



## Victim's Rights by Scott D. Abel

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In newspaper articles about violent crimes, often a family member of the victim says it is as if there is no place in the legal system for the victim and their families.

This is not a misconception.

The criminal justice system is designed to have an accused person answer to their community, not specifically to the victim. The Crown Attorney is a lawyer for the general public, not for the victim. When a convicted offender is sentenced, the Court is to look at principles of general deterrence, while also looking at the offender's particular circumstances, any aggravating factors and the possibility of rehabilitation. The sentence is to be fair, considering the offender and the interest of society as a whole. This sometimes means that the victim is not satisfied with the outcome.

Where this is most clear is when a relatively minor offence, such as driving through a red light, leads to the death of someone. If the guilty party receives just a fine, it by no means comes close to compensated the deceased's family, but it is the offender and the interest of society that are the focus for the Court.

Recently, there has been a trend toward acknowledging the rights

of victims in the criminal justice system. For example, Manitoba, in addition to most other provinces, has a Victim's Bill of Rights. The legislation allows victims to be kept informed of the status of their cases and to be consulted about various aspects of the prosecution. In addition, victims are now allowed to participate in Court proceedings by presenting written or oral victim impact statements. This allows them to explain to the Court the nature of the harm they have suffered as a result of the crimes committed against them.

The victims however often have very little impact in the plea bargain process. Approximately 90% of criminal cases are resolved through plea-bargaining and the acceptance of guilty pleas. Through discussions with the Crown Attorney, settlement is often reached through pleas involving the nature of the charges, the sentence recommended to the Court, and/or facts brought to the attention of the Judge.

The issue is whether victims should be involved in the plea bargaining process. The Manitoba legislation specifically allows the victims to be consulted about plea bargains; but should they have more input?

Generally, when victims are appropriately notified as to the bargaining discussions and resolutions, they are more likely to be satisfied with the criminal justice system and the outcome of their cases.

The United States has been dramatically enhancing the rights of victims in the prosecution of their cases. While all of the states have victim's rights legislation, prosecutors must only consult with victims during the plea bargaining stages process. In Arizona however new law will allow the victim to veto a proposed plea bargain.

It is difficult to foresee an effective criminal justice system which does allow a victim a veto right in the plea bargain process. Victims are likely to be emotional and not able to view the case impartially. Revenge has not been an accepted principle of the criminal justice system.

One interesting exception to the modern criminal justice system is the model of the sentencing circle. In this model, the victim and their family have input, as does the community, and sometimes a Crown Attorney and a Judge as well, in determining a fair sentence.

While it is not clear that the best model for the criminal justice system is to have victims heavily involved, it is obviously important that they are not excluded altogether.