

UNIFORM LAW CONFERENCE OF CANADA

REPORT OF THE CRIMINAL SECTION WORKING GROUP ON ENHANCED RESTITUTION FOR FRAUD VICTIMS

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Winnipeg

August 2011

Report of the Working Group

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INTRODUCTION

[1] At the 2010 proceedings of the criminal section of the Uniform Law Conference of Canada, Nova Scotia introduced the following resolution giving rise to this working group:

Victims of white collar crime and related offences, frequently bear costs that are not presently covered by the restitution provisions of the Criminal Code. These costs for items such as forensic audits can be significant. A criminal section working group should be formed to examine these issues, with the possible participation of the civil section.

[2] This resolution passed 21-0-2. In furtherance of this resolution, this paper was drafted by Joshua B. Hawkes, Q.C., Ronald MacDonald, Q.C., and Marina Ivanova. Several members of the Criminal Section were kind enough to review the report and provide their comments which were gratefully received.

[3] The working group concluded that an addition to the restitution provisions of the *Criminal Code* to address this narrow addition to the restitution provisions is justified. Further, the group is of the view that joint work with the civil section might be appropriate to examine ways in which victims are being assisted in the enforcement of these orders. Best practices could be shared, particularly in light of the expertise of that section as reflected in the *Uniform Enforcement Of Canadian Judgments And Decrees Act*, and subsequent amendments to that Act to reflect changes in the *Criminal Code*.¹

[4] In coming to this conclusion, the group examined the relevant case law regarding ancillary costs, such as forensic audits, the historical origin and development of restitution in the criminal law, the constitutional and policy constraints on restitution in this context, and an examination of similar provisions in foreign jurisdictions.

The Current Case Law

Report

Criminal Section Working Group

Restitution for Fraud Victims

[5] Section 738 (1)(a) of the *Criminal Code* provides the statutory basis for restitution orders in cases of theft or fraud. Earlier versions of this section have been interpreted in a way that suggests that the costs of a forensic audit as contemplated in the Nova Scotia resolution would not be covered by these provisions. Case law addressing analogous claims for restitution is described in the following passages.

[6] For ease of reference, section 738(1)(a) is reproduced as follows:

(1) Restitution to victims of offences — Where an offender is convicted or discharged under section 730 of an offence, the court imposing sentence on or discharging the offender may, on application of the Attorney General or on its own motion, in addition to any other measure imposed on the offender, order that that offender make restitution to another person as follows:

(a) in the case of damage to, or the loss or destruction of, the property of any person as a result of the commission of the offence or the arrest or attempted arrest of the offender, by paying to the person an amount not exceeding the replacement value of the property as of the date the order is imposed, less the value of any part of the property that is returned to that person as of the date it is returned, where the amount is readily ascertainable.

[7] The scope of the present provisions in relation to expenses associated with forensic audits is determined by the language in that section restricting restitution orders to damage, loss, or destruction of property as a result of the commission of the offense or the arrest of the offender.

[8] In *R. v. Devgan*, the Ontario Court of Appeal considered the propriety of a restitution order which included compensation for legal fees and disbursements incurred by one of the victims in a mortgage fraud. These fees and disbursements were incurred as a result of the mortgage fraud itself, and not a subsequent civil suit for recovery of damages.² The Court concluded that these fees and disbursements could not properly be included within the scope of a restitution order, as the section made no provision for the recovery of such fees even if they were related to the loss or damage occasioned by the criminal conduct.³ The Supreme Court of Canada denied leave to appeal from this decision.⁴

[9] Similar decisions had been reached by other appellate courts in relation to other types of loss. For example, in *R. v. Brunner* the Alberta Court of Appeal overturned the portion of a restitution order intended to provide compensation for the loss of rents or profits arising from the loss of property.⁵ Coverage of these consequential losses would convert the restitution scheme in the *Criminal Code* into something more closely resembling a civil rather than a criminal action. A key observation by the Court was that the recognition of such derivative losses would also shift the focus from restitution as a component of a just sentence for the offender, to a focus on restoring the victim to their original or initial position.⁶ For this reason, the Court also observed that interest is not properly included as the subject of a restitution order.⁷ It should be noted that the Court did not refer to the 1995 amendments to the restitution provisions of the *Criminal Code* relating to specified consequential amendments for victims of violent crime. These amendments will be described in greater detail below.

[10] Trial courts in various jurisdictions have reached similar conclusions with respect to claims for interest⁸, or other consequential expenses incurred by victims.⁹

[11] While all of these decisions were based on earlier versions of the present statutory provisions, the critical language as to the scope of the provisions upon which these decisions are based has not changed. However, the reach of these provisions has been gradually expanded to cover an increasing range of losses, including consequential costs in specified circumstances.

Historical Origin and Development

[12] Stand alone restitution orders have a long history in the criminal law of Canada. In fact, they were found in the *Criminal Code* in 1892, with some striking parallels to the modern provisions. Sections 836 and 837 of that *Code* provided:

836. Compensation for loss of property — A court on the trial of any person on an indictment may, if it thinks fit, upon the application of any person aggrieved and immediately after the conviction of the offender, award any sum of money, not exceeding one thousand dollars, by way of satisfaction or compensation for any loss of property suffered by the applicant through or by means of the offence of which such person is so

convicted; and the amount awarded for such satisfaction or compensation shall be deemed a judgment debt due to the person entitled to receive the same from the person so convicted, and the order for payment of such amount may be enforced in such and the same manner as in the case of any costs ordered by the court to be paid under section eight hundred and thirty-two.

837. Compensation to bonâ fide purchaser of stolen property — When any prisoner has been convicted, either summarily or otherwise, of any theft or other offence, including the stealing or unlawfully obtaining any property, and it appears to the court, by the evidence, that the prisoner sold such property or part of it to any person who had no knowledge that it was stolen or unlawfully obtained, and that money has been taken from the prisoner on his apprehension, the court may, on application of such purchaser and on restitution of the property to its owner, order that out of the money so taken from the prisoner, if it is his, a sum exceeding the amount of the proceeds of the sale be delivered to such purchaser.

[13] Initially, the scope of restitution was described as "satisfaction or compensation for any loss of property suffered by the applicant through or by means of the offense."¹⁰ These provisions remained essentially unchanged until amendments in 1953-54, which removed the limit of \$1,000. Apart from changes in 1968 to streamline the wording of the provision relating to money found on the accused, the sections remained essentially unchanged until 1985.

[14] In 1985, the structure of the provisions was modified to explicitly affirm that restitution was a part of the sentence, and that restitution orders were to be considered within that context. This essentially codifies the position taken both by the Law Reform Commission of Canada in its 1974 working paper report on the issue, and the subsequent decision of the Supreme Court of Canada in *R. v. Zelensky*, both of which will be described in greater detail later in this report.

[15] The next significant amendments occurred in 1992, when restitution for pecuniary damages, including loss of income or support incurred as the result of bodily injury were added to the restitution provisions, where these amounts were "readily ascertainable". In 1995, the restitution provisions were streamlined. They were also broadened to include losses or damages arising out of the arrest or attempted arrest of the offender in addition to losses arising as a result of the commission of the offense. All compensable losses or

damages had to be "readily ascertainable". The threshold both for damage or destruction or loss of property, or costs arising as a result of bodily harm were still to be based on loss suffered "as a result of the commission of the offense or the arrest or attempted arrest of the offender."

[16] Significantly, the provisions were also broadened to cover consequential expenses incurred in the case of bodily harm or threat of bodily harm to members of the offender's household where expenses were incurred as a result of moving out of the household for temporary housing, food, child care, and transportation where those expenses were reasonable and readily ascertainable. No reported challenges to the constitutional validity of the addition of these consequential expenses have been found.

[17] In 2005, the provisions were further broadened to cover bodily and "psychological harm". Finally, in 2009, the provisions were expanded to cover reasonable expenses necessary to reestablish the identity, including expenses to replace identity documents, and to correct credit history and credit ratings for the victims of specified identity theft offenses.

[18] In summary, the restitution provisions in the *Criminal Code* have undergone significant expansion in several phases. First, they were expanded to cover losses suffered as a result of bodily harm and; thereafter, losses to property or bodily harm arising out of the arrest or attempted arrest of the offender. Subsequently, they were further expanded to cover losses arising from psychological harm. Most significantly in 1995 and 2009, they have been broadened to cover specified forms of additional or consequential expenses incurred by victims.

[19] For completeness, it should also be noted that it was possible to order restitution for any amount reflecting the actual damage or loss caused to a person or persons aggrieved or injured by the offense as a term of probation beginning in 1921. While these provisions remain available, they were not the subject of detailed consideration by the working group. Probation orders are only available in conjunction with sentences of less than two years incarceration, and the orders may not exceed three years in duration.¹¹

In light of these and other limitations relating to enforcement of these conditions in a

probation order, the group felt that it would be more productive to examine the issue in light of stand alone restitution orders.

Constitutional Context

[20] The leading case addressing the constitutional parameters of the restitution provisions in the *Criminal Code* remains the decision of the Supreme Court of Canada in *R. v. Zelensky* in 1978. At issue in the case was whether the restitution provisions in the *Code* were a proper expression of the federal criminal law power as opposed to an unwarranted intrusion into provincial jurisdiction over property and civil rights. In resolving this issue, the court noted that they were not addressing a:

*"novel form of relief to persons aggrieved by another's criminal conduct, resulting in the loss or destruction of property,, but with one in respect of which the novelty is that no challenge has come to this court on the matter until now."*¹²

[21] In part, the absence of such a challenge may be a reflection of the fact that these powers were not regularly used, despite their long history in the *Code*. Speaking of these provisions in its 1974 report on restitution the Law Reform Commission of Canada characterised these provisions as "little-used". A review of cases from 1967 to 1972 revealed that restitution was recorded for only six convictions or in approximately 0.1% of the sentences imposed during that period.¹³

[22] The majority of the court concluded that compensating victims of crime was a valid objective of the criminal law, and that divesting the offender of the profits of crime was also a valid exercise of the criminal law power.¹⁴ The linkage of these powers to the responsibility to impose a fit sentence was the key consideration in upholding the constitutional validity of these provisions. Further, the majority noted that these orders were discretionary in nature, and that courts should properly consider a broad range of circumstances in determining whether or not to make the order. Restitution orders would be improper if they would require the court to "unravel involved commercial transactions in order to provide monetary redress to those entitled thereto as against the accused."¹⁵ The court also provided a list of factors to be considered in exercising this discretion in

relation to restitution orders to ensure that restitution orders remained focused on proper sentencing objectives. Those factors included considerations such as the means of the offender, whether a civil action was being pursued, whether the determination of the amount of loss would involve a criminal court in lengthy or detailed hearings on that issue, or whether the offender had an interest in exercising the civil processes such as discovery of documents etc. They also noted that such orders should be made with "restraint and caution."¹⁶ In this particular case, the fact that the corporate victim commenced a civil suit the day before the criminal charges were laid, and that they were actively pursuing that suit were strong factors militating against making the order.

[23] These principles have been attenuated somewhat in subsequent case law, particularly with respect to the significance of restitution orders in cases of fraud. For example, in 1990, the Supreme Court of Canada emphasized that the fact that an offender was an undischarged bankrupt at the time of sentencing should not preclude a restitution order, and that the fact that such an order would survive bankruptcy is not a factor affecting the validity of such an order. They also noted the very strong interest in depriving the offender of the benefits of his crime, particularly, where that crime involved a fraudulent breach of a position of trust.¹⁷

[24] There is a significant body of provincial appellate court authority to the same effect, emphasizing both the importance of restitution orders as an appropriate sentencing measure to deprive the offender of the benefits of their crime and provide some relief to the victim. These objectives may in fact properly outweigh the current ability of the offender to make restitution.¹⁸

[25] The Ontario Court of Appeal summarized these principles as follows:

... [A] restitution order is simply part of the determination of an overall fit sentence, and general sentencing principles apply. While consideration of the offender's ability to pay and the impact of a restitution order on an offender's rehabilitation are factors to be considered, the weight to be given to these factors will vary depending on the nature of the offence and the circumstances of the offender. When the offence involves a breach of trust, a primary consideration is the effect on the victim; rehabilitation is a secondary consideration. Furthermore, consideration of the ability to

*pay includes the ability to make payment from the money taken as a source of restitution.*¹⁹

Policy Considerations

[26] In its 1974 review of restitution and compensation, the Law Reform Commission of Canada observed:

*There is nothing in the Criminal Code to suggest that restitution should be seen as a sanction in its own right and nothing to tie restitution to a theory of sentencing or criminal law. The isolated provisions related to restitution of property and compensation for property loss appear to be historical carry-overs from English legislation that were grudgingly grafted onto the penal law in order to save victims the expense of a civil suit to regain stolen property or secure compensation.*²⁰

[27] The Commission was of the view that restitution should become a central consideration in sentencing and dispositions, and that restitution should receive consideration in the sentencing for most offenses.²¹ They noted that restitution not only accorded with common sense notions of justice but also established a social practice. In addition, they observed that restitution could play a significant role in removing the profits from criminal activity. Finally, they observed that increased use of restitution as a sanction would restore some of the balance as between the interests of the state and those of the victim in the criminal trial.²²

[28] While the restitution provisions have been expanded, as noted in the history above, that reform has not been as extensive or fundamental as the Commission recommended. Nevertheless, this proposed incremental change is not inconsistent with the rationale advanced by the Commission, or as endorsed by Courts both in and following the decision of the Supreme Court of Canada in *R. v. Zelensky*.

International Developments

[29] The constitutional division of powers between the federal criminal law power, and the provincial jurisdiction over property and civil rights imports a unique constitutional constraint on the scope of restitution in Canada. While that unique distinction is not present in many foreign jurisdictions, reference to the approaches taken internationally

may nevertheless be instructive. That is particularly the case where there are questions as to the propriety of injecting what are otherwise considered civil remedies into the criminal law.

[30] Inclusion of the forensic audit costs of fraud victims in the restitution provisions of the *Criminal Code* is consistent with international declarations, and the experience of other comparable jurisdictions.

[31] In 1985, the General Assembly of the United Nations adopted the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power. Included in that declaration was the following provision relating to restitution:

*Offenders or third parties responsible for their behaviour should, where appropriate, make fair restitution to victims, their families or dependants. Such restitution should include the return of property for payment for the harm or loss suffered, reimbursement of expenses incurred as a result of the victimization, the provision of services and the restoration of rights.*²³

[32] In relation to the availability of restitution many other jurisdictions have very broad powers, or are examining expansion of the scope of restitution as part of the sentencing process. For example, all states in the United States provide for authority for a criminal court to order restitution.²⁴

[33] In many states, the law requires restitution but allows broad exceptions to that rule. For instance, Connecticut and Nevada both require restitution “if restitution is appropriate.” Oregon provides that restitution shall be ordered “whenever possible.” Regardless of whether restitution is mandatory, about one-quarter of all states require courts to state on the record the reasons for failing to order restitution or for ordering only partial restitution. This requirement is thought to further encourage courts to consider restitution to the victim when sentencing convicted offenders.²⁵

[34] Where victims have a clear statutory right to restitution, the right has been found to apply to cases that result in a plea agreement. The California Court of Appeal ruled that restitution must be a part of every sentence, regardless of a plea agreement to the contrary:

*“The Legislature left no discretion or authority with the trial court or the prosecution to bargain away the victim’s constitutional and statutory right to restitution. As such, it cannot properly be the subject of plea negotiations.”*²⁶

[35] Oklahoma statutes expressly require that restitution to the victim be part of every plea agreement. Florida requires that an order of restitution entered as part of a plea agreement is as definitive and binding as any other order of restitution, and a statement to such effect must be made part of the plea agreement.²⁷

[36] Although most restitution laws apply to crime victims in general, many states have enacted specific directives to order restitution to victims of particular offenses, such as crimes against the elderly, domestic violence, sexual assault, hate crimes, child abuse, child sexual abuse, drunk driving, and identity fraud.

[37] Restitution may be ordered to cover numerous crime-related expenses incurred by a victim. Typically, statutes specify that the following may be included in setting the restitution amount:

- Medical expenses are defined as medical services and devices (often including nonmedical care and treatment rendered in accordance with a recognized method of healing), physical therapy, and rehabilitation.²⁸
- Lost wages can include time lost from work because of participation in the court process.²⁹ Courts have even applied this to self-employed individuals who have had to close a business or cease working while testifying.³⁰ California law specifies that parents can receive restitution for wages lost while caring for an injured minor victim.³¹ Although Arizona statutes are not so specific, its Court of Appeal has interpreted that statute to reach the same conclusion: the “parents . . . stood in the shoes of the victim and were entitled to restitution for their lost wages incurred while taking her to medical appointments and juvenile court hearings on this case.”³²
- Counselling expenses are generally recoverable. Many states extend restitution for counseling expenses to victims’ family members as well. Some states limit family counseling expenses to cases of homicide,³³ whereas others

allow such expenses whenever the counseling is related to the commission of the offense.³⁴

- Lost or damaged property.³⁵
- Funeral expenses – in homicide cases, a family’s funeral and travel expenses and the ordinary and reasonable attorney fees incurred in closing the victim’s estate have been found to be proper restitution items.³⁶ Other funeral expenses that might be covered include a headstone, flowers, chapel music, minister honorarium, and chapel fees.³⁷
- Other direct out-of-pocket expenses directly related to the crime. In cases of identity fraud, this may include expenses for correcting a victim’s credit history and costs incurred in any civil or administrative proceeding needed to satisfy any debt or other obligation of the victim, including lost wages and attorney fees.³⁸

[38] Many states authorize courts to order defendants to pay interest on the restitution. For example, California law provides that a restitution order shall include interest, at the rate of 10 percent per annum that accrues as of the date of sentencing or loss, as determined by the court.³⁹ In some states, attorney fees are also recoverable. In Oregon, attorney fees have been found by the courts to be recoverable as special damages; if incurred to ensure indictment and criminal prosecution, the victim may later file a civil suit.⁴⁰ California restitution statutes provide for recovery of attorney fees and costs incurred for collecting restitution.⁴¹

[39] In some states, future damages can be awarded. Iowa law specifically provides for future damages, stating that where the full extent of the loss is not known at the time of sentencing, the court is to issue a temporary order for a reasonable amount of restitution identified at that time. The court is authorized to issue a permanent supplemental order at a later date, setting out the full amount of restitution.⁴² The Arizona Court of Appeal ruled that future damages were a permissible restitution element, reasoning that disallowing future expenses would defeat the legislative purpose of restitution, which is to make the victim whole.⁴³

[40] Meanwhile, states like Wyoming have a detailed statutory scheme for ordering restitution for long-term medical expenses. Under its law, the court is to consider and include as a special finding each victim’s reasonably foreseeable actual pecuniary damage that will result in the future as a result of the defendant’s criminal activity.⁴⁴ Thus, a restitution order for long-term physical health care must be entered for any such damages.

[41] In the United Kingdom there is authority for restitution of property in conjunction with a criminal proceeding by virtue of section 30 of the *Criminal Justice Act 1988*. An expansion of this power to cover victims not listed in the indictment was announced in 2009.⁴⁵

[42] In addition, there is a broad compensation scheme addressing direct and indirect costs incurred as a result of violent criminal activity.⁴⁶

[43] In all Australian jurisdictions, except Western Australia, there is power to order—as a sentencing option—that an offender pay compensation for loss, injury or damage as a consequence of an offence. In Western Australia, the power to order compensation is restricted to property damages or property offences.⁴⁷

[44] The “fundamental purpose” of such powers is to give victims “easy access to civil justice” as Bell, J. has explained:

When an offender has been dealt with by the courts, the judge can be in a good position to consider the issue of compensating the victim. The factual circumstances relevant to compensation may have been fully or at least sufficiently established by the evidence led or the admissions made by the offender. It can be clear that the offender’s crime has caused loss or damage to the victim. Once the court receives evidence of the extent and value of such loss or damage, it can then expeditiously determine whether and what compensation to order. This saves the victim the time, expense, inconvenience and possible additional trauma of having to institute a civil proceeding. Not doing so may deprive the victim of ready access to just compensation, leaving them with an understandable sense of grievance.⁴⁸

CONCLUSION

[45] Incorporating a form of restitution into the sentencing process of the criminal law is a well-established principle with broad acceptance in Canada and internationally. The restitution provisions in the *Criminal Code* have expanded to recognize other consequential costs incurred by victims. To extend those provisions to cover forensic audit costs incurred by fraud victims, while retaining the caveats described by the Supreme Court of Canada in *R. v. Zelenski*, and in the case law that followed as described in paragraphs 22 – 25 above, could be consistent with the incremental expansion reflected in the historical development of these powers.

[46] Confining our consideration solely to the issue of the ability of courts to make these orders may miss other equally important considerations regarding the enforceability of these orders. For example, jurisdictions may wish to consider whether special civil enforcement provisions or powers should apply with respect to restitution orders, or whether some standardized assistance to victims should be provided in relation to the filing and enforcement of these orders. These considerations, together with the exchange of best practices could form the basis for further work in this area by a joint working group of the Criminal and Civil sections of the Conference.

[47] However, delegates to the Criminal Section of the Conference raised a number of issues at their August 2011 meeting, including the concern that expanding the restitution provisions of the *Criminal Code* to cover forensic audit costs where those audits had been undertaken at the request or direction of law enforcement might give rise to broader policy concerns. For example, if a forensic audit was considered as a requirement or pre-condition for further police investigation or the laying of charges, that could be considered a shifting of the costs of an investigation from the public to the victim. The propriety of such a shift, coupled with the implications of an expansion of the restitution provisions of the *Code* that may either encourage or give tacit approval to that shift, are policy issues that would require further analysis before a final conclusion could be reached.

ENDNOTES

¹ Both *The Uniform Enforcement Of Canadian Judgments And Decrees Act*, and *The Uniform Enforcement Of Canadian Judgments And Decrees Amendment Act* are available on the ULCC website at <http://www.ulcc.ca/en/us/index.cfm?sec=1>

² *R. v. Devgan*, 1999 CarswellOnt 1534 (Ont. C.A.)

³ *Devgan*, *supra*, at para's 32, 35

⁴ Leave to appeal to the Supreme Court of Canada denied on March 23, 2000 at 2000 CarswellOnt 912(S.C.C.)

⁵ *R. v. Brunner* 1995 CarswellAlta 96 (Alta. C.A.)

⁶ *Brunner*, *supra*, at para 6

⁷ *Brunner*, *supra*, at para 7

⁸ *R. v. Naumenko*, 1999 CarswellBC 2448 (B.C.S.C.)

⁹ *R. v. Johnston* 2005 CarswellOnt 8330, (Ont. S.C.J.), varied in other respects by the Ontario Court of Appeal reported at 2006 CarswellOnt 1371 (Ont.C.A.)

¹⁰ For a complete review of the history of these sections, see *Crankshaw's Criminal Code of Canada*, Legislative History s.738 available online at http://canada.westlaw.com/find/default.wl?serialnum=280369008&rp=%2ffind%2fdefault.wl&sv=Split&rs=WLCA11.07&findtype=Y&fn=top&mt=CriminalPro&vr=2.0&pbcc=F3620F0E&RLT=CLID_FQRLT1688405917188&TF=756&TC=1&n=1 (subscription required)

¹¹ Sections 731(1)(b) and 732.2(2)(b) of the *Criminal Code*

¹² *R. v. Zelensky* [1978] 2 S.C.R. 940 at 951 (S.C.C.)

¹³ Law Reform Commission of Canada, Working Papers 5, *Restitution and Compensation*, October 1974, pages 9, 11

¹⁴ *Zilenskey*, *supra*, at pages 955-56

¹⁵ *Zelensky*, *supra*, at page 962.

¹⁶ *Zelensky*, *supra*, at page 961

¹⁷ *R. v. Fitzgibbon* [1990] 1 S.C.R. 1005 at pages *(S.C.C.)

¹⁸ See for example, *R. v. Scherer* (1984) CarswellOnt 79 (Ont. CA.) at para's 26, 30-31, *R. v. Johnson* 2010 CarswellAlta 2445 (Alta. C.A.) at para's 23-30, *R. v. Wood* (2001) CarswellNS 72 (N.S.C.A.) at paragraphs 183-188, *R. v. Castro* (2010) CarswellOnt 8120 (Ont. C.A.) at paragraphs 29, 33-35

¹⁹ *Castro*, *supra*, at paragraph 35

²⁰ *Law Reform Commission*, *supra*, at page 9

²¹ *Law Reform Commission*, *supra*, at page 14

²² *Law Reform Commission*, *supra*, at pages 5-7

²³ *Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power*, article 8, available online at <http://www2.ohchr.org/english/law/victims.htm>

²⁴ Right to Restitution, *Ordering Restitution to the Crime Victim*, *Legal Series Bulletin #6*, November 2002, online: Office for Victims of Crime,

<http://www.ncjrs.gov/ovc_archives/bulletins/legalseries/bulletin6/2.html>. (Right to restitution)

²⁵ Restitution, online: An Abuse, Rape and Domestic Violence Aid and Resource Collection, last updated May 5, 2011 <<http://www.aardvarc.org/victim/restitution.shtml>> (Restitution)

²⁶ *People v. Valdez*, 24 Cal. App. 4th 1194, 30 Cal. Rptr. 2d 4. (1994, 5th Dist.)

²⁷ Restitution, *supra*

²⁸ FLA. STAT. ANN. § 775.089 (West 2000)

²⁹ ALA. CODE § 15-18-66 (2001); *People v. Nguyen*, 23 Cal. App. 4th 32, 28 Cal. Rptr. 2d 140, *modified on other grounds, reh'g denied*, 23 Cal. App. 4th 1306e (6th Dist. 1994)

³⁰ *State v. Russell*, 126 Idaho 38, 878 P.2d 212 (Ct. App. 1994)

³¹ CAL. PENAL CODE § 1202.4 (2002)

³² *In re Erika V.*, 983 P.2d 768; 297 Adv. Rep. 55 (1999)

³³ N.H. REV. STAT. ANN. § 651:62 (2000)

³⁴ MICH. STAT. ANN. § 28.1073 (2000)

³⁵ Right to Restitution, *supra*
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- ³⁶ *State v. Spears*, 184 Ariz. 277, 292, 908 P.2d 1062 (1996)
- ³⁷ *State v. Blanton*, 173 Ariz. 517, 520, 844 P.2d 1167 (Ct. App. 1993)
- ³⁸ MASS. GEN. LAWS ch. 266, § 37E (2001); see also Mark Hamblett, “2nd Circuit: Attorney Fees and Accounting Costs Part of Restitution”, online: New York Law Journal, August 25, 2008 <<http://www.law.com/jsp/article.jsp?id=1202424013342&slreturn=1&hbxlogin=1>>
- ³⁹ CAL. PENAL CODE § 1202.4 (Deering 2001). See also IDAHO CODE § 19-5304 (Michie 2000); KY. REV. STAT. ANN. § 532.164 (Michie 2001); UTAH CODE ANN. § 76-3-201 (2000)
- ⁴⁰ *State v. Mahoney*, 115 Or. App. 440, 838 P.2d 1100 (1992), Sup. Ct. review denied, as modified by 118 Or. App. 1, 846 P.2d 413 (1993)
- ⁴¹ *State v. Mahoney*, 115 Or. App. 440, 838 P.2d 1100 (1992), Sup. Ct. review denied, as modified by 118 Or. App. 1, 846 P.2d 413 (1993)
- ⁴² IOWA CODE § 910.3 (2001)
- ⁴³ *State v. Howard*, 168 Ariz. 458, 459–60, 815 P.2d 5 (Ct. App. 1991)
- ⁴⁴ WYO. STAT. ANN. § 7-9-103 (2001)
- ⁴⁵ *Criminal Justice Measures to Enhance Fraud Prosecutions to be Introduced*, announcement available online at <http://www.attorneygeneral.gov.uk/NewsCentre/Pages/CriminalJusticeMeasuresToEnhanceFraudProsecutionsToBeIntroduced.aspx>
- ⁴⁶ This compensation regime is operated by the Criminal Injuries Compensation Authority. The scope and procedures governing claims for compensation are described on the CICA website at <http://www.justice.gov.uk/guidance/compensation-schemes/cica/am-i-eligible/index.htm>
- ⁴⁷ Purposes of Laws Relevant to Family Violence, Victims’ compensation; Family Violence - A National Legal Response (ALRC Report 114), online: Australian Government <<http://www.alrc.gov.au/publications/4.%20Purposes%20of%20Laws%20Relevant%20to%20Family%20Violence/victims%20E2%80%99-compensation>>, at para. 4.114
- ⁴⁸ *Ibid*, at para. 4.115