

Are you a Victim of Crime?

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 the public 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 Department of Justice and Public Safety.

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

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What is restitution?

Restitution is a payment that an **offender** makes to a victim of crime to cover financial losses that resulted from the crime. The court may order restitution as part of an offender's sentence.

An **offender** is a person convicted of a crime, including a person who has pled guilty.

The court can order restitution as:

- 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 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.

Can all victims of crime ask for restitution?

The *Canadian Victims Bill of Rights* gives all victims the right to ask the court to make a restitution order and requires the court to consider their request.

When victims ask for restitution, will they automatically get it?

It is not automatic. Although the court must consider all requests for restitution, not all victims of crime will be eligible.



The court may consider whether ordering restitution would affect the offender's chances of successful rehabilitation.

Even if the crime caused the victim to suffer financial losses, 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 offender's situation. For example, the offender may be unemployed and unable to make the payment. However, these are only factors for consideration; the offender's financial means or ability to pay does not prevent the court from making a restitution order.

Can the court also order the offender to pay a fine?

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

At what point in the criminal justice process 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. If you have not already applied for restitution, Victim Services staff can give you direction on how to apply.



What kind of losses can a restitution order cover?

The court can order restitution for losses that resulted from the crime, up to the time of sentencing, such as:

- money spent on repairing or replacing damaged or lost property;
- physical or psychological injury, including lost income;
- money spent on moving out of the offender's residence, in cases where the offender threatened to cause an injury to the victim;
- 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;
- money spent on the cost of caring for an animal who has been injured in a crime; and
- costs associated with removing an intimate image from the internet or other digital network.



How does a victim of crime request restitution?

Victims should ask about restitution when they report the incident to police. The police are responsible for informing eligible victims of their right to apply for restitution and for providing them with the necessary form called a **Statement on Restitution** (Form 34.1). To help victims understand how restitution works, the police will also give them a **Restitution Fact Sheet**. Once the victim has completed the form, it should be returned to the police with supporting documentation. The police will give it to the Crown prosecutor.

The Crown prosecutor is responsible for submitting the victim's request for restitution to the court at the time of the sentencing. The court will consider these forms before deciding on the sentence and possibly order the offender to pay restitution. If a victim makes a request for restitution and the court decides not to order it, the court must state the reasons for this decision.

What if there are several victims in a community?

If the crime involved several victims in a community, individual victims can request restitution by filling out a **Statement on Restitution**.

The image shows two versions of the 'Statement on Restitution' form (Form 34.1). The English version on the left is titled 'STATEMENT ON RESTITUTION' and includes fields for the offender's name, the declarant's name, and checkboxes for seeking or not seeking restitution. The French version on the right is titled 'DÉCLARATION RELATIVE AU DÉDOMMAGEMENT' and includes similar fields and checkboxes. Both forms are from the Province of New Brunswick, Canada.


Statement on Restitution (Form 34.1)

What should a victim include in their Statement on Restitution?

The victim should describe all of the financial losses that they have suffered because 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 receipt for the replacement stereo.

The court is more likely to order restitution when the victim includes these kinds of documents.

Receipts make it easier for the court to determine the amount of the victim's losses.



The court must easily be able to figure out the amount of the losses.

When does the court review a victim's request for restitution?

Before sentencing, the court must ask the Crown prosecutor if the victims have had the opportunity to request restitution. If they have not, the court may delay the hearing. At the time of the sentencing, the court will review the application and decide on the victim's request for restitution.

Can the victim attend court for the sentencing?

Victims may attend the sentencing hearing if they wish, but it is not usually required. 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 happens, the Crown prosecutor may ask the victim to testify at this hearing.

How does the victim receive restitution payments?

The offender must send the restitution payments – either as a lump sum or in instalments – to Court Services. Court Services will forward the money to the victim. The offender does not make payments directly 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 ordered?

If the offender does not pay the court-ordered restitution, it may be a violation of their 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.

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. 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. 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. There is usually a fee for doing this.

Once filed with the court, the victim can enforce the order 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 must 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, such as filing 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 their 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-legal.nb.ca (under the *Law by Topic* menu, click on *Criminal Law* and then select *Information for Victims*)

Justice and Public Safety, Victim Services

www2.gnb.ca/content/gnb/en/departments/public-safety/community_safety/content/victim_services.html

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