

Restitution

Repairing Financial Harm
to Victims of Crime



Public Legal Education and Information Service of New Brunswick (PLEIS-NB) is a non-profit charitable organization. Its goal is to provide New Brunswickers with information on the law. PLEIS-NB receives funding and in-kind support from the Department of Justice Canada, the New Brunswick Law Foundation and the New Brunswick Office of the Attorney General.

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This pamphlet does not contain a complete statement of the law in this area and laws change from time to time. Anyone needing advice on his or her specific legal position should consult a lawyer.

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What is restitution?

Restitution is a payment that a person convicted of a crime makes to a victim to cover financial losses that resulted from the crime.

A person convicted of a crime, including a person who has pled guilty, is called an “offender”.

A court may order restitution as part of an offender’s sentence.

Restitution can be:

- part of a probation order;
- part of a conditional sentence order; or
- a “stand-alone” order – (meaning an order made in addition to the other parts of the sentence).

Why does the court make restitution orders?

The court makes restitution orders to:

- help to repair some of the harm done to victims of crime;
- encourage offenders to take responsibility for their actions;
- prevent offenders from profiting from their crimes; and
- discourage others from committing crimes.

Do all victims of crime receive restitution?

No, not all victims of crime are eligible to get restitution. The court can order restitution only in certain situations.

When can the court order restitution?

The court can only order restitution if it finds the offender guilty of the crime that caused the victim's losses. The court must also be able to easily figure out the amount of the losses.

What kind of losses can a restitution order cover?

Restitution can be ordered only for financial losses that were caused by the crime, such as:

- money spent on repairing or replacing damaged or lost property;
- money lost as a result of a physical or psychological injury, including lost income;
- money spent on moving out of the offender's residence, in cases where the offender caused or threatened to cause an injury;
- money spent on re-establishing the victim's identity, in cases of identity theft or identity fraud;

- money lost when a victim innocently purchased stolen property that was later returned to its owner;
- money lost when a victim loaned money to the offender and accepted stolen property as security; and
- money spent on the cost of caring for an animal who has been injured in a crime.

Can the court order restitution for pain and suffering caused by the crime?

No, the court cannot order restitution for pain and suffering.

Do all victims who ask for restitution automatically get it?

It is not automatic. Even if the crime caused the victim to suffer the kinds of losses listed above, the court may decide not to order restitution. To determine if restitution is appropriate, the court must also consider the nature of the crime and the situation of the offender. For example, the offender may be unemployed and unable to make the payment. As well, the court may consider whether ordering restitution would impact the offender's chances of successful rehabilitation.

In addition to restitution, the court may also order the offender to pay a fine. However, where the court determines that the offender is unable to pay both, the court must give priority to payment of the restitution order.

How does a victim of crime request restitution?

A victim of crime can request restitution by:

- writing a letter to the Crown prosecutors' office;
- filling out a form called a **Victim Impact Statement** at a Victim Services Office; or
- doing both.

What should the victim include about restitution in the letter or Victim Impact Statement?

The victim should describe all of the financial losses that he or she has suffered as a result of the crime. It is important to include copies of any relevant receipts, invoices, estimates or other documents. For example, if the offender broke the victim's window during the crime, the victim should include a copy of an invoice or estimate from a contractor showing the total cost of replacing the window. If the offender stole a stereo from the victim, the victim should include a copy of the original receipt.

The court is more likely to order restitution when the victim includes these kinds of documents. Such invoices make it easier for the court to determine the amount of the victim's losses.

When should a victim who wants restitution make a request?

Once the person accused of the crime has been convicted, the victim should write a letter to the Crown prosecutors' office as soon as possible. A Crown prosecutor will read the letter and the other documents the victim provides and decide whether to ask the court for a restitution order.

If the victim wishes to complete a Victim Impact Statement, he or she must do so at the Victim Services office before the sentencing date. A Victim Services Coordinator will give the Victim Impact Statement to the court.

At the time of sentencing, the court will read the letter and/or statement and decide on the victim's request for restitution. The victim may ask to read their Victim Impact Statement aloud at the sentencing hearing.

What about victims of fraud?

The court may also make a restitution order for victims of a fraud. If the Crown prosecutor asks the court for restitution, the

court **must** consider making a restitution order. However, there are special rules for asking for restitution when the offender is convicted of a fraud. They include:

- The victim should request restitution by filling out a form called a **Statement on Restitution for Fraud** (Form 34.1). This form is available at a Victim Services Office;
- If the fraud involved several victims in a community, victims can describe the losses suffered by their community in a form called a **Community Impact Statement**. The court will read this form before deciding on the sentence;
- The court must ask the Crown prosecutor if the victims have been given the opportunity to request restitution, and if they have not the court may adjourn the sentencing; and
- If a victim of fraud requests restitution and the court decides not to order it, the court must state the reasons for this decision.

Can the victim attend court for the sentencing?

Victims may attend the sentencing hearing if they wish. Usually, it is not necessary. Check with the Crown prosecutor. If the offender does not agree with the amount of restitution the victim has requested, the court may hold a hearing to determine the amount. If that is likely to happen, the Crown prosecutor may ask the victim to testify at this hearing.

How does the victim receive restitution payments?

The victim will receive the restitution payments from Court Services. The offender does not make payments directly to the victim. The offender sends the money to Court Services to forward to the victim. Victims should make sure that Court Services has their up-to-date contact information.

What if the offender does not pay the restitution?

If the offender does not pay the restitution ordered by the court as part of a probation order or conditional sentence order, it is a violation of his or her sentence. The victim should report this to Probation Services. A probation officer may then recommend that the offender be charged with breaching the probation order or conditional sentence order.

If the offender does not pay the full amount of the restitution order, the victim may also be able to use civil judgment enforcement methods. That means taking the same steps to enforce the order as a person who has won a civil lawsuit to recover money from another person. For more information about civil judgment enforcement, see the PLEIS-NB publication called *Judgment Enforcement*.

How does a victim use civil judgment enforcement methods?

To use civil judgment enforcement methods, the victim must first file a certified copy of the restitution order with the Court of Queen's Bench, Trial Division. There is usually a fee for doing this; however, the fee is waived for "stand-alone" restitution orders. If the restitution order is part of a probation order or conditional sentence order, the victim must wait until the end of the probation or conditional sentence to file the order. If the restitution order is a "stand-alone" order, the victim may file it with the Court of Queen's Bench immediately after the sentencing.

Once filed with the court, the order can be enforced as if it were a civil judgment. For example, the victim can arrange to have a sheriff seize and sell the offender's property.

What if the offender was a youth?

A court can order a youth offender to pay restitution. However, the victim cannot file the order with the Court of Queen's Bench or use civil judgment enforcement methods if the offender was under the age of 19 years at the time of the crime.

In some situations where restitution may not be practical or possible, a judge may order that the youth has to perform certain tasks for the victim. For example, a youth might have to clean up or paint over graffiti they painted on a victim's house. This is called a "personal services order". A judge would not make this kind of order without the victim's consent.

Is a restitution order the only way for a victim of crime to recover losses?

A restitution order is not the only way for a victim to recover the losses resulting from a crime. A victim may:

- be eligible for compensation through the **Compensation for Victims of Crime Program**. (For more information about this program, contact a Victim Services office);
- make a claim under an insurance policy;
- start a civil action, i.e., file a lawsuit with the Court of Queen's Bench, Trial Division and ask a judge to decide whether one person should pay the other person to reimburse for his or her losses. For information about how to start a civil action talk to a lawyer and read the PLEIS-NB publications on civil actions.

Resources

For more information about victims of crime, check out these websites:

Public Legal Education and Information Service of New Brunswick –

www.legal-info-legale.nb.ca

(under the *Publications* menu, click on *Going to Court* and then select *Information for Victims*)

Public Safety, Victim Services –

www.gnb.ca/publicsafety

Policy Centre for Victim Issues,
Department of Justice Canada –

www.justice.gc.ca/eng/pi/pcvi-cpcv/index.html

Canadian Resource Centre for
Victims of Crime –

www.crcvc.ca

Victim Services Offices in New Brunswick

For more information about the New Brunswick Department of Public Safety, Victim Services, contact the Victim Services Office nearest you:

Bathurst.....	547-2924
Burton	357-4035
Campbellton	789-2388
Edmundston	735-2543
Fredericton	453-2768
Grand Falls	473-7706
Miramichi	627-4065
Moncton	856-2875
Richibucto	523-7150
Saint John.....	658-3742
Shediac.....	533-9100
Shippagan	726-2417
St. Stephen.....	466-7414
Tracadie-Sheila.....	394-3690
Woodstock	325-4422

Notes