

Listening to victims

In recent decades researchers [Booth 2012] and practitioners involved in reform of court procedures have given greater attention to the merits of allowing victims to participate in some way in the sentencing process. More generally, it is better understood that many victims have certain expectations of the criminal justice system [Clark 2010], including that their experiences will be taken seriously and validated [Anderson 2015], and that they will be provided a forum through which they are able to voice their experiences [Bluett-Boyd & Fileborn 2014]. In a sentencing context however, victims' expectations must be balanced with the need to maintain the integrity of the court in an adversarial system.

The purpose of a sentencing hearing is for the judicial officer to determine the appropriate sentence according to the law. Within legislative constraints, the judicial officer exercises their discretion having regard to the available evidence regarding relevant factors. The victim is not a party to proceedings that have resulted in the finding that an offence has been committed, for example where a person is found to have breached a protection order; and yet they are directly affected by the offending behaviour and possibly by the sentence. A victim's emotional need to be heard by the court—to be given the opportunity to explain the impact of the offender's violence—should be accommodated where possible [Booth 2012].

One way of enabling a victim's involvement in sentencing is through a victim impact statement that is submitted, quoted from, or read aloud to the court. These are not permitted in relation to some offences. Where permitted, bench books advise that sentencing courts must treat the victim's statements with caution. For example, the victim may express forgiveness towards the offender. A victim may, as a result of the domestic and family violence they have experienced, be pressured or coerced by the perpetrator or the perpetrator's family members and friends to present a view of the harm experienced, the offender and the offence that is not commensurate with the seriousness of the offender's behaviour, the resulting harm and future risk [Klein 2009].

Research clearly acknowledges healing and restorative benefits to some victims in giving their account of their experiences of violence to the court, orally or in writing, provided they are fully informed of the limits of their capacity to influence sentencing outcomes [Herman 2005].