaches a previous or existing no-contact order or condition, or where new allegations suggest that the accused poses a danger to the safety of the victim, witnesses or other members of the public.[57]

Where the accused breaches bail conditions, consider the following:

- having the accused arrested pursuant to subsection 524(1)(a) of the *Code*;[58]

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[56] For more detailed suggestions, see D. Garth Burrow, *Bail Hearings* (Scarborough, Ontario: Carswell, 1996).

[57] In these situations, a bail review hearing under s. 525 of the *Code* might also be appropriate.

[58] See Part 2.9.5 – Arrest and Charges.

- charging the accused under subsection 145(3) and possibly charging the accused with a new count under section 264; and
- bringing an application pursuant to subsection 524(8)[59] to have all previous releases cancelled (see preconditions of that subsection).

This approach is advantageous because where the justice finds that the conditions in subsections 524(8)(a) or (b) are met, the justice must cancel all existing forms of release. The onus is then on the accused to show cause why detention is not justified, in relation to both the new charges and the old charges (for which previous forms of release have been cancelled). The application to cancel previous forms of release is usually heard at the same time as the judicial interim release hearing. If the accused is subsequently released, it will be under one form of release (in other words one set of conditions) for all charges for which the existing forms of release were cancelled. If the accused is detained, it will be for all outstanding charges. Where subsection 524(8) applies, the laying of new charges will bring the accused's entire course of conduct before the bail court.

Note that where subsection 524(8) does not apply, subsection 515(6) may still place the onus on the accused to show why their detention in custody is not justified.

4.6 Election – Summary Conviction or Indictment Considerations

Issues to consider in determining whether to proceed by way of summary conviction or indictment include the following.

Statistics Canada's Adult Criminal Court Survey (ACCS) data for 2001–2002 include the following fact.

- Of all criminal harassment cases, 57% proceeded by summary conviction and 12% proceeded by indictment (election was unknown for 31% of the cases).

- ❑ Does the case require a quick response and solution by the criminal justice system?
- ❑ Do the nature and seriousness of the conduct in question warrant a strong response by the criminal justice system?
- ❑ Given the facts of this case, is a penalty in excess of six months' imprisonment likely?
- ❑ Would a preliminary hearing and possible trial by judge and jury pose a greater burden on the victim?
- ❑ Will the election have any implication on plea negotiations?

[59] Note that where the previous form of release was made under subsection 522(3) (in relation to s. 469 offences), subsection 524(4) applies.

4.7 Case Preparation

- ❑ Determine whether the Information is accurate and complete—in other words, that it reflects all of the necessary elements of a charge under section 264—or whether it needs to be amended. The Information and charges should also be reviewed to determine whether all of the charges have been laid that arise from the evidence the police gathered.
- ❑ Contact the victim as soon as practicable to advise them of responsibility for the case. (In some jurisdictions, the Crown's office may make this initial contact through the victim witness assistance program.) Be sensitive to the victim's personal situation: some victims may prefer or need to be interviewed well before the preliminary hearing or trial date; others may prefer or need to be interviewed closer to the preliminary hearing or trial date. Take notes of all meetings with the victim and record the following on the Crown Case Record Sheet: the date of the meetings, the persons present, the issues discussed, and the recommendations made or decisions taken.
- ❑ Advise the victim that all information provided to the Crown is subject to Crown disclosure obligations.
- ❑ Where appropriate, seek the assistance of experts, such as police threat specialists and forensic psychiatrists. See, for example, ***R. v. Fraser*** (1997), 33 O.R. (3d) 161 (C.A.), where based on information obtained in a psychiatric assessment done for sentencing purposes, the Crown moved to set aside a conviction for criminal harassment and the Court found that the accused was not criminally responsible on account of mental disorder.
- ❑ Where evidence of the accused's prior conduct/history will be led to address the reasonableness of the victim's fear, ensure that all of this evidence is available and properly documented.
- ❑ Where the accused is self-represented, bring a motion to appoint counsel for the purposes of cross-examining a child victim or a key witness (subsection 486(2.3)). See ***R. v. Grey***, [1996] O.J. No. 4743 (Prov. Div.) (QL). (Note that Bill C-12, *An Act to Amend the Criminal Code (protection of children and other vulnerable persons) and the Canada Evidence Act*, introduced in the House of Commons on February 12, 2004, seeks to facilitate testimony by children and other vulnerable persons, including victims of criminal harassment. Specifically, proposed subsection 486.3(4) would require the trial judge to appoint counsel for a self-represented accused to conduct the cross-examination of the victim, thus preventing any continuation of the harassment that might occur if the accused is permitted to personally cross-examine the victim.)[60]

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[60] This amendment was originally introduced in the House of Commons on December 5, 2002, in Bill C-20, *An Act to amend the Criminal Code (protection of children and other vulnerable persons) and the Canada Evidence Act*. Bill C-20 died on the order paper with the prorogation of Parliament on November 12, 2003. It was reintroduced as Bill C-12 on February 12, 2004, in the same form as Bill C-20 at the time of prorogation of the previous session.

4.8 Sentencing

In reviewing cases for sentencing purposes, Crown counsel should remember that while the criminal harassment provisions were proclaimed into force on August 1, 1993, new sentencing reforms were introduced effective September 3, 1996. These reforms included measures that have had an impact on subsequent sentencing decisions in criminal harassment, most notably regarding the use of conditional sentences. Additional criminal harassment reforms were proclaimed into force on May 26, 1997, that make the commission of an offence of criminal harassment in the face of a protective court order an aggravating factor for sentencing purposes (subsections 264(4) and (5)). As well, effective July 23, 2002, the maximum sentence for criminal harassment was increased from 5 to 10 years, when proceeding on indictment, making it possible to argue that criminal harassment fits the criteria of a "serious personal injury offence" for the purpose of recognizance orders under s. 810.2 of the *Code*. Consideration may also be given to bringing a dangerous offender application.

4.8.1 Relevant Factors

The length of sentences in criminal harassment cases appears to have been increasing since s. 264 was enacted in 1993. A 1995 decision of the Prince Edward Island Court of Appeal continues to guide sentencing courts dealing with criminal harassment convictions:

> The very unsettling aspect of dealing with these offences in the criminal justice system is that, undoubtedly, many offenders will be presenting themselves with no criminal record and with the reputation of being both a good family and community person. The other unsettling aspect of these cases is that if the pattern of harassing conduct continues and is not properly dealt with by the sentence imposed, the result could be very serious physical and/or emotional harm to the victim. In passing sentence trial judges must, therefore, be wary of positive pre-sentence reports depicting the offender as a person whose actions, in respect to the offence, are entirely out of character. The fact an offender shows any propensity toward this kind of conduct, regardless of his unblemished past, is cause for great concern and for a very careful and judicious approach to sentencing. Factors such as the absence of a prior criminal record and expressions of remorse, which must necessarily be considered on sentencing, should not be given undue weight in the sentencing of this offence.

The focus of sentences must be to send a message to the offender, and the public, that harassing conduct against innocent and vulnerable victims is not tolerated by society and most importantly, the Court must insure, as best it can, that the conduct of the offender never happens again recognizing that, if it does, a far more serious offence could be committed. The principles of sentencing must be applied with this focus squarely in mind. (***R. v. Wall*** (1995), 136 Nfld. & P.E.I.R. 200)

These passages were recently reproduced in ***R. v. Bates*** (2000), 146 C.C.C. (3d) 321 (Ont. C.A.), now one of the leading cases in the country on sentencing for criminal harassment.[61] In this decision, Moldaver and Feldman JJ.A. stated:

> The number of recent cases continuing to reach this court emphasizes the extent of the problem of criminal harassment and the need for sentencing courts to respond to this type of offence in the most forceful and effective terms, sending the message of denunciation and general deterrence to the community, and specific deterrence to individual offenders. (para. 42)

Factors to consider at sentencing include the following:

- whether the offence was calculated and planned;
- magnitude and impact of the crime;
- use of violence;
- use of a weapon;
- offender's previous criminal record, including offences relating to the victim and breaches of restraining and no-contact orders;
- history and context of the offender's relationship with the victim;
- aggravating or mitigating factors;
- pre-sentence, medical or psychological reports, including any risk assessment related to the victim in particular and the public in general;
- offender's insight into the crime, and any feelings of remorse;
- punishment, deterrence and rehabilitation;
- victim impact statement or other victim impact information;
- guilty plea;
- time spent in pre-trial custody;
- firearms prohibitions;

[61] By the end of January 2004, ***Bates*** had been followed or mentioned in 35 reported decisions by courts in Alberta, British Columbia, Newfoundland and Labrador, and Ontario.

- conditional sentence conditions; and
- probation conditions.

See the following cases, for example, for further insight.

R. v. White (2003), 176 C.C.C. (3d) 396 (Ont. C.A.): The majority of the Court of Appeal reduced the sentence to 12 months plus probation (shortened to time served plus probation to reflect credit for time spent in custody, both before the trial and before the appeal). The original sentence was 23 months' imprisonment plus 3 years' probation (imprisonment shortened to 18 months to reflect credit for time spent in pre-trial custody). The majority found that the sentence was excessive since the conduct in question was "materially different" from the more egregious conduct in ***Bates***, above, and ***Thomas***, below. However, MacPherson J.A. would have upheld the sentence. He cited the need to denounce and deter criminal harassment in a domestic setting, and noted that since "psychological violence" is at the heart of the offence of criminal harassment, the absence of physical violence is not a mitigating factor.

R. v. Verral (2003), 330 A.R. 171 (C.A.): The Court of Appeal upheld a sentence of 15 months' imprisonment for criminal harassment (shortened to 11-1/2 months to reflect credit for pre-trial custody) and 3 months consecutive for a related charge of driving while prohibited. The accused's harassment of his ex-girlfriend included calling her, visiting her and writing her notes over a long period (October 1999 to April 2000); repeatedly visiting her home and place of work; writing crude letters; and threatening to publish nude, sexually suggestive photos of the victim that the accused took during their relationship. The Court quoted the trial judge as stating that the appropriate range of sentencing was from a few months to a maximum of a few years, and that longer sentences generally involved violence and sometimes the use of a weapon. Note that the Court was also considering the maximum penalty under s. 264 to be 5 years.

R. v. Thomas (2001), 146 O.A.C. 298 (C.A.): This case followed ***Bates***, before, and upheld a 3-1/2-year penitentiary sentence for a guilty plea to criminal harassment (shortened to 3 years to reflect credit for pre-trial custody) and 1 year concurrent on a breach of probation charge. The accused had a lengthy criminal record that included assaults against the same victim (his wife) and was on three probation orders at the time of the offence. The harassment had a significant effect on the victim, leading her to change her job and her residence. (See also ***R. v. Fazekas***, [2001] O.J. No. 4128 (C.A.) (QL).)

R. v. Gilkes (2001), 156 Man. R. (2d) 114 (C.A.): The trial judge determined that a 4-year term of imprisonment was appropriate, and shortened this term to 30 months to reflect credit for pre-trial custody. The Court of Appeal upheld the 4-year term but gave greater credit for the pre-trial custody, shortening

the imprisonment to 2 years less a day, and added a 3-year probation term. The accused had harassed the complainant with phone calls and letters while incarcerated under a 12-month sentence for uttering threats to the same complainant.

R. v. Finnessey (2000), 135 O.A.C. 396 (C.A.), leave to appeal to S.C.C. refused, [2000] S.C.C.A. No. 565: The Court of Appeal increased the sentence for criminal harassment from 18 months to 2 years and 8 months (shortened to 2 years and 4 months to reflect credit for pre-trial custody). The total sentence for criminal harassment, breaking and entering, and damage to a police vehicle was increased from 20 months plus 3 years' probation to 4 years. The accused broke into his ex-wife's home and terrorized her for several hours, threatening to kill her and her family. Over the next 15 months, the accused continued to harass the victim. He phoned her hundreds of times, broke into her home, evaded arrest, and taunted her and police. The Court applied ***Bates***, before, and held that given the seriousness of the facts, a substantial penitentiary term was required to adequately reflect the applicable sentencing principles.

R. v. Bates (2000), 146 C.C.C. (3d) 321 (Ont. C.A.): The accused pleaded guilty to three counts of assault and six counts of failing to comply; was found guilty of uttering threats; and was sentenced to 14 months' imprisonment (shortened to time served to reflect credit for pre-trial custody) plus 3 years' probation. The Court of Appeal increased the sentence to 30 months total (shortened to 16 months to reflect credit for pre-trial custody) to address general deterrence, denunciation and specific deterrence. The Court of Appeal stressed that there had been an "escalating pattern of harassment" that three judicial release orders had been ineffective in stemming. There had also been a final threat of homicide and suicide with a "realistic looking weapon." (See also ***R. v. Watson***, [2002] O.J. No. 5221 (Sup. Ct. J.) (QL), in which the accused was sentenced to 30 months' imprisonment and 3 years' probation (shortened to 17 months' imprisonment to reflect credit for pre-trial custody) for the fifth criminal harassment conviction against the same victim. See also ***R. v. Lepore***, [2001] O.T.C. 479 (Sup. Ct. J.), in which the accused was sentenced to 2 years and 3 months' imprisonment and 3 years' probation (shortened to imprisonment of 2 years less a day to reflect pre-trial custody) for 6 months of serious harassment of a former live-in-girlfriend, which included hundreds of phone calls, distribution of a videotape of the accused and the victim having sex, and an attempt to burn down the victim's family cottage. It was a mitigating factor that the accused had been subject to a pre-trial recognizance order akin to house arrest for 22 months.)

R. v. Kenny, [2000] O.J. No. 5346 (Sup. Ct. J.) (QL), aff'd [2002] O.J. No. 4450 (C.A.) (QL): The accused was found guilty of criminal harassment at a jury trial and was sentenced to 5 months' imprisonment and 3 years' probation. The

female accused had a deteriorating psychiatric condition and harassed a man who interviewed her for a job at Goldman Sachs. The victim impact statement indicated a debilitating effect on the victim. The Court found that a conditional sentence would not be appropriate in this case, since the accused had previous convictions relating to the same conduct, and if her conduct went unchecked (by moderate prison time allowing for reflection and therapy), there would be a high risk to the victim's safety.

R. v. Davis (1999), 138 Man. R. (2d) 71 (C.A.): The accused was sentenced to 12 months' imprisonment (in addition to 7 months of pre-trial custody) upon a guilty plea to criminal harassment. The accused had previous convictions for harassing this victim, a former intimate, and for breaching recognizance and probation conditions in relation to this victim. The Crown and defence psychiatrists found that there was a high risk that the offender would re-offend, posing a threat of psychological damage to the victim and a long term possibility of physical violence. The Court of Appeal found that although the sentence might have seemed harsh at first, it was fitting since the offender had continued the harassment, in the face of probation and recognizance orders, even after being convicted of similar offences.

R. v. Perrier (1999), 177 Nfld. & P.E.I.R. 225 (Nfld. S.C. (T.D.)): The accused pleaded guilty mid-trial and was given a 15-month conditional sentence plus 2 years' probation. The accused's harassment of his former spouse included writing insulting and vulgar letters to her, publishing electronic messages on the Internet, establishing a home page, and putting up posters near her home and workplace. The posters made obscene and vulgar comments about her personal life and allegedly promiscuous sexual history, including statements that she had slept with a man who had AIDS and did not tell her boyfriend until after having sex with him. In considering whether incarceration was required, the judge pointed out that the accused had not bothered the complainant for the 18 months since the charge had been laid. The judge cited ***R. v. Gladue***, [1999] 1 S.C.R. 688, regarding the consensus that imprisonment does not work and that courts must consider all available sanctions other than imprisonment.

R. v. T.(J.C.) (1998), 124 C.C.C. (3d) 385 (Ont. C.A.): The Court of Appeal upheld an 18-month conditional sentence (in addition to 1 month of pre-trial custody), 18 months' probation and a 10- year weapons prohibition for a guilty plea to charges of sexual assault, assault, two counts of criminal harassment, two counts of failing to comply with an undertaking, and two counts of failing to comply with a recognizance. The complainant was the respondent's wife and the charges were serious; however, they arose at a time when the respondent was under significant stress and he had no previous criminal record. A psychiatrist testified at the sentencing hearing and provided a concrete treatment plan to address the respondent's problems. The psychiatrist testified he was satisfied that the respondent did not represent a physical risk to the complainant.

R. v. MacInnis, [1996] Y.J. No. 53 (Terr. Ct.) (QL): The sentence upon guilty plea was criminal harassment (90 days), assault (18 months' probation) and uttering threats (30 days concurrent). The accused had also served 2 months of pre-trial detention. The Court considered the effect of the harassment on the complainant, the accused's former wife; she believed the accused was watching her at all times. The accused's behaviour caused her to become extremely concerned about her safety and the safety of her children; she took in a boarder, had her brother stay with her and got a security system. The Court considered punishment, deterrence and, in particular, rehabilitation, to "ensure the offender's tendency toward this type of conduct is eliminated." See also ***R. v. Gladue***, [1999] 1 S.C.R. 688, regarding sentencing principles and available sanctions other than imprisonment, particularly for Aboriginal offenders.

R. v. Karalapillai, [1995] O.J. No. 2105 (Prov. Div.) (QL): The accused had made repeated threatening calls to an institution that was attempting to combat racism. Upon conviction of criminal harassment at trial, the accused was sentenced to 4 months' imprisonment and 2 years probation. Principles of general and specific deterrence, denunciation and public protection were all cited as guiding the Court. The Court considered a victim impact statement and a pre-sentence report. The accused's racial motive was an aggravating factor.

4.8.2 Aggravating (and Mitigating) Factors

- ❑ Evidence that the offender, in committing the offence, abused his spouse or child is an aggravating circumstance for sentencing purposes (section 718.2(a)(ii)).
- ❑ Where criminal harassment is committed in contravention of an existing restraining order, this shall be considered an aggravating factor for sentencing (subsection 264(4)). See also ***R. v. Bates*** (2000), 146 C.C.C. (3d) 321 (Ont. C.A.). If such an aggravating factor exists but the court does not give effect to it, the court must give reasons for its decision (subsection 264(5)). See ***R. v. Davis*** (1999), 138 Man. R. (2d) 71 (C.A.).
- ❑ The weight to be given to such aggravating factors must be balanced with the need to consider the particular circumstances of the offender and the circumstances in which these offences were committed: ***R. v. T.(J.C.)*** (1998), 124 C.C.C. (3d) 385 (Ont. C.A.). See also ***R. v. Karalapillai***, [1995] O.J. No. 2105 (Prov. Div.) (QL).
- ❑ The absence of physical violence in criminally harassing a complainant is not a mitigating sentencing factor, since the psychological harm caused by this offence is the "very evil that Parliament sought to punish by creating the crime of harassment." ***R. v. Finnessey*** (2000), 135 O.A.C. 396 (C.A.). (But see ***R. v. Verral*** (2003), 330 A.R. 171 (C.A.).)

4.8.3 Circle Sentencing

- ❑ See ***R. v. Gingell*** (1996), 50 C.R. (4th) 326 (Y. Terr. Ct.), where circle sentencing was used for an Aboriginal offender who pleaded guilty to four charges under subsection 264(2)(b). Note that in conducting circle sentencing, safeguards must be in place to ensure victim safety and offender accountability.

4.8.4 Victim Impact Statements

- ❑ Victim impact statements may be prepared for submission at the sentencing hearing. These statements provide an opportunity to describe the harm done to, or loss suffered by, the victim.
- ❑ Victim impact statement programs exist in some provinces to help victims complete their statements. Practices vary between jurisdictions as to when and how the statement is gathered.
- ❑ Victim impact statements are subject to Crown disclosure obligations where they are part of the Crown's file. Victims should be advised that they may be cross-examined on their statement.

See for example, ***R. v. Perrier*** (1999), 177 Nfld. & P.E.I.R. 225 (Nfld. S.C. (T.D.)).

Judges are required to inquire whether the victim has been informed of the opportunity to prepare a statement and may adjourn the proceedings to permit the victim to prepare a statement. Upon request, the victim shall be permitted to read the statement.

4.8.5 Conditional Sentences

A conditional sentence may be an appropriate disposition in a criminal harassment case; see ***R. v. T.(J.C.)*** (1998), 124 C.C.C. (3d) 385 (Ont. C.A.), for which the facts and sentence are described in Part 4.8.1. The Supreme Court of Canada stated clearly in ***R. v. Proulx***, [2000] 1 S.C.R. 61, that there should be no judicial presumption for or against the use of conditional sentences for any category of offence. The existing pre-requisites, in s. 742.1 of the *Code*, for the use of a conditional sentence are as follows: that the offence not provide for a minimum penalty; that the sentence be less than two years; that the offender not be a danger to the community; and that the sentence be consistent with the purpose and principles of sentencing, including denunciation, deterrence and incapacitation. The Court also emphasized that conditional sentences should include both punitive and rehabilitative objectives and that conditions such as house arrest or curfew should be the norm. ***R. v. Bailey*** (1998), 124 C.C.C. (3d) 512 at para. 17 (Nfld. C.A.), considered the types of conditions that may be imposed as part of a conditional sentence, and stated that Parliament's intention in enacting the conditional sentencing provisions would be best "served by conditions which may limit the liberty of the subject but allow him or her to serve the sentence in the community."

The factors that have frequently led courts to reject imposing a conditional sentence for a criminal harassment conviction, where a sentence of less than two years is appropriate, include the following: a significant risk of re-offending; victim safety; and the fact that a conditional sentence would not provide the specific and general deterrence warranted by the gravity of the conduct in question. See ***R. v. Kenny***, [2000] O.J. No. 5346 (Sup. Ct. J.) (QL), aff'd [2002] O.J. No. 4450 (C.A.) (QL); ***R. v. Simms*** [2002] N.J. No. 3 (N.L. Prov. Ct.) (QL); and ***R. v. R.M.C.*** (2002), 322 A.R. 331 (Prov. Ct.).

In ***R. v. Waiting*** (2000), 261 A.R. 334 (C.A.), the Alberta Court of Appeal upheld the imposition of a conditional sentence upon a guilty plea to one count of criminal harassment and one count of breach of a recognizance, but increased the sentence from 8 to 18 months. The Court of Appeal found that the length of an appropriate term of imprisonment cannot simply be "transposed" to a conditional sentence. The court must consider the different nature of the conditional sentence, and give "due weight" to denunciation and deterrence, which will likely require the court to impose a longer term for a conditional sentence than it would for a prison sentence.

Compulsory Conditions (Subsection 742.3(1)):

- ❑ Keep the peace and be of good behaviour.
- ❑ Appear before the court when required to do so by the court.
- ❑ Report to a supervisor
  - (i) within two working days, or such longer period as the court directs, after the making of the conditional sentence order; and
  - (ii) thereafter, when required by the supervisor and in the manner directed by the supervisor.
- ❑ Remain within the jurisdiction of the court unless written permission to go outside that jurisdiction is obtained from the court or the supervisor.
- ❑ Notify the court or the supervisor in advance of any change of name or address, and promptly notify the court or supervisor of any change of employment or occupation.

Optional Conditions (Subsection 742.3(2)):

- ❑ Abstain from
  - (i) the consumption of alcohol or other intoxicating substances; or
  - (ii) the consumption of drugs except in accordance with a medical prescription.
- ❑ Abstain from owning, possessing or carrying a weapon.
- ❑ Provide for the support or care of dependants.

- ❑ Perform up to 240 hours of community service over a period not exceeding 18 months.
- ❑ Attend a treatment program approved by the province.
- ❑ Comply with such other reasonable conditions as the court considers desirable, subject to any regulations made under subsection 738(2), for securing the good conduct of the offender and for preventing a repetition by the offender of the same offence or the commission of other offences. Some conditions that have been imposed as "other reasonable conditions" are as follows.
  - No contact or communication: Almost all conditional sentences for criminal harassment convictions include a condition prohibiting the offender from contacting or communicating with the victim, either directly or indirectly. See ***R. v. Bailey*** (1998), 124 C.C.C. (3d) 512 (Nfld. C.A.).
  - House arrest: In ***R. v. Perrier*** (1999), 177 Nfld. & P.E.I.R. 225 at para. 30 (Nfld. S. Ct. (T.D.)), the Court imposed a condition requiring the accused to stay in his home, with a list of exceptions specifying when he could leave. For example, these exceptions allowed him to receive medical and dental treatment, attend meetings with legal counsel, and pursue employment or education. (See description of facts and sentence in Part 4.8.1).
  - Completion of an intensive sexual offender treatment program: see ***R. v. P.L.A.***, 2003 ABPC 179, where the accused was given a conditional sentence of 2 years less a day, and 3 years' probation. The accused had repeatedly watched and driven by two female 13-year-old complainants as they each walked home from school. When the police seized his van, they found duct tape, gloves, a balaclava, and a case containing film, condoms and rubber gloves. The accused had one previous conviction for attempted rape and was a suitable candidate for community supervision, but without counselling, he had a moderate risk of re-offending.
  - No operation of a motor vehicle unless a named person is a passenger in the vehicle: see the remarks at sentence for ***R. v. Gerein***, (April 7, 1999), Vancouver C39753-01-DD (B.C. (Prov. Ct.)); finding of guilt reported at [1999] B.C.J. No. 1218 (Prov. Ct.).
  - No possession of a camera while in a motor vehicle: see the remarks at sentence for ***R. v. Gerein***, (April 7, 1999), Vancouver C39753-01-DD (B.C. (Prov. Ct.)); finding of guilt reported at [1999] B.C.J. No. 1218 (Prov. Ct.).

4.8.6 Probation Conditions

Mandatory Conditions (Subsection 732.1(2)):

- ❑ Keep the peace and be of good behaviour.
- ❑ Appear before the court when required to do so by the court.
- ❑ Notify the court or the probation officer in advance of any change of name or address, and promptly notify the court or the probation officer of any change of employment or occupation.

Optional Conditions (Subsection 732.1(3)):

- ❑ No contact or communication with the victim, either directly or indirectly. Where the victim and the offender have children together, courts have begun using the following clause regarding access to the children, which was imposed on appeal in ***R. v. Alberts*** (2000), 147 B.C.A.C. 90 (C.A.): no contact with [name(s) of child(ren)] "except as may be ordered in child custody or access proceedings subsequent to the coming into force of this probation order by a court of competent jurisdiction." Note that such a term may not always be appropriate and consideration should be given to leaving this determination to the discretion of a probation officer, who may be more aware of the risks in a given case and better placed to monitor the situation. The decisions of a probation officer in this regard should be communicated to the offender in writing.
- ❑ Refrain absolutely from being present at, or within a specified distance of, the victim's place of employment and place of residence (as well as that of any other named persons, such as family, friends or other intimates).
- ❑ Refrain absolutely from being present at other designated locations. In ***R. v. Sayyeau***, [1995] O.J. No. 2558 (Prov. Div.) (QL), the offender was prohibited from being present within the city of Cornwall on Sundays, as well as at certain other locations (malls, restaurants and parks on specified days, or at specified times), to allow the victim the freedom to walk about without any fear of further molestation. See also ***R. v. Bailey*** (1998), 124 C.C.C. (3d) 512 (Nfld. C.A.), where the Court of Appeal upheld a condition that prohibited the offender from participating in a regatta; this condition gave the victim true freedom of choice to continue participating in the event. The Court of Appeal did, however, strike out a condition that prohibited the offender from coaching young females, as the evidence did not support the conclusion that he had demonstrated a pattern of harassing women attending the regatta.
- ❑ Be under the supervision of the probation officer and report to the probation officer forthwith and thereafter at such times and places as the probation officer shall direct.

- ❑ During the term of probation, undergo whatever assessment, counselling and treatment the probation officer or any other professional deems necessary, in light of the offender's conduct that gave rise to the charge, or in light of any other concern.[62]
- ❑ Abstain from consuming alcohol or other intoxicating substances or drugs, except in accordance with a medical prescription.

4.8.7 Firearms/Weapons Prohibition

- ❑ Where the offender is convicted, or discharged under section 730 of the *Criminal Code*, of criminal harassment, subsection 109(1) of the *Criminal Code* requires the court to make a weapons prohibition order, as follows.
  - First offence: The court must prohibit the offender from possessing non-restricted firearms, cross-bows, restricted weapons, ammunition and explosive substances for at least 10 years and prohibited firearms, restricted firearms, prohibited weapons, prohibited devices and prohibited ammunition for life.
  - Second or subsequent offence: The court must prohibit the possession of all firearms, cross-bows, restricted weapons, ammunition and explosive substances for life. Note that various provincial appellate courts have held that, under subsection 727(1), the mandatory 10-year prohibition order is not available unless the Crown proves that the accused was notified that the Crown would be seeking greater punishment due to earlier convictions. See ***R. v. Jobb*** (1988), 43 C.C.C. (3d) 476 (Sask. C.A.); ***R. v. Ellis*** (2001), 143 O.A.C. 43 (C.A.); and ***R. c. Caplin***, [2001] J.Q. nº 5941 (Qc. C.A.).
- ❑ Section 113 allows for the partial lifting of a prohibition order where the person establishes, on a balance of probabilities, that he requires a firearm or restricted weapon for sustenance hunting or employment purposes.

4.8.8 Forfeiture

- ❑ Section 115 provides that weapons in the possession of a person who has been prohibited from possessing weapons are forfeited unless the prohibition order states otherwise.

4.8.9 Authorization Revoked or Amended

- ❑ Section 116 provides that any documents relating to weapons that a person is prohibited from possessing are revoked or amended when the prohibition order commences.

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[62] Note that they may be limitations on what can be ordered under these types of conditions. See for example, ***R. v. Rogers*** (1990), 61 C.C.C. (3d) 481 (B.C.C.A.); and ***R. v. R.M.C.*** (2002), 322 A.R. 331 (Prov. Ct.).

4.8.10 Chief Firearms Officer

❑ Where a court makes, varies or revokes a firearms prohibition order, the court must notify the Chief Firearms Officer without delay (section 89 of the *Firearms Act*).

4.8.11 Fine

❑ The imposition of a monetary penalty, in combination with probation, and restitution may be appropriate. See ***R. v. Wall*** (1995), 136 Nfld. & P.E.I.R. 200 (P.E.I.S.C. (C.A.)).

4.8.12 Restitution

❑ Under section 738, the court may order restitution to the victim for ascertainable costs arising from the commission of the offence. See, for example, ***R. v. S.J.***, [1997] Y.J. No. 123 (Terr. Ct.) (QL).

4.8.13 Victim Surcharge

❑ A victim surcharge will be imposed in every case and can only be waived where the offender establishes hardship. See ***R. v. Rowe*** (1994), 126 Nfld. & P.E.I.R. 301 (Nfld. S.C. (T.D.)).

Note: Bill C-79, *An Act to amend the Criminal Code (victims of crime) and another Act in consequence* (Royal Assent received on June 17, 1999, in force December 1, 1999), amended the "victim surcharge" provisions by raising the amounts of the applicable surcharges.

4.8.14 Breach of Probation

❑ Charge the offender with any breach of probation conditions (section 733.1). See, for example ***R. v. White***, [1998] O.J. No. 3225 (Prov. Div.) (QL), where the Court sentenced the offender to the maximum jail term of 6 months, and imposed a further 12 months of probation for breaching a no-contact condition of a probation order.

4.8.15 Dangerous Offender Applications

❑ In appropriate cases, consideration may be given to bringing a dangerous offender application.[63] Note that long-term offender applications continue to be available as well.

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[63] Bill C-15A, *An Act to amend the Criminal Code and to amend other Acts*, proclaimed into force on July 23, 2002, increased the maximum penalty to 10 years such that it could meet the criteria of a "serious personal injury offence" in s. 752.

A Case Examples

The following examples are based on actual case files. They show the impact of criminal harassment on the victim and their family. These cases are intended to tell the story to support information provided in the Part 2 – Guidelines for Police.

Case 1:

A man moved to a small community to work. He met a woman who worked in a local store but lived in an isolated farmhouse 20 minutes from town. He commented on their first meeting how frightening it must be to live as a woman alone, but that she shouldn't worry, as he was not a stalker. A few days later, he appeared at her side while she was working at the store.

He met her days later at a community event that she attended with friends. Later, he arrived at her house while she was alone, preparing to go out for the evening. She invited him in but told him she had to leave soon. He talked about his repeated visits to the farmhouse when she was not there, and how glad he was to have found her at home. He spoke again of her isolated setting, and her vulnerability to attack. He accurately described her activities with her friends that day. She eased him out of her house and fled to her friends.

A mutual friend told the suspect that the woman was upset by his visit. The following morning, the suspect arrived at her door because he had left his coat at her house the night before. She did not answer. The suspect began to depart, then stopped and parked his vehicle so that it blocked her car. Then he returned to bang loudly on the door. Police were called.

The suspect gave a statement to the police indicating he was new in town, single and lonely, and the woman was friendly. He had run into her accidentally at the store, and later at a community event. When he came to visit, she invited him in for a drink, and he forgot to take his coat when he left. Later he heard that she was upset with him. He visited her house the next day to find out why, but no one was at home. As he was leaving, he saw a curtain moving, so he stopped his vehicle and ran back to see if she was, in fact, at home.

Case 2:

A man was obsessed with a young woman and had been stalking her for several years. The harassment took place at the victim's home, her office in the city and a university campus. The victim was only a casual acquaintance of

the accused, through a professional connection. The man refused to accept the woman's decision to terminate the relationship. He engaged in a bizarre and obsessive pattern of harassment that included relentless e-mail messages, phone calls, "love" poems, personal contact, indirect contact and numerous communications that spread lies about the victim to others in their professional community. Collectively, this behaviour was intrusive and frightened the victim, leaving her feeling vulnerable and helpless.

The victim, her husband, her professional colleagues and, finally, the police asked the accused to stop the harassment. None of this deterred the accused, and he continued to harass the victim through other means, such as posting poems about her on his Web site, engaging in incidents of watching and besetting, and sending indirect communications through her colleagues.

Interviews with the victim, her husband and her colleagues yielded evidence that included hard copies of numerous e-mails relevant to the situation, a ranting taped phone message, a book of poetry that the accused gave the victim and poetry posted on the accused's Web site.

In an interview, the suspect confessed to virtually all the alleged incidents, and admitted that an obsessive love of the victim had evolved into an obsessive hatred. A search warrant was conducted at the suspect's residence and multiple exhibits were seized. The suspect was charged with criminal harassment.

Case 3:

The suspect stalked a woman by vehicle during three separate segments over the course of one hour. A police patrol stopped him and found him in possession of gloves, a balaclava and a video camera. Subsequent investigation revealed a lengthy history of sexually motivated stalking from 1979 to 1998. A search warrant of the suspect's residence and vehicle revealed numerous surreptitious surveillance photos of other women (with similar hair colour and style) whom he had stalked. The suspect admitted to an uncontrollable compulsion. Interviews with the women shown in the photos revealed many other cases of stalking.

The accused was convicted. See ***R. v. Gerein***, [1999] B.C.J. No. 1218 (Prov. Ct.) (QL); and remarks at sentencing: (April 7, 1999), Vancouver C39753-01-DD (Prov. Ct.).

Case 4:

The suspect chased his ex-girlfriend through the streets of a small town in his pickup truck. He had been previously convicted for choking her unconscious and beating her with a cane, and he came looking for her as soon as he was released from jail. Five weeks after chasing her with his truck, he attempted to cut the phone lines to her house. He smashed a sliding glass door with the butt end of a sawed-off shotgun, but she was able to escape through the bathroom window and run to her neighbour's house. He shot and killed her friend and wounded his ex-girlfriend's daughter as she pushed a younger sister to safety. He then set fire to the house and committed suicide in an upstairs bedroom.

B CPIC Searches Relating to Firearms

This section includes suggestions for searching the Canadian Police Information Centre database (CPIC), the Canadian Firearms Registration Online (CFRO) and the Firearms Interest Police file (FIP) for information relating to firearms.

Canadian Firearms Registration Online

The Canadian Firearms Registration System (CFRS) is "a fully integrated, automated information system that provides administrative and enforcement support to all partners involved in licensing of firearm owners/users, registration of all firearms, and the issuance of authorizations related to restricted firearms."[64]

Canadian police agencies that have access to CPIC can access relevant subsets of the information in the CFRS through the CFRO. It contains information on licensees and the guns registered to them, revoked licenses, weapons prohibition orders and refused applications. As of January 1, 2003, the law has required that all firearms in Canada be registered. CFRO will contain information on prohibited, restricted and non-restricted firearms in Canada.

CFRO can be queried by name (or corporate name), address, telephone number, firearm licence number, registration certificate or authorization number, firearm serial number or firearm identification number.

Firearms Interest Police

The FIP file contains information from local police agencies about a person's convictions, discharges or prior contact with police for violent incidents, and treatment for violent mental illness, and details of any other public safety concerns. If a query reveals an entry on the FIP, police can then obtain more detailed information about the recorded incidents from the local records of the contributing policy agency.

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64 Canada Firearms Centre, 2001, online: Role of the CFRS Team <http://www.cfc-ccaf.gc.ca/en/cfrs/role/default.asp>.

Case Example

In 1996, Mark Chahal shot and killed his estranged wife and her family in Vernon, British Columbia, and then committed suicide. An inquest into the murders revealed that, in the months leading up to the shootings, Mr. Chahal had applied for and received a Firearms Acquisition Certificate. He then applied for and received a permit to purchase a semi-automatic handgun, which he registered for target practice. Days before the shooting, Chahal purchased a 10-round magazine for one of his handguns and practised shooting at his gun club several days later.

Throughout this period, Chahal dealt with several different police forces. Since the information was not centrally registered, no pattern could be detected. This information is now maintained in a central database, thereby providing police with a new opportunity to monitor and assess individual situations for increasing risk of harm.

C

Forms

Sample Information . . . . . C – 2
Sample Information for Search Warrant . . . . . C – 3
Sample Judicial Interim Release Order . . . . . C – 5
Sample Application for Search Warrant - Firearms (s. 117.04) . . . . . C – 7
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Sample Information

(See Part 2.7 – Police are reminded to refer to applicable provincial or local policies and practices.)

This is the information of Police Constable _____ (name) _____ , a Peace Officer (the "informant") of the _____ Police Department. The informant says that he has reasonable and probable grounds to believe and does believe that

Count 1
_____ (suspect) _____, on or about the _____ day of _____ , 2004, at or near the City of _____ , in the Province of _____ , did, without lawful authority and knowing that another person was harassed or was reckless as to whether the other person was harassed, engage in conduct that caused that other person, _____(victim) _____ , to reasonably fear for his/her safety or the safety of anyone known to ___ (him/her) ___, contrary to Section 264 of the Criminal Code.

Sample Information to Obtain a Search Warrant

The informant says that he has reasonable grounds for believing that:

1. Computer hard drive and computer discs containing electronically stored e-mail messages and poems from _____ (suspect) _____ and pertaining to _____ (victim) _____;
2. Hard copies of e-mail messages from _____ (suspect) _____ pertaining to _____ (victim) _____;
3. Documents, photographs, diaries, and any other record or item made or possessed by _____ (suspect) _____ that refer to an interest in _____ (victim) _____ ;
4. Documents containing the signature and handwriting or hand printing of _____ (suspect) _____ ; and
5. Confirmation of occupancy, consisting of articles of personal property tending to establish the identity of the person or persons in control of the premises described below, including, but not limited to rent receipts, cancelled mail, keys, photographs, utility bills and telephone bills

will afford evidence that
COUNT 1 That between (date), 2002 and (date) 2004, at or near the City of _____, in the Province of _____, _____ (suspect) _____ did, without lawful authority and knowing that another person was harassed or was reckless as to whether the other person was harassed, engage in conduct that caused that other person, (name), to reasonably fear for her safety or the safety of anyone known to her, contrary to Section 264 of the Criminal Code

and that he has reasonable grounds for believing that the said things or some part of them are in the following building:
A dwelling hose situated at _____ (address) _____

NOT AN OFFICIAL FORM.
Included only as guidelines for assistance with Criminal Harassment cases. For further information contact the National Weapons Enforcement Support Team (NWEST) at1-800-731-4000 Ext 2053.

CANADA,
PROVINCE OF_____,
(*territorial division*)

JUDICIAL INTERIM RELEASE ORDER

_____
Court file number

_____(court)

THE HONOURABLE_____

WHEREAS _____, hereinafter called the accused, has been charged that he/she on or about the _____ day of _____, 20___, at the _____ in the _____ committed the offence(s) of: (set out brief description of offence)

_____
_____
_____

The previous order dated _____, 20___, is vacated.

IT IS ORDERED THAT the said accused be released upon his/her giving or entering into

❒ 1. an undertaking without conditions:

❒ 2. a) an undertaking with conditions:

❒ b) a recognizance without sureties in the amount of $ _____
**with/without conditions but without deposit of money, or other valuable security

❒ c) a recognizance with one or more sufficient sureties in the amount of $ _____
**with/without conditions but without deposit of money or other valuable security

❒ d) a recognizance, with the consent of the prosecutor, in the amount of $ _____
**without sureties with/without conditions and upon there being deposited with the Justice the sum of $ _____ in money or other valuable security, namely, _____ to the value of $ _____

❒ e) (the accused not being ordinarily resident in the Province of _____ or within two hundred kilometres of the place in which he/she is in custody) a recognizance **__with one or more sufficient/without__ sureties, in the amount of $ _____
**with/without conditions, and upon there being deposited with the justice before whom he/she enters into the recognizance the sum of $ _____ in money or other valuable security, namely _____ to the value of $ _____ (Definition of "valuable security" Code S.2 & S.42(2))

3. **THE SAID CONDITIONS** being that the accused shall
a) attend at court on the ____day of _____, 20___ at _____
b) report at_____(state times) to_____(name of peace officer or other person designated)

c) remain within _____(designated territorial jurisdiction)
d) notify _____(name of peace officer or other designated person of any change in his/her address, employment or occupation

** Delete inapplicable word(s)

e) abstain from communicating with _____ except in accordance with the following conditions (as the justice /judge specifies): _____
_____
f) deposit his/her passport (as the justice/judge directs)
g) not possess, until dealt with according to law, any firearm, cross-bow, prohibited weapon, restricted weapon, prohibited device, ammunition, prohibited ammunition or explosive substance OR
not possess, until dealt with according to law any of the foregoing items except for _____*
h) and _____(any other reasonable condition)

4. IT IS FURTHER ORDERED THAT the items subject to the prohibition in condition 3 g) and every authorization, licence, and registration certificate relating thereto shall be
   - ❒ surrendered to the police within 48 hours of release
   - ❒ deposited with the police as a pre-condition of release
   - ❒ or,_____

   Section 115 of the *Criminal Code* shall not apply to this order.

*Where the Justice or Summary Conviction Court does not add a condition prohibiting the respondent from possessing any firearm, cross-bow, prohibited weapon, restricted weapon, prohibited device, ammunition, prohibited ammunition or explosive substance, the Justice or Summary Conviction Court shall include in the record a statement of the reasons for not adding the cindition.

A COPY OF THIS ORDER SHALL BE SENT TO THE CHIEF FIREARMS OFFICER.

Dated this _____day of _____, 20____,at_____.

(If a warrant for committal is issued for non-compliance with the order and there is endorsed on the warrant for committal an author ization to the person having the custody of the accused to release him/her upon his/her complying with this order, a copy of this order is to be attached to the warrant for committal: *Criminal Code*, paragraph 519(1)(b).)

_____
Judge/ Justice of the Peace in and for the Province of _____

Canada,
Province of _____,
(*territorial division*)

IN THE MATTER OF AN APPLICATION TO A JUSTICE FOR THE ISSUANCE OF A WARRANT AUTHORIZING THE SEARCH FOR AND SEIZURE OF FIREARMS, WEAPONS, AMMUNITION, EXPLOSIVE SUBSTANCES ETC. IN THE POSSESSION, CUSTODY OR CONTROL OF A PERSON PURSUANT TO SECTION 117.04 OF THE CRIMINAL CODE.

APPLICATION

TAKE NOTICE THAT application is hereby made for the issuance, on public safety grounds, of a warrant pursuant to Subsection 117.04 of the *Criminal Code* authorizing the search for and any seizure of any weapon, prohibited device, ammunition, prohibited ammunition or explosive substance and any authorization, licence or registration certificate relating to any such thing that is held in the possession of _____.

AND FURTHER TAKE NOTICE THAT upon and in support of the said application will be read the affidavit(s) of _____.

DATED at _____, this _____day of _____, 20____.

TO: _____(Court)

_____
Peace Officer

OR

A JUSTICE OF THE PEACE

Canada,
Province of _____,
(*territorial division*)

IN THE MATTER OF AN APPLICATION TO A JUSTICE FOR THE ISSUANCE OF A WARRANT AUTHORIZING THE SEARCH FOR AND SEIZURE OF WEAPONS, AMMUNITION, EXPLOSIVE SUBSTANCES ETC. IN THE POSSESSION, CUSTODY OR CONTROL OF A PERSON PURSUANT TO SECTION 117.04 OF THE CRIMINAL CODE.

WARRANT

To the peace officers in the said _____(*territorial division*):

WHEREAS it appears on the affidavit(s) of _____ that there are reasonable and probable grounds for believing that it is not desirable in the interests of the safety of an individual that _____ should have in his/her possession, custody or control, any weapon, prohibited device, ammunition, prohibited ammunition or explosive substance.

WHEREAS it appears on the affidavits of _____ that there are reasonable grounds for believing that there is in _____, hereinafter referred to as the premises, a weapon, prohibited device, ammunition, prohibited ammunition or explosive substance held by or in the possession of _____.

THIS IS, THEREFORE, to authorize and require you between the hours of _____ to enter into the said premises and to search for and seize the said weapon, prohibited device, ammunition, prohibited ammunition, or explosive substance and any authorization, licence or registration certificate relating to any such thing.

DATED at _____, this _____ day of _____, 20____.

_____
Justice

Canada,
Province of _____,
(*territorial division*)

IN THE MATTER OF A RETURN TO A JUSTICE PURSUANT TO A WARRANT AUTHORIZING SEARCH AND SEIZURE ISSUED PURSUANT TO SECTION 117.04 OF THE CRIMINAL CODE.

RETURN

WHEREAS a warrant authorizing peace officers to search for and seize, on public safety grounds, any weapon, prohibited device, ammunition, prohibited ammunition or explosive substance and any authorization, licence or registration certificate relating to any such thing that was held by or in the possession of _____ was issued by _____ on the _____ day of _____20____.

AND WHERERAS the said warrant was executed on _____ , the _____ day of _____ , 20_____ .

TAKE NOTICE THAT the following articles were seized:

_____
_____
_____

DATED at _____, this _____ day of _____, 20____.

TO: _____(court)

_____
Peace Officer

Or

Justice of the Peace

Canada,
Province of _____,
(*territorial division*)

IN THE MATTER OF A RETURN TO A JUSTICE PURSUANT TO SECTION 117.04 (3)(b) OF THE CRIMINAL CODE

RETURN

WHEREAS on _____day, the _____day of _____, 20____, _____, a peace officer searched for any firearm, weapon, prohibited device, ammunition, explosive substance or any authorization, licence or registration certificate relating to any such thing, pursuant to section 117.04 (2) of the *Criminal Code*, that was held by or in the possession of_____.

AND WHEREAS the peace officer was satisfied that there were reasonable grounds for believing that it was not desirable in the interests of safety of _____, that _____ should possess any weapon, prohibited device, ammunition, prohibited ammunition, explosive substance or any authorization, licence or registration certificate relating to any such thing and that the danger to the safety of _____ was such that to proceed by way of an application under Section 117.04(1) of the *Criminal Code* was not practicable.

THE GROUNDS on which it was concluded that the peace officer who conducted the said search was entitled to do so without warrant are as follows:

_____

_____

THE ARTICLES SEIZED are listed in Schedule A attached hereto.

DATED at _____, this _____ day of _____, 20____.

TO: _____(court)

_____
Peace Officer

Or

A Justice of the Peace

Canada,
Province of _____
(*territorial division*)

IN THE MATTER OF AN APPLICATION TO A PROVINCIAL COURT JUDGE FOR AN ORDER PROHIBITING A PERSON FROM POSSESSING FIREARMS, WEAPONS, AMMUNITION, EXPLOSIVES ETC. PURSUANT TO SECTION 111 OF THE CRIMINAL CODE.

APPLICATION

TAKE NOTICE THAT application is hereby made by _____ (peace officer, firearms officer or chief firearms officer) for an Order pursuant to Section 111 of the *Criminal Code* that_____be prohibited from having in his possession any firearm, cross-bow, prohibited weapon, restricted weapon, prohibited device, ammunition, prohibited ammunition or explosive substance.

DATED at _____, this _____ day of _____, 20____.

TO: A Judge of the Provincial Court

_____
Signature of peace officer, firearms officer or chief firearms officer

Pursuant to this Application, I hereby fix _____day, the _____ day of _____, 20____, at _____a.m./p.m. at _____ for the hearing **AND I DIRECT** that notice of the hearing be given to _____ (*respondent/counsel/agent*) by serving a copy hereof upon him/her _____ (*personally/ by registered mail/by substituted service/by any other method specified by the Provincial Court Judge*).

DATED at _____, this _____ day of _____, 20_____.

_____
Provincial Court Judge

Canada,
Province of _____,
(*territorial division*)

IN THE MATTER OF AN APPLICATION TO A PROVINCIAL COURT JUDGE FOR AN ORDER PROHIBITING A PERSON FROM POSSESSING FIREARMS, WEAPONS, AMMUNITION, EXPLOSIVES, ETC. PURSUANT TO SECTION 111 OF THE CRIMINAL CODE

AFFIDAVIT

This is the information of A.B., _____(peace officer, firearms officer or chief firearms officer), of _____ in the said _____(*territorial division*), hereinafter called the informant, taken before me.

THE INFORMANT SAYS THAT he/she has reasonable grounds to believe that it is not desirable in the interests of the safety of C.D., the person against whom the order is sought, or of any other person, that C.D. should possess any firearm, cross-bow, prohibited weapon, restricted weapon, prohibited device, ammunition, prohibited ammunition or explosive substance, or all such things._____ (*here set out the grounds of the belief*).

WHEREFORE the informant prays that an order prohibiting C.D. from possessing any firearm, cross-bow, prohibited weapon, restricted weapon, prohibited device, ammunition, prohibited ammunition, or explosive substance, or all such things, be granted.

Sworn before me at _____
in the _____ this _____
day of _____, 20____.

_____
Signature of informant

_____
Provincial Court Judge

Canada
Province of _____,
(*territorial division*)

IN THE MATTER OF AN APPLICATION TO A PROVINCIAL COURT JUDGE FOR AN ORDER PROHIBITING A PERSON FROM POSSESSING FIREARMS, WEAPONS, AMMUNITION, EXPLOSIVES, ETC. PURSUANT TO SECTION 111 OF THE CRIMINAL CODE.

ORDER

UPON the application of _____(peace officer, firearms officer, chief firearms officer) for an order pursuant to section 111 of the *Criminal Code* prohibiting the respondent, named _____ from possessing any firearm, cross-bow, prohibited weapon, restricted weapon, prohibited device, ammunition, prohibited ammunition or explosive substance.

UPON hearing the evidence adduced and what was alleged by the applicant and by the respondent and it appearing that there are reasonable grounds to believe that it is not desirable in the interests of the safety of the respondent or other person, namely,_____that the respondent should possess any firearm, cross-bow, prohibited weapon, restricted weapon, prohibited device, ammunition, prohibited ammunition or explosive substance.

IT IS ORDERED THAT _____ is hereby prohibited from having in his/her possession any firearm, cross-bow, prohibited weapon, restricted weapon, prohibited device, ammunition, prohibited ammunition or explosive substance for a period of _____years to be computed from the date this order is made.

In accordance with s.115 of the *Criminal Code* but subject to any other term of this order, every item prohibited by this order and in the possession of the accused on the commencement of this order:

- ❒ is forfeited to Her Majesty to be disposed of or otherwise dealt with as the Attorney General directs

- ❒ is not subject to forfeiture

THIS COURT THEREFORE ORDERS THAT

- ❒ the person against whom this order is made is required, within _____days to surrender to a peace officer, a firearms officer or a chief firearms officer all items the possession of which is prohibited by this order together with every authorization, licence and registration certificate relating thereto and held by him or her on the commencement of this order.

- ❒ notwithstanding any other term of this order, the item(s) listed in Schedule A hereto, shall be ordered returned to _____, a person other than the person against whom this order is made and whom this court has found is lawfully entitled to possess the item(s).

NOTE: Pursuant to s.116 of the *Criminal Code*, every authorization, licence and registration certificate relating to anything to the possession of which is prohibited by this order and issued to the person against whom this order is made is, on the commencement of this order, revoked or amended, as the case may be, to the extent of the prohibition in this order.

AND THIS COURT FURTHER DIRECTS THAT A COPY OF THIS ORDER BE SENT TO THE CHIEF FIREARMS OFFICER

DATED at _____, this _____day of _____, 20_____.

_____
Judge/Clerk

Canada,
Province of _____,
(*territorial division*)

IN THE MATTER OF AN APPLICATION TO A JUSTICE PURSUANT TO SECTION 117.05 OF THE CRIMINAL CODE FOR AN ORDER FOR THE DISPOSITION OF ARTICLES SEIZED PURSUANT TO SECTION 117.04 OF THE CRIMINAL CODE.

APPLICATION

TAKE NOTICE THAT an application is hereby made pursuant to Section 117.05 of the *Criminal Code*, for an order for the disposition of articles seized by _____, peace officer, on _____, the _____ day of _____, from _____ pursuant to Section 117.04 of the *Criminal Code*.

AND TAKE FURTHER NOTICE THAT if such order is made there may also be an order prohibiting the possession of any weapon, prohibited device, ammunition, prohibited ammunition and explosive substance or any such thing for a period not exceeding five years.

DATED at _____, this _____ day of _____, 20_____.

TO: _____(court)

_____
Peace Officer

Or

A Justice of the Peace

Pursuant to this Application, I hereby fix _____day, the _____ day of _____ 20___, at _____a.m./p.m. at _____ for the hearing **AND I DIRECT** that a notice of the hearing be given to _____ *(respondent/counsel/agent*) by serving a copy hereof upon him/her _____(*personally/by registered mail/by substituted service/by any other method specified by the justice*).

DATED at _____, this _____ day of _____, 20_____.

_____
Justice of the Peace/Provincial Court Judge

Canada,
Province of _____,
(*territorial division*)

IN THE MATTER OF AN APPLICATION FOR DISPOSITION PURSUANT TO SECTION 117.05 OF THE CRIMINAL CODE.

ORDER FOR PROHIBITION FOLLOWING FORFEITURE

WHEREAS on the _____ day of _____at _____ at the hearing of the Application for Disposition made under subsection (1), it was ordered that the things of A.B. seized on the _____ day of _____ at _____ be forfeited to her Majesty or be otherwise disposed of;

NOW THEREFORE BE IT FURTHER ORDERED that A.B. be prohibited for a period of _____ years (not exceeding 5 years) from possessing any _____ (weapon, prohibited device ammunition, prohibited ammunition and explosive substance, or any such thing), beginning on the making of the order.*

Dated this _____ day of _____ A.D._____, at _____.

_____
Justice/ Provincial Court Judge

THIS COURT FURTHER DIRECTS THAT A COPY OF THIS ORDER BE SENT TO THE CHIEF FIREARMS OFFICER

***NOTE:** Where a justice does not make an order under subsection 117.05(4), or where a justice does make an order but does not prohibit the possession of all things referred to in that subsection, the justice shall include in the record a statement of the justice's reasons.

Canada,
Province of _____,
(*territorial division*)

IN THE MATTER OF AN APPLICATION TO A JUDGE OF THE PROVINCIAL COURT FOR AN ORDER PURSUANT TO SECTION 117.011 OF THE CRIMINAL CODE.

APPLICATION

TAKE NOTICE THAT an application is hereby made pursuant to Section 117.011 of the *Criminal Code*, for an order for the limitation on access to any firearm, cross-bow, prohibited weapon, restricted weapon, prohibited device, ammunition, prohibited ammunition or explosive substance, or all such things.

AND FURTHER TAKE NOTICE THAT upon and in support of said application will be read the affidavit(s) of _____ attached hereto.

DATED at _____, this _____ day of _____, 20_____.

TO: A Judge of the Provincial Court

_____
Peace Officer/ Firearms Officer/
Chief Firearms Officer

Pursuant to this Application, I hereby fix _____day, the _____ day of _____20_____, at _____ a.m./p.m. at _____for the hearing AND I DIRECT that a notice of the hearing be given to _____ (*respondent/counsel/agent*) by serving a copy hereof upon him/her _____ (*personally/by registered mail/by substituted service/by any other method specified by the justice*).

DATED at _____, this day of _____, 20_____.

_____
Judge of the Provincial Court

Canada,
Province of_____,
(*territorial division*)

IN THE MATTER OF AN APPLICATION TO A JUDGE OF THE PROVINCIAL COURT FOR AN ORDER PURSUANT TO SECTION 117.011 OF THE CRIMINAL CODE.

AFFIDAVIT

This is the information of A.B.,_____ (peace officer, firearms officer or chief firearms officer), of _____ in the said _____(*territorial division*), hereinafter called the informant, taken before me.

THE INFORMANT SAYS THAT he/she has reasonable grounds to believe that C.D., the person against whom the order is sought, cohabits with (or is an associate of) E.F., who is prohibited by _____ (*specify the prohibition order*) made on the _____day of _____, 20_____, (*see Schedule A*), from possessing any firearm, cross-bow, prohibited weapon, restricted weapon, prohibited device, ammunition, prohibited ammunition or explosive substance, or all such things.

AND THE INFORMANT SAYS THAT he/she has reasonable grounds to believe that E.F. would or might have access to a firearm, cross-bow, prohibited weapon, restricted weapon, prohibited device, ammunition, prohibited ammunition or explosive substance, or all such things that are in the possession of C.D., against whom this order is sought (*specify grounds of the belief*).

WHEREFORE the informant prays that an order placing terms and conditions on C.D.'s use and possession of a firearm, cross-bow, prohibited weapon, restricted weapon, prohibited device, ammunition, prohibited ammunition, or explosive substance, or all such things, be granted.

Sworn before me at _____
in the _____ this _____
day of _____, 20_____.

_____
Signature of informant

_____
Provincial Court Judge

Canada,
Province of _____,
(*territorial division*)

IN THE MATTER OF AN APPLICATION TO A JUDGE OF THE PROVINCIAL COURT FOR AN ORDER PURSUANT TO SECTION 117.011 OF THE CRIMINAL CODE.

ORDER

UPON the application of _____, (peace officer, firearms officer or chief firearms officer), for an order pursuant to section 117.011 of the *Criminal Code* placing terms and conditions on C.D.'s use and possession of a firearm, cross-bow, prohibited weapon, restricted weapon, prohibited device, ammunition, prohibited ammunition or explosive substance, or all such things.

UPON hearing the evidence adduced and what was alleged by the applicant and the respondent and it appearing that there are reasonable grounds to believe that E.F.would have access to a firearm, cross-bow, prohibited weapon, restricted weapon, prohibited device, ammunition, prohibited ammunition or explosive substance, or all such things.

IT IS ORDERED THAT the following terms and conditions be placed on C.D.'s use and possession of a firearm, cross-bow, prohibited weapon, restricted weapon, prohibited device, ammunition, prohibited ammunition or explosive substance, or all such things, _____.

DATED at _____, this _____day of _____, 20_____.

_____
Provincial Court Judge

Prohibition Order Imposed at Sentencing-Criminal Code

_____
COURT FILE NO.

_____

Name of Court

Between

Her Majesty The Queen

Vs.

_____

_____
Date of Birth

ORDER

WHEREAS the accused was found guilty and convicted or discharged for the offence(s) set out in the attached information or indictment marked as Schedule A hereto.

Discretionary Order - no more than ten years

❒ **THIS COURT ORDERS**, pursuant to s.110 of the *Criminal Code*, that the accused is prohibited from possessing any firearm, cross-bow, prohibited weapon, restricted weapon, prohibited device, ammunition, prohibited ammunition, explosive substance except for _____for a period beginning on the day this order is made and ending _____ years after his or her release from imprisonment or, if he or she is not imprisoned or subject to imprisonment, after conviction or discharge for the offence(s) set out in the attached information or indictment.

Or

Mandatory Order - minimum ten years

❒ **THIS COURT ORDERS**, pursuant to s.109 of the *Criminal Code*, that the accused is prohibited from

a) possessing any firearm (other than a prohibited firearm or restricted firearm) and any cross-bow, restricted weapon, ammunition and explosive substance for a period beginning on the day this order is made and ending _____ years after his or her release from imprisonment, after conviction or discharge for the offence(s) set out in the attached information or indictment; and

b) possessing any prohibited firearm, restricted firearm, prohibited weapon, prohibited device and prohibited ammunition for life;

Or

❒ **THIS COURT ORDERS**, pursuant to s.109 of the *Criminal Code*, that the accused is prohibited from possessing any firearm, cross-bow, restricted weapon, ammunition and explosive substance for life.

Prohibition Order Imposed at Sentencing-Criminal Code

_____
COURT FILE NO.

_____

In accordance with s.115 of the *Criminal Code* but subject to any other term of this order, every item prohibited by this order and in the possession of the accused on the commencement of the order:

Forfeiture

❒ Is forfeited to Her Majesty to be disposed of or otherwise dealt with as the Attorney General directs

❒ Is not subject to forfeiture

THIS COURT FURTHER ORDERS THAT

Immediate Disposition

❒ The accused is required, within _____ days, to surrender to a peace officer, a firearms officer, a chief firearms officer or other person specified by the court, any thing the possession of which is prohibited by this order together with every authorization, licence and registration certificate relating thereto and held by the accused on the commencement of this order, as directed by this court.

❒ Notwithstanding any other term of this order, the item(s) listed in Schedule B hereto shall be ordered returned to _____, a person other than the accused whom this court has found is lawfully entitled to possess the item(s) and who had no reasonable grounds to believe the item(s) would or might be used in the commission of the offence(s) set out in Schedule A hereto.

NOTE: Pursuant to s.116 of the *Criminal Code* every authorization, licence and registration certificate relating to anything the possession of which is prohibited by this order and issued to the accused is, on the commencement of this order, revoked or amended, as the case may be, to the extent of the prohibitions in this order.

AND THIS COURT FURTHER DIRECTS THAT A COPY OF THIS ORDER BE SENT TO THE CHIEF FIREARMS OFFICER

DATED at _____, this _____day of _____, 20_____.

_____
Judge/ Registrar/Clerk

Canada,
Province of _____,
(*territorial division*)

Prohibition Order Imposed at Sentencing – Youth Criminal Justice Act

_____
COURT FILE NO.

_____

Name of Court

Between

Her Majesty The Queen

Vs.

_____

_____
Date of Birth

ORDER

WHEREAS the accused, a young person within the meaning of the *Youth Criminal Justice Act*, was on his/her own admission or was tried and found guilty and/or discharged for the offence(s) set out in the attached information or indictment marked as Schedule A hereto.

Discretionary Order - no more than two years

❐ **THIS COURT ORDERS**, pursuant to 51 (3) of the *Youth Criminal Justice Act*, that the accused is prohibited from possessing any firearm, cross-bow, prohibited weapon, restricted weapon, prohibited device, ammunition, prohibited ammunition, or explosive substance except for_____ for a period beginning on the day this order is made and ending _____year(s) after his or her release from custody, or, if he or she is not in custody or subject to custody, after being found guilty or discharged for the offence(s) set out in the attached information.

Or

Mandatory Order - two years minimum

❒ **THIS COURT ORDERS**, pursuant to 51 (1) of the *Youth Criminal Justice Act*, that the accused is prohibited from possessing any firearm, cross-bow, prohibited weapon, restricted weapon, prohibited device, ammunition, prohibited ammunition, or explosive substance for a period beginning on the day this order is made and ending _____ years after the accused's release from custody or, if he or she is not in custody or subject to custody, after being found guilty or discharged from the offence(s) set out in the attached information.

In accordance with s.115 of the *Criminal Code* but subject to any other term of this order, every item prohibited by this order and in the possession of the accused on the commencement of the order:

❒ is forfeited to Her Majesty to be disposed of or otherwise dealt with as the Attorney General directs.

Forfeiture

❒ is not subject to forfeiture.

THIS COURT FURTHER ORDERS THAT

❒ The accused is required, within _____days, to surrender to a peace officer, a firearms officer or a chief firearms officer any thing the possession of which is prohibited by this order together with every authorization, licence and registration certificate relating thereto and held by the accused on the commencement of this order.

Immediate Disposition

❒ Notwithstanding any other term of this order, the item(s) listed in Schedule B hereto shall be ordered returned to _____, a person other than the accused whom this court has found is lawfully entitled to possess the item(s) and who had no reasonable grounds to believe the item(s) would or might be used in the commission of the offence(s) set out in Schedule A hereto.

NOTE: Pursuant to s.116 of the *Criminal Code*, every authorization, licence and registration certificate relating to anything the possession of which is prohibited by this order and issued to the accused is, on the commencement of this order, revoked or amended, as the case may be, to the extent of the prohibitions in this order.

AND THIS COURT FURTHER DIRECTS THAT A COPY OF THIS ORDER BE SENT TO THE CHIEF FIREARMS OFFICER.

DATED at _____, this _____day of _____, 20_____.

_____
Youth Court Judge

Distribution:

❒ young person ❒ counsel ❒ parent ❒ Police Service ❒ Chief Firearms Officer

Canada,
Province of _____,
(*territorial division*)

RECOGNIZANCE OF BAIL

_____
COURT FILE NUMBER

BE IT REMEMBERED that on this day the persons named in the following schedule personally came before me and severally acknowledged themselves to owe to Her Majesty the Queen the several amounts set opposite their respective names: namely,

	NAME	DATE OF BIRTH	OCCUPATION	AMOUNT	CASH
ACCUSED					Y/N
ADDRESS					
SURETY					Y/N
ADDRESS					
SURETY					Y/N
ADDRESS					

to be made and levied of their several goods and chattels, lands and tenements respectively, to the use of Her Majesty the Queen, if the said accused fails in any of the conditions hereunder written.

Taken and acknowledged before me at the _____ of _____ on the _____ day of _____, 20_____, at _____ a.m./p.m..

_____
A Justice of the Peace in and for the Province of
_____

WHEREAS the said _____ , hereinafter called the accused, has been charged that he/she on or about the _____day of _____, 20____, at the _____of _____, unlawfully did commit the offence of _____.

NOW THEREFORE, the condition of this recognizance is that if the accused attends at the time and place fixed by the court and attends therefore as required by the court in order to be dealt with according to the law, AND FURTHER, if the accused:

(strike out the inapplicable words)

a) reports at _____(state times) to _____(name of police officer or other person designated),
b) remains within _____(designated territorial jurisdiction),

c) notifies _____ (name of peace officer or other person designated) of any change in his/her address, employment or occupation,
d) abstains from communicating with _____(name of witness or other person) except in accordance with the following conditions:
_____
_____
_____ (as the Justice or Judge specifies),
e) deposits his/her passport _____(as the justice or judge directs) and
f) does not possess during the term of the recognizance, any firearm, cross-bow, prohibited weapon, restricted weapon, prohibited device, ammunition, prohibited ammunition, or explosive substance

or

does not possess, during the term of the recognizance, any of the foregoing items except for _____
_____
g) _____
_____(any other reasonable conditions)

the said recognizance is void, otherwise it stands in full force and effect.

Assuming that it would otherwise apply, s.115 of the *Criminal Code* shall not apply to this order.

A COPY OF THIS ORDER SHALL BE SENT TO THE CHIEF FIREARMS OFFICER.

THE CRIMINAL CODE PROVIDES AS FOLLOWS:
Note Section 763 and subsection 764(1), (2) and (3) of the Criminal Code state as follows:

763. Where a person is bound by recognizance to appear before a court, justice or provincial court judge for any purpose and the session or sittings of that court or the proceedings are adjourned or an order is made changing the place of trial, that person and his sureties continue to be bound by the recognizance in like manner as if it had been entered into with relation to the resumed proceedings or the trial at the time and place at which the proceedings are ordered to be resumed or the trial is ordered to be held.

764. (1) Where an accused is bound by recognizance to appear for trial, his arraignment or conviction does not discharge the recognizance, but it continues to bind him and his sureties, if any, for his appearance until he is discharged or sentenced, as the case may be.

(2) Notwithstanding subsection (1), the court, justice or provincial court judge may commit an accused to prison or may require him to furnish new or additional sureties for his appearance until he is discharged or sentenced, as the case may be.

(3) The sureties of an accused who is bound be recognizance to appear for trial are discharged if he is committed to prison pursuant to subsection (2)."

LE CODE CRIMINEL STIPULE QUE :
Remarque : L'article 763 et les paragraphes 764(1), (2) et (3) du Code criminel se lisent comme suit :

763 Lorsqu'une personne est tenue, par engagement, de comparaître devant un tribunal, un juge de paix ou un juge de la cour provinciale pour une fin quelconque et que la session de ce tribunal ou les procédures sont ajournées, ou qu'une ordonnance est rendue pour changer le lieu du procès, cette personne et ses cautions continuent d'être liées par l'engagement de la même manière que s'il avait été contracté à l'égard des procédures reprises ou du procès aux date, heure et lieu ou la reprise des procédures où la tenue du procès est ordonnée.

764 (1) Lorsqu'un prévenu est tenu, aux termes d'un engagement, de comparaître pour procès, son interpellation ou la déclaration de sa culpabilité ne libère pas de l'engagement, mais l'engagement continue de lier le prévenu et ses cautions, s'il en existe, pour sa comparution jusqu'à ce que le prévenu soit élargi ou condamné, selon le cas.

(2) Nonobstant le paragraphe (1), le tribunal, le juge de paix ou le juge de la cour provinciale peut envoyer un prévenu en prison ou exiger qu'il fournisse de nouvelles cautions ou des cautions supplémentaires pour sa comparution jusqu'à ce qu'il soit élargi ou condamné, selon le cas.

(3) Les cautions d'un prévenu qui est tenu, par engagement, de comparaître pour procès sont libérées si le prévenu est envoyé en prison en vertu du paragraphe (2).

This recognizance has been read over to me and explained and I fully understand the same./Cet engagement m'a été lu et expliqué et je le comprends entièrement.

_____ Signature of Accused/*Signature de prévenu*
_____ Signature of Bondsman/*Signature de la caution*

RECOGNIZANCE OF BAIL
JUSTICE OF THE PEACE – APPEAL TO COURT OF APPEAL

ENGAGEMENT DE CAUTION
JUGE DE PAIX – APPEL DEVANT LA COUR D'APPEL

_____
accused
prévenu

Dated _____ day of _____, 20_____
Fait le *jour de*

CC1518 (rev. 11/98)

CERTIFICATE OF DEFAULT
CERTIFICAT DE DÉFAUT

Form/*Formulaire 33*
Section/*Article 770 C.C.*

I hereby certify that _____
Je certifie par les présentes que
(has not appeared as required by this recognizance or has not complied with a condition of this recognizance) and that by reason thereof the ends of justice have been (defeated or delayed, as the case may be).

(n'a pas comparu ainsi que l'exigeait le présent engagement ou ne s'est pas conformé à une des conditions prévues dans cet engagement) et que, de ce fait (la justice a été contrariée ou les fins de la justice ont été retardées, selon le cas).

The nature of the default is _____
Le manquement peut se décrire comme suit :
_____
and the reason for the default is _____
et la raison du manquement est (state reason if known)
(indiquer la raison, si elle est connue)
_____

The names and addresses of the principal and sureties are as follows:
Les noms et adresses du cautionné et de ses cautions sont les suivants :
_____
_____
_____
_____
Dated this _____ day of _____, 20 _____

Fait le *jour de*
at/*à* _____
_____

Signature of justice, judge, provincial court judge, clerk of the court, peace officer or other person, as the case may be
Signature du greffier du tribunal, juge, juge de paix, juge de la cour provinciale, agent de la paix ou autre personne

In case of cash bail, signature of person depositing cash:
S'il s'agit d'un cautionnement en espèces, signature de la personne qui dépose l'argent :

_____, 20 _____ RECEIVED
REÇU
from the COURT CLERK the sum of
du GREFFIER DE LA COUR la somme de
_____ Dollars
$ _____ $ _____
(Signature)

Canada,
Province of _____,
(*territorial division*)

IN THE MATTER OF A RECOGNIZANCE ORDERED PURSUANT TO SECTION 810 OF THE CRIMINAL CODE

RECOGNIZANCE

WHEREAS on _____day, the_____day of _____, 20_____, a hearing took place pursuant to an information sworn by_____,

AND WHEREAS the court, satisfied that reasonable grounds existed for the making of an order, did order that the respondent enter onto a recognizance for a period of _____months (not to exceed 12 months)

IT IS HEREBY ORDERED that the respondent, _____, of _____, _____ (occupation), hereby undertake to keep the peace and be of good behaviour and to comply with the following conditions:

(a) to abstain from communicating, in whole or in part, directly or indirectly with the person on whose behalf the information was laid or that person's spouse or child, as the case may be, except in accordance with the following conditions, _____,
(b) to abstain from being at or within _____ (specify distance) of a place where the person on whose behalf the information was laid or that person's spouse or child, as the case may be, is regularly found,
(c) to abstain from possessing, during the term of the recognizance, any firearm, prohibited weapon, restricted weapon, prohibited device, ammunition, prohibited ammunition or explosive substance or all such things, **OR** to abstain from possessing during the term of the recognizance, any of the foregoing items except for _____ ;
(d) to surrender, (*dispose of, or have detained/stored/dealt with*) any firearm, cross-bow, prohibited weapon, restricted weapon, prohibited device, ammunition, prohibited ammunition or explosive substance or all such things in his/her possession in the following manner _____,* **
(e) to surrender any authorizations, licences, registration certificates in his/her possession in the following manner,_____ ,
(f) to abide by any further conditions_____
_____.

* Where the Justice or Summary Conviction Court does not make such an order, or where the court does make an order but does not prohibit the possession of everything referred to in that subsection, the Justice or Summary Conviction Court shall include in the record a statement of the reasons for not doing so.

**Assuming that it would otherwise apply, s.115 of the *Criminal Code* shall not apply to this Recognizance.

WARNING: Breach of this Recognizance may result in a charge being laid pursuant to s. 811 of the *Criminal Code*.

BREACH OF RECOGNIZANCE

811. A person bound by a recognizance under section 810, 810.1 or 810.2 who commits a breach of the recognizance is guilty of

(a) an indictable offence and liable to imprisonment for a term not exceeding two years; or

(b) an offence punishable on summary conviction.

DATED at _____this _____day of _____, 20_____.

_____
Respondent

_____
Justice

IT IS ORDERED THAT A COPY OF THIS RECOGNIZANCE BE SENT TO THE CHIEF FIREARMS OFFICER.

Canada,
Province of _____,
(*territorial division*)

IN THE MATTER OF AN APPLICATION TO A JUSTICE TO OBTAIN A WARRANT TO INSPECT PURSUANT TO SECTION 102 OF THE FIREARMS ACT

APPLICATION

TAKE NOTICE THAT application is hereby made by, _____, an inspector under the *Firearms Act* for the issuance of a warrant to inspect pursuant to Section 102 of the *Firearms Act*.

TAKE NOTICE THAT entry to the dwelling house at _____ is necessary to enforce the Firearms Act and the regulations.

AND FURTHER TAKE NOTICE THAT upon and in support of this application will be read the affidavit(s) of _____.

DATED at _____, this _____day of _____, 20_____.

TO: _____(court)

_____
Inspector

Or

A Justice of the Peace

Canada,
Province of _____,
(*territorial division*)

IN THE MATTER OF AN APPLICATION TO OBTAIN A WARRANT TO INSPECT PURSUANT TO SECTION 102 OF THE FIREARMS ACT

AFFIDAVIT

This is the information of A.B., of _____ in the said _____ (*territorial division*), an inspector under the *Firearms Act*, hereinafter called the informant, taken before me.

THE INFORMANT SAYS THAT he/she believes on reasonable grounds that _____(a business is being carried on or there is a record of a business *or* there is a gun collection or a record in relation to a gun collection or a prohibited firearm or there are more than 10 firearms)_____(*here set out the grounds of the belief*) are in the dwelling house of C.D., of _____ in the said _____ (*territorial division*).

THAT reasonable notice has been given to the owner or occupant of the dwelling house, except where a business is being carried on in the dwelling house, _____ (*state the reasonable notice*).

THAT entry to the dwelling house is necessary to enforce the *Firearms Act* and the regulations.

THAT entry to the dwelling house has been refused or there are reasonable grounds to believe that entry will be refused, _____ (*state the reasonable grounds*).

WHEREFORE the informant prays that an inspection warrant may be granted to inspect the said dwelling house.

Sworn before me at _____
in _____ this ____day
_____, 20____.

_____
Signature of informant

_____
Justice

Canada,
Province of _____,
(*territorial division*)

IN THE MATTER OF AN APPLICATION TO OBTAIN A WARRANT TO INSPECT PURSUANT TO SECTION 104 OF THE FIREARMS ACT

WARRANT TO INSPECT

To the inspectors in the said _____ (*territorial division*):

WHEREAS it appears on the oath of A.B., of _____ that there are reasonable grounds for believing that _____ (a business is being carried on or there is a record of a business *or* there is a gun collection or a record in relation to a gun collection *or* there is a prohibited firearm *or* there are more than 10 firearms) at the dwelling house of C.D;

AND WHEREAS it appears that entry to the dwelling house is necessary for any purpose relating to the enforcement of this Act or the regulations;

AND WHEREAS it appears that entry to the dwelling house has been refused or that there are reasonable grounds for believing that entry will be refused;

THIS IS, THEREFORE, to authorize and require you to enter into the said dwelling house _____ (conditions the justice may direct).

Dated this ____ day of _____ AD._____, at _____.

_____
Justice

Canada,
Province of _____,
(*territorial division*)

PROBATION ORDER

WHEREAS on the _____ day of _____, 20_____, at _____, A.B., of _____, hereinafter called the offender, was found guilty or convicted on the charge that _____ .

AND WHEREAS on the _____ day of _____ the court adjudged that in addition to complying with the conditions below:

**Use whichever of the following forms of disposition is applicable:*

- ❒ (a) The offender be discharged;
- ❒ (b) The passing of sentence on the offender be suspended;
- ❒ (c) The offender pay a fine and surcharge in accordance with the fine order;
- ❒ (d) The accused make restitution pursuant to s. 738 or s.739 of the *Criminal Code*;
- ❒ (e) The offender be prohibited from owing, possessing or carrying a weapon;
- ❒ (f) The offender be imprisoned for a term of _____.
- ❒ The offender serve the term of imprisonment in the community pursuant to s.742.1.

The Court has considered that an order pursuant to s.110

❒ is applicable *
❒ is not applicable

Section 110(1) provides that:
Where a person is convicted, or discharged under section 736, of
(a) an offence, other than an offence referred to in any of the paragraphs 109(1)(a), (b) and (c), in the commission of which violence against a person was used, threatened or attempted, or
(b) an offence that involves, or the subject-matter of which is, a firearm, cross-bow, a prohibited weapon, a restricted weapon, a prohibited device, ammunition, prohibited ammunition or an explosive substance and, at the time of the offence, the person was not prohibited by any order made under this Act or any other Act of Parliament from possessing any such thing,
the court that sentences the person or directs that the person be discharged, as the case may be, shall in addition to any other punishment that may be imposed for that offence or any other condition prescribed in the order of discharge, consider whether it is desirable, in the interests of the safety of the person or of any other person, to make an order prohibiting the person from possessing any firearm, cross-bow, prohibited weapon, restricted weapon, prohibited device, ammunition, prohibited ammunition or explosive substance, or all such things, and where the court decides that it is so desirable, the court shall so order.

NOTE: Where the court does not make an order under subsection (1), or where the court does make such an order but does not prohibit the possession of everything referred to in that subsection, the court shall include in the record a statement of the court's reasons for not doing so. Subsection 110(3).

* Assuming that it would otherwise apply, s.115 of the Criminal Code shall not apply to this order.

CONDITIONS

NOW THEREFORE, the said offender shall, for the period of _____ from the date of this order (or where paragraph (f) is applicable the date of expiration of his/her sentence of imprisonment or conditional sentence) comply with the following conditions, namely; **that the said offender shall:**

(i) keep the peace and be of good behaviour;
(ii) appear before the court when required to do so;
(iii) notify the court or the probation officer in advance of any change of address;
(iv) promptly notify the court or the probation officer of any change of employment or occupation.

AND IN ADDITION, (here state any additional conditions prescribed pursuant to subsection 732.1(3) of the *Criminal Code*).

❒ **(a) REPORT**_____ (WITHIN 2 WORKING DAYS or as the court directs), in person, to a Probation Officer as directed and, thereafter, be under the supervision of a Probation Officer or a person authorized by the Probation Officer to assist in the supervision of the offender, and report at such times and places as that person may require as follows:_____

❒ **(b) REMAIN WITHIN THE PROVINCE OF** _____ unless the written permission to go outside the Province is obtained from the court or the probation officer.

❒ **(c) ABSTAIN FROM:** the purchase /possession/consumption of alcohol or other intoxicating substances. (Delete any inapplicable words.)

❒ **(d) ABSTAIN FROM:** the purchase/possession/consumption of drugs except in accordance with a medical prescription. (Delete any inapplicable words).

❒ **(e) ABSTAIN FROM:** owing, possessing or carrying any weapon.

❒ **(f) ABSTAIN FROM:** acquiring, or possessing any firearm, cross-bow, prohibited weapon, restricted weapon, prohibited device, ammunition, prohibited ammunition or explosive substance.

❒ **(g) PROVIDE FOR THE SUPPORT** or care of dependents, namely:_____

❒ **(h) PERFORM** _____ hours (maximum 240 hours) of Community Service work. The work is to commence within _____ days of the date of the commencement of this Order and shall be completed at a rate of not less than _____ hours per month in consecutive months and shall be completed to the satisfaction of the probation officer or designate, within _____ months (not to exceed 18 months).

❒ **(i)** (**THE OFFENDER HAVING AGREED** to this condition, and and the Director of the treatment program having accepted the offender),
ATTEND AND COMPLY with a treatment program for _____
(i.e. alcoholism, illness) at/with _____ (hospital, medical doctor, clinic, psychiatrist, etc.—must be a person or facility licensed, regulated, or otherwise approved by provincial legislation or regulation).

❒ **(j) ATTEND AND ACTIVELY PARTICIPATE** in such rehabilitative programs for _____ (i.e. anger management, alcoholism, spousal abuse), as recommended by your probation officer.

- ❒ **(k) COMPLY WITH ANY ORDER OF RESTITUTION** (made with respect to this offence) under s.738 and s. 739 of the Criminal Code. Such restitution to be paid in instalments of $$_____ / month and to be paid in full by_____ (date).
- ❒ **(l) MAKE REASONABLE EFFORTS** to find and maintain suitable full time employment.
- ❒ **(m)** CONTINUE TO ATTEND SCHOOL FULL TIME and show progress reports to the Probation Officer or designate as required.
- ❒ **(n) OBEY A CURFEW:** be in your place or residence between the hours of _____a.m./p.m. and _____a.m./p.m. unless permission is obtained in writing from the Probation Officer or designate.
- ❒ **(o) NOT TO ASSOCIATE** or hold any communication directly or indirectly with _____ except _____.
- ❒ **(p) NOT TO BE WITHIN** meters of _____.
- ❒ **(q) APPEAR AT THE JAIL** on time and in sober condition.
- ❒ **(r) AND IN ADDITION** (Here state any additional conditions prescribed pursuant to subsection 732.1(3)(h) of the *Criminal Code*.)_____.

❒ Yes
❒ No

FOR ADDITIONAL CONDITIONS see reverse side of this form.

I, _____, hereby acknowledge that I have read the Probation Order including any additional conditions on the reverse or had it read to me, and I have received a copy of the Probation Order and I understand its terms and conditions, and I have been informed of and understand the provisions of Section 732.2(3) and the provisions of Section 732.2(5) and Section 733.1 of the *Criminal Code* which appear on the reverse of this document.

Name and title of Witness	Signature of Witness	Signature of offender
	Name of Interpreter	Signature of Interpreter

IT IS ORDERED THAT A COPY OF THIS ORDER BE SENT TO THE CHIEF FIREARMS OFFICER.

ADDITIONAL CONDITIONS

_____ _____ _____

Signature of Witness | Signature of Offender | Justice/Judge/Local Registrar/ Clerk of the Court

VARIATION OF PROBATION ORDER

Upon the application of the probation officer/prosecutor/offender (delete any in applicable words), it is ordered that the probation order dated the _____ day of _____, 20__, be and it is hereby varied as follows:_____
_____

DATED this _____ day of _____, 20____,at the _____of _____.

_____
Justice/Judge/Local Registrar/Clerk of the Court

I, the undersigned offender, hereby acknowledge that I have been informed of the above variation of the probation order dated the _____ day of _____, 20____, and that I have received a copy of the said probation order endorsed accordingly.

_____ _____

Signature of Witness | Signature of Offender

_____
Print name and title of Witness

TRANSFER OF PROBATION ORDER

Upon the application of the Probation Officer and with the consent of the Attorney General, the foregoing order is hereby transferred to _____

DATED this _____day of _____, 20_____, at the _____of_____.

_____
Justice/Judge/Local Registrar/Clerk of the Court

NOT AN OFFICIAL FORM.
Included only as guidelines for assistance with Criminal Harassment cases. For further information contact the National Weapons Enforcement Support Team (NWEST) at1-800-731-4000 Ext 2053.

IMPORTANT INFORMATION:

1. You, your probation officer or the prosecutor may apply to the court for a change in the conditions or duration of this probation order by filling an application at the Court Office. (See s.732.2(3) below)

2. If you are convicted of an offence (including breach of probation) you may face the following consequences:

   (a) Your suspended sentence may be revoked and a different sentence (including incarceration) may be imposed (see s.732.2(5)(d));
   (b) The conditions of probation may be changed or the duration of probation extended for up to one year (see s. 732.2(5)(e));
   (c) A conditional discharge may be revoked and you may receive a conviction and a different sentence (see s.730(4)).

3. Failure to comply with probation is a criminal offence (see s.733.1).

CRIMINAL CODE PROVISIONS:
SECTION 732.2(3) and 732.2(4)

(3) A court that makes a probation order may at any time, on application by the offender, the probation officer or the prosecutor, require the offender to appear before it and, after hearing the offender and one or both of the probation officer and the prosecutor.

   (a) make any changes to the optional conditions that in the opinion of the court are rendered desirable by a change in the circumstances since those conditions were prescribed,
   (b) relieve the offender, either absolutely or on such terms or for such period as the court deems desirable, of compliance with any optional condition, or
   (c) decrease the period for which the probation order is to remain in force, and the court shall thereupon endorse the probation order accordingly and, if it changes the optional conditions, inform the offender of its action and give the offender a copy of the order so endorsed.

(4) All the functions of the Court under (3) may be exercised in chambers.

SECTION 732.2(5)

(5) Where an offender who is bound by a probation order is convicted of an offence, including an offence under section 733.1, and

   (a) the time within which an appeal may be taken against that conviction has expired and the offender has not taken an appeal,
   (b) the offender has taken an appeal against that conviction and the appeal has been dismissed, or
   (c) the offender has given written notice to the court that convicted the offender that the offender elects not to appeal the conviction or has abandoned the appeal, as the case may be.

   In addition to any punishment that may be imposed for that offence, the court that made the probation order may, on application by the prosecutor, require the offender to appear before it and, after hearing the prosecutor and the offender,

   (d) where the probation order was made under paragraph 731(1)(a), revoke the order and impose any sentence that could have been imposed if the passing of sentence had not been suspended, or
   (e) make such changes to the optional conditions as the court deems desirable, or extend the period for which the order is to remain in force for such period, not exceeding one year, as the court deems desirable,

   and the court shall thereupon endorse the probation order accordingly and, if it changes the optional conditions or extends the period for which the order is to remain in force, inform the offender of its action and give the offender a copy of the order so endorsed.

SECTION 733.1

(1) An offender who is bound by a probation order and who, without reasonable excuse, fails or refuses to comply with that order is guilty of
   (a) an indictable offence and is liable to imprisonment for a term not exceeding two years; or

   (b) an offence punishable on summary conviction and is liable to imprisonment for a term not exceeding eighteen months, or to a fine not exceeding two thousand dollars, or both.

(2) An accused who is charged with an offence under subsection (1) may be tried and punished by any court having jurisdiction to try that offence in the place where the offence is alleged to have been committed or in the place where the accused is found, is arrested or is in custody is outside the province in which the offence is alleged to have been committed, no proceedings in respect of that offence shall be instituted in that place without the consent of the Attorney General of that province.

CC 1413 (rev. 11/96)

RENSEIGNEMENTS IMPORTANTS :

1. Vous, votre agent de probation ou le poursuivant, pouvez demander au tribunal une modification des conditions ou de la durée d'application de l'ordonnance de probation en déposant une demande à cet égard auprès du greffe. (Voir art. 732.2(3) ci-après.)

2. Si vous êtes déclaré coupable d'une infraction (y compris la violation de l'ordonnance de probation), vous risquez de faire face aux conséquences suivantes:

   (a) La suspension du prononcé de la peine peut être révoquée et une peine différente (y compris l'incarcération) peut être infligée (voir art. 732.2(5)d);
   (b) Les conditions de probation peuvent être modifiées ou la durée d'application de l'ordonnance de probation peut être prolongée pour une période d'au plus un an (voir art. 732.2(5)e);
   (c) Une absolution sous conditions peut être révoquée, et une déclaration de culpabilité peut être prononcée contre vous et une peine différente peut être infligée (voir art. 730(4));

3. Le défaut de se conformer à une ordonnance de probation constitue une infraction criminelle (voir art. 733.1).

DISPOSITIONS DU CODE CRIMINEL :
LES PARAGRAPHES 732.2(3) ET 732.2(4) se lisent comme suit :

(3) Le tribunal qui a rendu une ordonnance de probation peut, à tout moment, sur demande du délinquent, de l'agent de probation ou du poursuivant, ordonner au délinquent de comparaître devant lui, et après audition du délinquent d'une part et du poursuivant et de l'agent de probation, ou de l'un de ceux-ci, d'autre part :

   (a) apporter aux conditions facultatives de l'ordonnance les modifications qu'il estime justifiées eu égard aux modifications des circonstances survenues depuis qu'elle a été rendue;
   (b) relever le délinquent, soit complètement, soit selon les modalités ou pour la période qu'il estime souhaitables, de l'obligation d'observer une condition facultative;
   (c) abrèger la durée d'application de l'ordonnance.

   Dès lors, le tribunal vise l'ordonnance de probation en conséquence et, s'il modifie les conditions facultatives, il en informe le délinquent et lui remet une copie de l'ordonnance ainsi visée.

(4) Les attributions conférées au tribunal par le paragraphe (3) peuvent être exercées par le juge en chambre.

LE PARAGRAPHE 732.2(5) se lit comme suit :

(5) Lorsque le délinquant soumis à une ordonnance de probation est déclaré coupable d'une infraction, y compris une infraction visée à l'article 733.1, et que, selon le cas :

   (a) le délai durant lequel un appel de cette déclaration de culpabilité peut être interjeté est expiré ou le délinquent n'a pas interjeté appel,
   (b) Il a interjeté appel de cette déclaration de culpabilité et l'appel a été rejeté,
   (c) Il a donné avis écrit au tribunal qui l'a déclaré coupable qu'il a choisi de ne pas interjeter appel de cette déclaration de culpabilité ou d'abondonner son appel, selon le cas,

   en suis de toute peine qui peut être infligée pour cette infracton, le tribunal qui a rendu l'ordonnance de probation peut, à la demande du poursuivant, ordonner au délinquent de comparaitre devant lui et, après audition du poursuivant et du délinquent :

   (d) lorsque l'ordonnance de probation a été rendue aux termes de l'alinéa 731()a), révoquer l'ordonnance et infliger toute peine qui aurait pu être infligée si l e prononcé de la peine n'avait pas été suspendu;
   (e) apporter aux conditions facultatives les modifications qu'il estime souhaitables ou prolonger la durée d'application de l'ordonnance pour la période, d'au plus un an, qu'il estime southaitable.

   Dès lors, le tribunal vise l'ordonnance de probation en consèquence et, s'il modifie les conditions facultatives de l'ordonnance ou en prolonge la durée d'application, il en informe le délinquent et lui remet une copie de l'ordonnance ainsi visée.

L'ARTICLE 733.1 se lit comme suit :

(1) Le délinquant qui, sans excuse raisonnable, omet ou refuse de se comformer à l'ordonnance de probation à laquelle il est soumis est coupable :

   a) soit d'un acte criminel et passible d'un emprisonnement maximal de deux ans:
   b) soit d'une infraction punissable sur déclaration de culpabilité par procédure sommaire et passible d'un emprisonnement maximal de dixhuit mois et d'une amende maximale de deux mille dollars, ou de l'une de ces peines.

(2) Le délinquent qui est inculpé d'une infraction aux termes du paragraphe (1) peut être jugé et condamné par tout tribunal compétent au lieu où l'infraction est présumée avoir été commise, ou au lieu où il est trouvé, est arrêté ou est sous garde, mais si ce dernier lieu est situé à l'extérieur de la province où l'infraction est présumée avoir été commise, aucune poursuite concernant cette infraction ne peut être engagée en ce lieu sans le consentement du procureur général de la province.

Canada,
Province of _____,
(*territorial division*)

UNDERTAKING GIVEN TO A JUSTICE OR A JUDGE PURSUANT TO SECTIONS 515 AND 679 OF THE CRIMINAL CODE

_____
Court file number

I,_____
of _____
occupation _____
understand that I have been charged that _____
_____
(set out briefly the offence in which the accused is charged)

In order that I might be released from custody, I undertake to attend court on _____day, the _____ day of _____, 20___, and to attend thereafter as required by the court in order to be dealt with according to law (or, where date and place of appearance before court are not known at the time the undertaking is given, to attend at the time and place fixed by the court and thereafter as required by the court in order to be dealt with according to law).

(and where applicable)
I also undertake to (insert any conditions that are directed):

(a) report at _____(state time) to _____(name of peace officer or other person designated);
(b) remain within _____(designated territorial jurisdiction);
(c) notify _____ (name of peace officer or other person designated) of any change in my address, employment or occupation;
(d) abstain from communication with _____ (name of witness or other person) except in accordance with the following conditions_____ (as the justice or judge specified);
(e) deposit my passport_____ (as the justice or judge directed); and
(f) abstain from possessing, during the term of this undertaking, any firearms, cross-bow, prohibited weapon, restricted weapon, prohibited device, ammunition, prohibited ammunition or explosive substance,

or

abstain from possessing, during the term of this undertaking, any of the foregoing items except for _____;
g) surrender to the police within 48 hours of release OR deposit with the police as a precondition of release, or_____ , the items subject to prohibition in paragraph f) and every authorization, licence and registration certificate relating thereto. *
h) _____
_____ (any other reasonable condition).

*Assuming that it would otherwise apply, s.115 of the *Criminal Code* shall not apply to this order.

I understand that failure without lawful excuse to attend court in accordance with this undertaking is an offence under subsection 145(2) of the *Criminal Code*.

SUBSECTION 145(2) AND 145(3) OF THE CRIMINAL CODE STATE AS FOLLOWS:

(2) Every one who,

(a) being at large on his undertaking or recognizance given to or entered into before a justice or a judge, fails without lawful excuse, the proof of which lies on him to attend court in accordance with the undertaking or recognizance, or

(b) having appeared before a court, justice, or judge, fails, without lawful excuse, the proof of which lies on him, to attend court as thereafter required by the court, justice or judge, or to surrender himself in accordance with an order of the court, justice or judge, as the case may be is guilty of an offence punishable on summary conviction.

(3) Every person who is at large on an undertaking or recognizance given to or entered into before a justice or a judge and is bound to comply with a condition of that undertaking or recognizance directed by a justice or a judge, and every person who is bound to comply with a direction ordered under subsection 515(12) or 522(2.1), and who fails without lawful excuse the proof of which lies on the person, to comply with that condition or direction, is guilty of

(a) an indictable offence and liable to imprisonment for a term not exceeding two years; or

(b) an offence punishable on summary conviction.

Dated this _____ day of _____, 20_____, at the _____ of _____.

_____
Signature of Accused

_____
Judge/Justice of the Peace in and for the Province of _____

IT IS ORDERED THAT A COPY OF THIS UNDERTAKING BE SENT TO THE CHIEF FIREARMS OFFICER.

NOT AN OFFICIAL FORM.
Included only as guidelines for assistance with Criminal Harassment cases. For further information contact the National Weapons Enforcement Support Team (NWEST) at1-800-731-4000 Ext 2053.

D Experts: Police Specialists

D.1 Behavioural Analysts and Specialists in Criminal Harassment

Police agencies with expert personnel who might provide guidance for criminal harassment cases in their jurisdictions include the following.

Royal Canadian Mounted Police
Insp. Glenn Woods
OIC Behavioural Sciences Branch
1426 St. Joseph Boulevard
Gloucester, Ontario K1A 0R2
Phone: (613) 993-4162
Fax: (613) 990-6037
E-mail: glenn.woods@RCMP-GRC.gc.ca

Royal Canadian Mounted Police
Sgt. Pierre Nezan
Behavioural Sciences Branch
1426 St. Joseph Boulevard
Gloucester, Ontario K1A 0R2
Phone: (613) 993-6494
E-mail: pierre.nezan@RCMP-GRC.gc.ca

Royal Canadian Mounted Police
Insp. Keith Davidson
"E" Div. Behavioural Sciences Group
12992 76th Avenue
Surrey, British Columbia V3W 2V6
Phone: (604) 598-4543
Fax: (604) 598-4568
E-mail: keith.davidson@rcmp-grc.gc.ca

Royal Canadian Mounted Police
Cst. Cindy Ramos
"E" Div. Behavioural Sciences Group
Threat Assessment Unit
12992 76th Avenue
Surrey, British Columbia V3W 2V6
Phone: (604) 598-4562
E-mail: cramos@rcmp-grc.gc.ca

Royal Canadian Mounted Police
Cpl. Patricia J. Powell
"E" Div. Behavioural Sciences Group
Threat Assessment Unit
12992 76th Avenue
Surrey, British Columbia V3W 2V6
Phone: (604)598-4544
Pager: (604)667-4556
E-mail: ppowell@rcmp-grc.gc.ca

Vancouver Police Department
Sgt. Keith Hammond
Criminal Harassment Unit
312 Main Street
Vancouver, British Columbia V6A 2T2
Phone: (604) 717-2654
Fax: (604) 717-3315
E-mail: keith_hammond@city.vancouver.bc.ca

Ontario Provincial Police
Det./Sgt. Joey Gauthier
Behavioural Sciences Section
777 Memorial Avenue
Orillia, Ontario L3V 7V3
Phone: (705) 329-6544
Fax: (705) 329-6259
E-mail: joe.gauthier@jus.gov.on.ca

Ontario Provincial Police
Det./Sgt. Jim Van Allen
Behavioural Sciences Section
777 Memorial Avenue
Orillia, Ontario L3V 7V3
Phone: (705) 329-6259
Fax: (705) 329-6597
E-mail: jim.vanallen@jus.gov.on.ca

Ontario Provincial Police
Det./Sgt. Steve Smethurst
Behavioural Sciences Section
777 Memorial Avenue
Orillia, Ontario L3V 7V3
Phone: (705) 329-6259
Fax: (705) 329-6597
E-mail: steve.smethurst@jus.on.ca

Ontario Provincial Police
Dr. Peter Collins
Forensic Psychiatrist
Behavioural Sciences Section
Investigation Support Bureau
777 Memorial Avenue
Orillia, Ontario L3V 7V3
Phone: (705) 329-6351
Fax: (705) 329-6259
E-mail: peter.collins@jus.gov.on.ca

Ontario Provincial Police
Det./Sgt. Debra Heaton
Behavioural Sciences Section
777 Memorial Avenue
Orillia, Ontario L3V 7V3
Phone: (705) 329-6491
Fax: (705) 329-6259
E-mail: debra.heaton@jus.gov.on.ca

Ontario Provincial Police
Det./Sgt. Steve Hayward
Behavioural Sciences Section
777 Memorial Avenue
Orillia, Ontario L3V 7V3
Phone: (705) 329-6275
Fax: (705) 329-6259
E-mail: steve.hayward@jus.gov.on.ca

Toronto Police Service
Det. Insp. A.J. (Tony) Warr
Intelligence Bureau
E-mail: ajwarr@torontopolice.on.ca

Toronto Police Service
Det. Gwen Hovey
Behavioural Assessment Section
Phone: (416) 808-7455
Fax: (416) 808-7472
E-mail: bas@torontopolice.on.ca

Toronto Police Service
Det./Cst. LeeAnn Papizewski
Behavioural Assessment Section
Phone: (416) 808-7451
E-mail: bas@torontopolice.on.ca

Toronto Police Service
Det./Cst. Brian Thomson
Behavioural Assessment Section
Phone: (416) 808-7452
E-mail: bas@torontopolice.on.ca

Durham Regional Police Service
Det. Tracey Marshall
77 Centre Street North
Oshawa, Ontario L1G 4B7
Phone: (905) 579-1520
E-mail: tmarshall@drps.ca

Peel Regional Police
Det. Allan Clewer
Offender Management Unit – Threat Assessment
7750 Hurontario Street
Brampton, Ontario L6V 3W6
Phone: (905) 453-3311 ext. 7760
Fax: (905) 456-5900
E-mail: allan.clewer@peelpolice.on.ca

D.2 Firearms Investigation Specialist

National Weapons Enforcement Support Team
Special Cst. Leslie Cunningham
Firearm Investigation Specialist
1450 Meyerside Drive, Suite 415
Mississauga, Ontario L5T 2N5
Phone: (905) 795-5205
Fax: (905) 795-5224
Police Assist 24/7: 1-800-731-4000, ext 2053
E-mail: les.cunningham@rcmp-grc.gc.

E

Crown Case Record Sheet

See attached form

Crown Case Record Sheet

Crown Case File No.		**Assigned Crown**	
Date Assigned		**Charging/Investigating Officer**	
Complainant		**Accused**	**CPIC/ICON Fingerprint No.**
Address		**Address**	
Date of Incident	**Information No.**	**Location of Incident** 1 Home 2 Street 3 Work 4 Other_____	
Nature of Incident(s) s. 264 (1) s. 264 (2) (a) (b) (c) (d) s. 264 (3) (a) (b) s. 264 (4) (a) (b) s. 264 (5)		**Additional Charges** s. 145 s. 127 s. 733.1 s. 423 s. 264.1 s. 430 s. 372 s. 177 s. 811 s. 265 s. 267 s. 265 s. 271 s. 231 (6) Other_____	

Nature of Victim/Offender Relationship
0 Unknown 1 Ex-Partner/ex-spouse 2 Partner/Spouse 3 Other relative 4 Acquintance 5 Stranger
6 Other_____

History of Previous Conduct
0 Unknown 1 Yes 2 No 3 Details_____

History of Previous Conduct with Complainant
0 None 1 No Contact Orders_____ 2 Breaches_____ 3 Charges_____ 4 Convictions_____

	Yes	No	Date	Details
Victim(s) Interview				
Other Witness Interviews				**Relationship to Victim** 0 Unknown 1 Ex-partner/ex-spouse 2 Parner/Spouse 3 Other relative 4 Acquaintance 5 Stranger 6 Other_____
Victim Impact Statement				
Victims Services Referral				
Risk Assessment				1 Low 2 Medium 3 High
Expert Consulted				**Specialty**

Recommended Actions

Warrants Issued (Arrest/Bench/Search)

	Date	Outcomes		
Hearing				
Pre-trial Release		**Conditions**		
Trial		**Disposition**	**Mitigating Factors**	**Aggravating Factors**
Sentencing		Charges Stayed Withdrawn Plea Negotiated Peace Bond		

Follow Up	Yes	No	Date	Outcomes
Victim				
Victim Services				
Police				