Case Name:
R. v. C.C.

Between
Her Majesty the Queen, and
C.C.

[**2018] O.J. No. 4240**

2018 ONCJ 542

Ontario Court of Justice

B.M. Green J.

July 23, 2018.

(29 paras.)

Criminal Law -- Sentencing -- Sentencing considerations -- Submissions -- Victim impact statements -- Application by accused to exclude or redact portions of victim impact statements allowed in part -- Statements were written in style of conversation with accused and contained information that was no about impact of crimes on victims -- All three statements were admitted in current form -- Judge would only consider victim impact arising out of offences that accused was convicted of committing and aggravating factors that were proven beyond reasonable doubt -- Canadian Victims Bill of Rights, s. 2 -- Criminal Code, ss. 718, 722, 722(8).

Application by the accused to exclude or redact portions of the victim impact statements. The accused was convicted of sexual offences involving his niece. Written submissions were sought from counsel due to delays in sentencing. The defence filed a written factum seeking to exclude or redact portions of the three victim impact statements sought to be introduced by the Crown during the sentencing. Two of the statements were written in the style of a conversation with the accused as opposed to direct expressions to the court about the impact those crimes had of the victim and her mother. In addition, each of the statements contained information that was not about the impact the crimes had on the victims.

HELD: Application allowed in part. The court should not preclude victims from providing impact statements in their own words just because they operated unfortunately for the accused. Section

722(8) of the Criminal Code preserved the fair trial rights of the accused by allowing the sentencing judge to disregard the contents that counsel objected to in the application. There was nothing in the victim impact statements that necessitated judicial intervention to ensure the appearance of fairness or protect the integrity of the administration of justice. All three victim impact statements were admitted in their current form. The judge would only consider the victim impact arising out of the offences that the accused was convicted of committing and the aggravating factors that were proven beyond a reasonable doubt.

Statutes, Regulations and Rules Cited:

Canadian Victims Bill of Rights, S.C. 2015, c. 13, s. 2

Criminal Code, R.S.C. 1985, c. C-46, s. 718, s. 722, s. 722(8)

Counsel:

Ms. Allan -- Counsel for the Crown.

Ms. Bharadwaj -- Counsel for the defendant Mr. C.C.

WARNING

The court hearing this matter directs that the following notice be attached to the file:

A non-publication and non-broadcast order in this proceeding has been issued under subsection 486.4(1) of the *Criminal Code*. This subsection and subsection 486.6(1) of the *Criminal Code*, which is concerned with the consequence of failure to comply with an order made under subsection 486.4(1), read as follows:

> **486.4 Order restricting publication -- sexual offences**. -- (1) Subject to subsection (2), the presiding judge or justice may make an order directing that any information that could identify the victim or a witness shall not be published in any document or broadcast or transmitted in any way, in proceedings in respect of
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> (*a*) any of the following offences:
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> (i) an offence under section 151, 152, 153, 153.1, 155, 159, 160, 162,

163.1, 170, 171, 171.1,172, 172.1, 172.2, 173, 210, 211, 212, 213, 271, 272, 273, 279.01, 279.011, 279.02, 279.03, 280, 281, 286.1, 286.2, 286.3, 346 or 347, or

(ii) any offence under this Act, as it read at any time before the day on which this subparagraph comes into force, if the conduct alleged involves a violation of the complainant's sexual integrity and that conduct would be an offence referred to in subparagraph (i) if it occurred on or after that day; or

(*b*) two or more offences being dealt with in the same proceeding, at least one of which is an offence referred to in paragraph *(a)*.

(2) **MANDATORY ORDER ON APPLICATION** -- In proceedings in respect of the offences referred to in paragraph (1)(*a*) or (*b*), the presiding judge or justice shall

(*a*) at the first reasonable opportunity, inform any witness under the age of eighteen years and the complainant of the right to make an application for the order; and

(*b*) on application made by the complainant, the prosecutor or any such witness, make the order.

. . .

486.6 OFFENCE -- (1) Every person who fails to comply with an order made under subsection 486.4(1), (2) or (3) or 486.5(1) or (2) is guilty of an offence punishable on summary conviction.

Reasons for Ruling with respect to the Admission of the Victim Impact Statements

B.M. GREEN J.:--

A. Introductory remarks

1 Mr. C.C. was convicted of sexual offences involving his niece B.W. on February 28th, 2018. The sentencing was delayed for months to accommodate a defence request for the preparation of a psychological report. The sentencing was further delayed because of unexpected and unfortunate personal challenges that impacted Counsel's availability. As a result, to avoid any further delays, I directed that written submissions be prepared with respect to any objection to the exhibits sought to be filed during the sentencing hearing and further, that written submissions outlining the proposed ranges of sentence advocated by Counsel and the Crown and the associated case law relied on in support on these positions be filed with the Court well in advance of the next appearance date.

2 In response to my direction, Counsel diligently and promptly filed a written factum seeking to exclude or redact portions of the victim impact statements sought to be introduced by the Crown during the sentencing.

3 I appreciate the time and effort that Counsel devoted to researching this issue and drafting this application and the legitimacy of some of the issues raised in the application. I am concerned however, that awaiting a written response from Crown Counsel due to summer holidays and the potential for further reply by defence will only serve to prolong these proceedings even further. I recognize the fundamental importance of allowing both parties an opportunity to be heard. As Justice Akhtar recently stated in *R. v. Sibbert*, [2018] O.J. No. 2437 (Ont.S.C.J):

> **21** The obligation to ensure a fair trial is a basic tenet of the judicial system. A fair trial accrues not only to a person accused of an offence but also the Crown who is charged with prosecuting the offence: *R. v. R.D.S.*, [1997] 3 S.C.R. 484, at para. 96; *R. v. Curragh* (1997), 113 C.C.C. (3d) 481 (S.C.C.), at p. 486; *R. v. Coreas* (1996), 115 C.C.C. (3d) 353 (Ont. C.A.) at p. 354; *R. v. J.V.* (2002), 163 C.C.C. (3d) 507 (Ont. S.C.), at para. 95.
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> **22** As described in *R.D.S.*, at p. 364, the adversarial system forms the "bedrock" of Canadian jurisprudence. That system incorporates, at its core, the right to be heard, also known as the *audi alteram partem* rule: *J.V.*, at para. 97.
>
> **23** The right to be heard has been described as "one of the most fundamental components of natural justice".

4 Nevertheless, this application is not about the ultimate issue to be determined by this Court. Rather, this is a mid-trial application about the admissibility of evidence during the sentencing. The Supreme Court of Canada has been unequivocal that Courts should take a proactive role in stream lining motions and applications to avoid unconstitutional delay. As a result, considering my ruling on this matter, I am prepared to decide this application without hearing from the Crown to ensure

that the sentencing proceeds as scheduled without any further delays.

5 In addition, before rendering my decision on this application, this is an ideal opportunity to exercise my trial management authority and provide both Counsel and the Crown with explicit directions about the Court's expectations for the contents of the written sentencing submissions.

6 Throughout these proceedings there has been an apparent and palpable acrimony between Counsel and the Crown. This acrimony has contributed to each side espousing uncompromising positions. This application to vet the victim impact statements is an example of how the needlessly entrenched positions on both sides have necessitated judicial intervention.

7 The recent decision of the Supreme Court of Canada in *Groia vs. the Law Society of Upper Canada*, [2018] S.C.J. No. 27 (S.C.C.), reminds trial judges that "the presiding judge has a responsibility to intervene when the fairness of the trial is at stake. This duty includes controlling uncivil behaviour that risks undermining the fairness and the appearance of fairness of the proceeding". I have tried to manage the interpersonal issues between Counsel and the Crown throughout the trial by focusing on what's most important, ensuring that Mr. C.C. and the victims receive a fair trial. As we are approaching the end of these proceedings and understandably vigorously contested sentencing submissions, it is apposite to remind Counsel and the Crown of the oft-cited decision of *R. v. Felderhoff*, [2003] O.J. No. 4819 (O.C.A.). In particular, I expect that Counsel and the Crown will be mindful of the Court of Appeal's comments at paragraph 84 when drafting their written submissions and speaking to this matter in Court:

> It is important that everyone, including the courts, encourage civility both inside and outside the courtroom. Professionalism is not inconsistent with vigorous and forceful advocacy on behalf of a client and is as important in the criminal and quasi-criminal context as in the civil context. Morden J.A. of this court expressed the matter this way in a 2001 address to the Call to the Bar: "Civility is not just a nice, desirable adornment to accompany the way lawyers conduct themselves, but, is a duty which is integral to the way lawyers do their work." Counsel are required to conduct themselves professionally as part of their duty to the court, to the administration of justice generally and to their clients. As Kara Anne Nagorney said in her article, "A Noble Profession? A Discussion of Civility Among Lawyers" (1999), 12 Georgetown Journal of Legal Ethics 815, at 816-17, "Civility within the legal system not only holds the profession together, but also contributes to the continuation of a just society. ... Conduct that may be characterized as uncivil, abrasive, hostile, or obstructive necessarily impedes the goal of resolving conflicts rationally, peacefully, and efficiently, in turn delaying or even denying justice." Unfair and demeaning comments by counsel in the course of submissions to a court do not simply impact on the other counsel. Such conduct diminishes the public's respect for the court and for the administration of criminal justice and thereby undermines the legitimacy of the results of the

adjudication.

8 I expect that the written submissions will not contain references to any irrelevant communications between Counsel nor any interpersonal remarks about the positions taken or advocated by either side. The written submissions must be confined to the issues for this Court to decide based on the applicable legal principles and the case law. If either Counsel or the Crown wish to address the Court about any other issues that are relevant to the hearing or the evidence sought to be introduced, they are invited to bring the matter forward and address me in Court on the record or file further written applications. I will not countenance being included in any email correspondence between Counsel and the Crown either directly or indirectly.

9 Throughout the balance of these proceedings including the written submissions, I expect that Counsel and the Crown will be guided by the sage words of the Supreme Court of Canada in *Groia, supra*:

> **2** To achieve their purpose, it is essential that trials be conducted in a civilized manner. Trials marked by strife, belligerent behaviour, unwarranted personal attacks, and other forms of disruptive and discourteous conduct are antithetical to the peaceful and orderly resolution of disputes we strive to achieve.
>
> **3** By the same token, trials are not -- nor are they meant to be -- tea parties. A lawyer's duty to act with civility does not exist in a vacuum. Rather, it exists in concert with a series of professional obligations that both constrain and compel a lawyer's behaviour. Care must be taken to ensure that free expression, resolute advocacy and the right of an accused to make full answer and defence are not sacrificed at the altar of civility.

10 Turning to this application, it is important to review the applicable legislation and guiding case law before addressing Counsel's concerns with the contents of the victim impact statements.

B. Applicable Legislation

11 In 2015, the law with respect to victim's rights and their participation in the criminal justice system changed with the passing of the *Canadian Victims Bill of Rights*, S.C. 2015, c. 13, s. 2. The preamble in the Bill of Rights is instructive. It states in part that:

> Whereas crime has a harmful impact on victims and on society;
>
> Whereas victims of crime and their families deserve to be treated with courtesy, compassion and respect, including respect for their dignity;

> Whereas it is important that victims' rights be considered throughout the criminal justice system;
>
> Whereas victims of crime have rights that are guaranteed by the *Canadian Charter of Rights and Freedoms*;
>
> Whereas consideration of the rights of victims of crime is in the interest of the proper administration of justice;

12 In conformity with the principles in this legislation, sections 718 and 722 of the *Criminal Code* were amended to facilitate the informed involvement of victims of crimes in the criminal process, ensuring that their rights are respected, their harm considered and that they are treated with compassion and dignity. Section 718 states that one of the fundamental purposes of a sentencing is to denounce the harm done to the victims and the community at large and to provide reparations for the harm done to the victims:

> The fundamental purpose of sentencing is to protect society and to contribute, along with crime prevention initiatives, to respect for the law and the maintenance of a just, peaceful and safe society by imposing just sanctions that have one or more of the following objectives:
>
> **(a)** to denounce unlawful conduct and **the harm done to victims or to the community that is caused by unlawful conduct**;
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> **(b)** to deter the offender and other persons from committing offences;
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> **(c)** to separate offenders from society, where necessary;
>
> **(d)** to assist in rehabilitating offenders;
>
> **(e) to provide reparations for harm done to victims or to the community**; and
>
> **(f) to promote a sense of responsibility in offenders, and acknowledgment of the harm done to victims or to the community**.

13 Although the sentencing provisions in the *Criminal Code* have changed and there are a couple of decisions that have found that these provisions cannot be applied retrospectively, these concepts are hardly new in criminal law. Rather, for the most part, it is a codification of what Judges have done for decades. During a sentencing hearing, a Judge has to engage in balancing the aggravating and mitigating features of the offender and the offence. An important consideration is how the conduct of an offender and the nature of an offence has harmed the victims, how their lives have been impacted and the consequences that criminal conduct has visited on innocent people. This essential information is provided by the victims of crimes. In addition, one of the goals of sentencing has always been to make reparations for the harm done to victims. Providing victims with a voice in the proceedings is one means to make reparations.

14 While some parts of the victim impact statements that were submitted in this case may be improper and I will not consider any fact that is not in evidence nor will it impact the outcome of the sentencing, this sentencing hearing is not just about the outcome. The process itself is an invaluable experience for all of the participants. It is an opportunity for Mr. C.C. to hear directly from the victims about the immense harm that his actions have caused which may achieve some of the principles of sentencing by deterring this offender from harming other children, promoting a sense of responsibility and encouraging rehabilitation. It is an opportunity to treat these victims with compassion and dignity by allowing them to voice their pain and suffering. It is a means to begin making reparations and a chance to start the process of healing. As result, the sentencing provisions allow for some flexibility to achieve a just result and a fair hearing while permitting the victims a fulsome opportunity to express themselves within some boundaries.

15 Section 722 of the *Criminal Code* provides direction about the expected form and contents of victim impact statements:

> (1) When determining the sentence to be imposed on an offender or determining whether the offender should be discharged under section 730 in respect of any offence, the court shall consider any statement of a victim prepared in accordance with this section and filed with the court **describing the physical or emotional harm, property damage or economic loss suffered by the victim as the result of the commission of the offence and the impact of the offence on the victim**.
>
> *And further*:
>
> (4) **The statement must be prepared in writing, using Form 34.2 in Part XXVIII**, in accordance with the procedures established by a program designated for that purpose by the lieutenant governor in council of the province in which the court is exercising its jurisdiction.

Presentation of statement

(5) **The court <u>shall</u>, on the request of a victim, permit the victim to present the statement by**

(a) reading it;

(b) reading it in the presence and close proximity of any support person of the victim's choice;

(c) reading it outside the court room or behind a screen or other device that would allow the victim not to see the offender; or

(d) **presenting it in any other manner that the court considers appropriate**.

Photograph

(6) During the presentation

(a) the victim may have with them a photograph of themselves taken before the commission of the offence if it would not, in the opinion of the court, disrupt the proceedings; or

(b) if the statement is presented by someone acting on the victim's behalf, that individual may have with them a photograph of the victim taken before the commission of the offence if it would not, in the opinion of the court, disrupt the proceedings.

Conditions of exclusion

(7) The victim shall not present the statement outside the court room unless arrangements are made for the offender and the judge or justice to watch the

presentation by means of closed-circuit television or otherwise and the offender is permitted to communicate with counsel while watching the presentation.

Consideration of statement

(8) **In considering the statement, the court shall take into account the portions of the statement that it considers relevant to the determination referred to in subsection (1) and disregard any other portion**.

Evidence concerning victim admissible

(9) **Whether or not a statement has been prepared and filed in accordance with this section, the court may consider any other evidence concerning any victim of the offence for the purpose of determining the sentence to be imposed on the offender or whether the offender should be discharged under section 730**

16 While none of the statements that were prepared in this case used Form 34.2 in Part XXVIII, this Court clearly has the discretion to receive the statements in their current written format. Two of the statements are written in the style of a conversation with Mr. C.C. as opposed to direct expressions to the Court about the impact these crimes have had on B.W. and her mother. They are, however, simply speaking to how Mr. C.C. hurt and betrayed them as opposed to attacking him or engaging in any vitriolic commentary.

17 In addition, each of the statements contain information that is not about the impact these crimes have had on the victims. It bears repeating that subsection 722(8) specifically states that I **shall** only take into account the portions of the statements that are admissible and relevant when I determine the appropriate sentence and I can "disregard any other portion" of these statements. I am acutely aware of my own findings of fact and that I specifically found that the Crown had not proven beyond a reasonable doubt the aggravating factor of "forced intercourse". I will not in any way be persuaded, influenced or confused by statements of facts in the victim impact statements that do not conform to my own ruling.

C. **Guiding case law**:

18 For more than two decades, Courts across Canada have acknowledged the importance of considering the impact of a crime on the victim when arriving at a just sanction. As Justice Hill emphasized in *R. v. Gabriel*, [1999] O.J. No. 2579 (Ont.S.C.J.) at paragraph 13:

> Assessment of the harm caused by a crime has long been an important concern of the law of sentencing and evidence of specific harm relates to assessment of an offender's moral culpability and blameworthiness.

19 Obviously, the contents of the victim impact statements may have some influence on the determination of a fit sentence. The Ontario Court of Appeal aptly observed in *R. v. A.G.*, [2015] O.J. No. 1217 at paragraph 73:

> ... it is not an error in principle for a sentencing judge to determine that the impact of the crime on a victim, as described in a victim impact statement, is an aggravating factor. If it were otherwise, victim impact statements would have limited utility and the mandate to consider them as part of the sentencing process found in s. 722 of the Criminal Code would be rendered meaningless.

20 Considering the significance of the contents of these statements during the sentencing process, it is understandable why, in the appropriate circumstances, Counsel may object to some or all of a statement if it creates the risk of or perception of unfairly influencing the outcome of the proceedings. Nonetheless, Jurists hear evidence on a daily basis during voir dires that we are presumed to be able to disabuse our minds of when deciding cases. The sentencing provisions of the *Criminal Code* recognize this ability and permit Judges to simply "disregard" any irrelevant information contained in the statements. This authority to disregard the inadmissible or irrelevant does not mean that there are no limits to the contents of a victim impact statement.

21 As noted above, the contents of the statements are directed by the statutorily proscribed form and section 722 clearly contemplates that these statements are to describe "the physical or emotional harm, property damage or economic loss suffered by the victim as the result of the commission of the offence and the impact of the offence on the victim." Before the amendments to the *Code* allowing Judges to disregard the irrelevant, in the decision of *R. v. McDonough*, [2006] O.J. No. 2199 (Ont.S.C.J.) Justice Durno directed that victim impact statements should not contain certain information and he emphasized the important role that the Crown plays in assisting victims with properly preparing and circumscribing these statements:

> **30** There are other comments that appear all too frequently in Victim Impact Statements that do not describe the harm done by or loss suffered as a result of the commission of the offence. While there is no exhaustive list of items that should be excluded from the statements, the following should not appear in Victim Impact Statements:
>
> * criticism of the offender, which has the potential to tilt the adversary system and risks the appearance of revenge motivation (*Gabriel*, at paras. 29-30).

* any comments that amount to "offender bashing". Since vengeance plays no role in sentencing, any comments directed at "getting the accused back" must be excluded: *R. v. Lerno* [2004] O.J. No. 2537 (Ont. C.A.) at para. 8.

* assertions as to the facts of the offence (*Gabriel* at para. 29).

* recommendations as to the severity of the punishment (*Jackson*, [2002] O.J. No. 1097 at para. 55).

* statements addressed to the offender. The Victim Impact Statement is not an opportunity to confront the offender and tell him or her what the victim thinks of him, her, or the crime.

31 It is the responsibility of the Crown to ensure that the statements comply with the section if they seek to have Victim Impact Statements introduced, regardless if they have been prepared through the Victim Witness Program (*Jackson*, para. 50). It is also the responsibility of Crown Counsel to determine in advance who is being asked to prepare the statements, and to give advice where required regarding the content of the report and who is entitled to prepare one.

22 Even with the flexibility permitted by subsection 722(8) of the *Criminal Code* for jurists to simply disregard the inadmissible or irrelevant content in a victim impact statement, there may be instances that warrant judicial intervention. This Court has the overriding authority to control its process. A Judge may choose to exercise that discretion and exclude inflammatory or offensive parts of victim impact statements that create the appearance of unfairness in the proceedings or reflect negatively on the integrity of the administration of justice.

23 It is imperative however, that this Court should not preclude victims from providing impact statements in their own words just because they operate unfortunately for the accused. The Supreme Court of Canada has repeated in a number of decisions that:

> Just because a piece of evidence operates unfortunately for an accused does not of itself render the evidence inadmissible or the trial unfair.
>
> *R. v. Corbett*, [1988] 1 S.C.R. 670 at pp. 724-25 (S.C.C.) *per* La Forest J., dissenting on other grounds

> An accused is entitled to a fair trial, not a trial in which the playing field is tilted in his or her favour.
>
> *R. v. Jesse*, [2012] 1 S.C.R. 716 at para 53 (S.C.C.)
>
> The accused is not entitled to a perfect trial. He is entitled to a fair trial ...
>
> *R. v. Khan*, [2001] S.C.J. No. 83 at para 72 (S.C.C.)
>
> This Court has also stated that s. 7 of the Charter entitles the appellant to a fair hearing; it does not entitle him to the most favourable procedures that could possibly be imagined.
>
> *R. v. Harrer*, [1995] 3 S.C.R. 562 at para 14 (S.C.C.)

24 I am presumed to be able to disabuse my mind of the inadmissible or irrelevant parts of the victim impact statements. Absent inflammatory language or highly prejudicial statements that may invite judicial vetting, the process contemplated by section 722(8) of the *Criminal Code* preserves the fair trial rights of Mr. C.C. by allowing me to disregard the contents that Counsel is objecting to in this Application. While this process may not be perfect from the Applicant's perspective, it is fair. It strikes an appropriate balance between the right of the offender to a fair trial and the rights of the victims to a fulsome opportunity to express the impact that his crimes have had on their lives.

25 In terms of the other available remedies proposed in the Application, Counsel relied significantly on the Ontario Court of Appeal's decision in *Klem Re*, [2016] O.J. No. 773 to provide this Court with other available options when faced with a dispute about the contents of victim impact statements. The *Klem* decision is clearly distinguishable because it was concerned with the conduct of a review board hearing which is governed by different procedures and considerations as outlined in section 672 of the *Criminal Code*.

26 I have however, found the decision of Justice Coroza in *R. v. Brown*, [2017] O.J. No. 4445 (Ont.S.C.J.), to be instructive in this case:

> 5 In my view, I should receive the remaining VIS. While many of the cases cited by counsel are applicable, many of them pre-date Amendments to s. *722* (Bill C-32, *An Act to enact the Canadian Victims Bill of Rights and to amend certain Acts*, SC 2015, c 13) ("CVBR") came into force on July 23, 2015.

6 Section *722* of the *Criminal Code* allows a victim of a crime to present a victim impact statement to the court describing the physical or emotional harm, property damage or economic loss suffered by the victim as the result of the commission of the offence and the impact of the offence on the victim.

7 Defence counsel have comprehensively set out many of the principles set out in the cases that were decided under former s. *722*. For example, the jurisprudence sets out that the victim impact statement should not contain criticisms of the offender, statements about the facts or presumed facts of the case, or material which appears to be an appeal to the sentencing judge to place a value on the life of the victim, or to compensate grief through the imposition of a harsh sentence.

8 Two decisions of this Court from two highly respected jurists (Justice Hill and Justice Durno) have directed Crown counsel to redact unacceptable material before the VIS are filed. There is also appellate authority that also approves of this approach (*citations deleted*)

9 I appreciate that the principles set out in the cases cited by defence counsel are applicable.

10 However, s. *722*(*8*) now provides that the court shall take into account the portions of the statement it considers relevant and disregard any other portion. It seems to me, that this provision recognizes that a sentencing hearing must be conducted efficiently. It explicitly permits a judge to receive the VIS, review it, and disregard any portion that is not relevant. I am not suggesting that VIS should not be redacted or excised in advance of the hearing. Clearly, the direction from my colleagues Justice Hill and Justice Durno should be followed.

11 However, in this case, given the importance of dealing with this hearing efficiently (the defence position is one of time served), the hearing should not be consumed by an issue that threatens to delay it. What must occur is a procedure that is efficient, fair to all parties and is consistent with Parliament's intent in enacting the CVBR.

12 I will provisionally accept the VIS. Pursuant to s. *722* (*8*), I will only take into account portions of the statement that I consider relevant and admissible. The written objections filed by defence counsel will be taken into account and also

> filed as an exhibit.
>
> 13 I am very much aware of my responsibility to ensure that I disregard irrelevant, prejudicial and inflammatory content. Further written reasons as to what I have considered in the VIS to be admissible will be given at a later date.
>
> 14 In my respectful view, this procedure strikes the appropriate balance. It protects the rights of the offenders by ensuring that I consider only relevant and admissible information in these statements and it also ensures that the expressions of victims to the sentencing judge are dealt with respectfully and sensibly.

27 There is nothing in the victim impact statements in this case that necessitates judicial intervention to ensure the appearance of fairness or protect the integrity of the administration of justice. I note, however, that it is unfortunate that the statements were prepared in this fashion without more guidance and supervision. Any reference to being "raped" should have been vetted out by the Crown. Moreover, there are really powerful statements of lasting victim impact which are obscured by irrelevant information, facts not in evidence and references to the outcome of these proceedings. Nevertheless, requiring the victims to rewrite their statements would be both insensitive and unnecessary.

28 All three victim impact statements will be admitted in their current form and read in Court without interruption immediately prior to the sentencing on September 5th. To be clear, I will specifically disregard the following information contained in the statements and it should not be relied on in any way in the written submissions with respect to the appropriate sentence in this case:

* Any reference to B.W. being raped or any other fact about the offences that is not contained in my written ruling;

* Any statements about the manner of or delay in the disclosure of these offences that has expanded on the evidence at trial;

* Any requests or suggestions about the appropriate sanction; or

* Any statements to Mr. C.C. about what the victims think of him or his crimes.

29 I will only consider the victim impact arising out of the offences that Mr. C.C. was convicted

of committing and the aggravating factors that were proven beyond a reasonable doubt included in my written reasons. I will consider the descriptions of the physical, emotional and psychological harm these offences have caused and the individual impact on each victim. This process "strikes the appropriate balance" by ensuring that both Mr. C.C. and the victims receive a fair hearing.

B.M. GREEN J.