BALANCING THE SCALES:
THE STATE OF VICTIMS' RIGHTS IN CANADA

A REPORT PREPARED BY THE CANADIAN RESOURCE CENTRE FOR VICTIMS OF CRIME

FOREWORD

The Canadian Resource Centre for Victims of Crime is a non-profit national lobby group that advocates for victims' rights and an effective justice system. Formed in 1993 by the Canadian Police Association, the Centre has literally helped hundreds of victims of crime. The Centre has made dozens of presentations to both the Commons Justice Committee and the Senate Justice Committee on issues that affect victims of crime and potential victims of crime.

Emerging as a leader in the fight for victims' rights, the Centre works with many victims' advocates and groups across the country. Because of this, the Centre formed the National Justice Network. The NJN is a grassroots network system of victim advocates/groups. Through the Centre, groups can share information and are kept up to date on legislation affecting victims.

The following report is a compilation of the insight of the crime victims the Centre has worked with and helped over the last five years. The recommendations are based not on academic research, but on the real life experiences of people. It is to them that this report is dedicated. Their courage and bravery in the face of such tragedy and pain is an inspiration to all of us who work with them, and for them. It is our hope that this report will help ease the suffering of those who will unfortunately become victims in the future.

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INTRODUCTION

"There is no such thing as a victim, it is just a state of mind." Defence Attorney Russ Chamberlain, Vancouver Sun, Feb.28/96;

"I don't know what you people are so upset about. Eleven children could just have easily been killed in a bus accident. If they're dead, they're dead." Vancouver Crown Attorney John Hall to parents of children murdered by serial child killer Clifford Olson.

"...the victim is twice victimized: once by the offence and once more by the process." Federal-Provincial Task Force on Justice for Victims of Crime, 1983.

It was the first time they had met in over ten years, but an outsider would never know they had ever been apart. Time or distance has not broken the bond that has held them together for over seventeen years; it likely never will. When the families of the children murdered by serial killer Clifford Olson gathered in Vancouver to attend his pre-745 hearing, the reunion was bittersweet - happy to see each other again; angry at the reason why.

Fifteen years ago, they found strength in each other because there was no where for them to turn to for help. The Crown, police and politicians ignored them, as if they did not exist. Sixteen years later, as some of those same people traveled once again to BC for Olson's judicial review hearing, things have changed.

No longer did they have to stand-alone. At a press conference in March, many of the families joined the BC Federation of Police Officers, the Canadian Police Association, victims' advocates and politicians to condemn the Federal Government for allowing the hearing to take place.

Their phone calls were no longer ignored. The Crown Attorneys handling the case kept them updated throughout the process, from the pre-trial hearing in March to the judicial review hearing in August/1997. They met with the victims before and after each day of court. The families were given a tour of the courthouse before the hearing began so they knew where to go and what to expect. Victim service workers were with the families constantly to provide a shoulder to cry on and a hand to hold whenever it was needed.

The difference in treatment they received in 1997 to that they received in 1981 was obvious, and a clear indication of how far victims have come. Yet at the same time the reason why they were gathered together once again was an indication of how far victims had yet to go.

It has been said that victims are the forgotten orphans of the justice system. The treatment they receive is too often lacking in even the minimal respect they deserve. Despite some official recognition by the system, many of those who work within the system refuse to recognize that victims do have a role to play in the justice system. As a result, many victims feel like outsiders.

Many years ago, the criminal justice system consisted of two parties - the offender and the victim. The victim initiated and handled the prosecution of the offender. That scenario is a far cry from the one we have today where the only two parties involved are the offender and the state, and where the victim is at most a witness for the prosecution. Today, a crime is considered to have been committed against the state, not the victim.

Through years of determination and hard work, the voices of victims have been heard. Change began when victims themselves began to speak out and question the system and its shortcomings. In the beginning, they were often dismissed as being too emotional or only motivated by vengeance. When police and others within the system began to validate what the victims were saying, and supported their message, people began to take notice. The police are most often a victim's first contact within the justice system and the police observe how victims' needs and interests are often ignored.

Today, it is not uncommon to see the police and victims groups calling for similar changes to the justice system. Both groups have unique perspectives on crime B the police are the people that enforce our laws and the victims are those who are most affected by crime. The Canadian Police Association saw a need for an independent victims' lobby group and in 1993 they formed the Canadian Resource Centre for Victims of Crime (CRCVC).

One only has to look at the impact of the feminist voice since the 1970's and the results they obtained for women victimized by domestic violence and sexual assault. In Canada, since the early 1980's, victims' organizations like Citizens United for Safety and Justice, Victims of Violence and CAVEAT have convinced various Governments that the role of the victim in the process is an important one. Changes with regards to the Criminal Code and victims' rights legislation are a direct result of the courage displayed by victims who have allowed society to benefit from their experiences with the system. Their influence is not limited to ensuring that victims have their rights respected throughout the process, but also with regards to legislation that will prevent future victims.

While no one really wants to return to the days where the victim was the "judge, jury and executioner," victims do want their role in the system formally accepted. They want their voices heard and opinions considered. They want the system and its players to recognize that they are important, and that they do have a stake in the outcome of the case. It was, after all, their lives that were the most affected by the crime. When the lawyers, judges and reporters go on to the next "case" and the offender begins to serve his sentence which in most cases will end one day (assuming a conviction was even obtained), the victim has to cope with the crime for the rest of his/her life.

Victims have had a profound and positive impact on the justice system. Legislation that recognizes the needs of victims has been enacted in most provinces and territories. Programs to compensate victims for losses incurred as a result of a crime exists in almost every province. The Criminal Code and the Canada Evidence Act have been amended to give victims a voice at sentencing hearings and to make it easier for young victims to testify in court.

But who is ultimately responsible for victims and ensuring that the system responds to their needs: the Federal Government or the Provinces? The answer is both. Like anything in the field of criminal justice, it is the Federal Government, which enacts and reforms law (mainly in the Criminal Code) and it is the provinces that have the responsibility of the enforcement, administration and prosecution of those laws. Therefore, both the Federal and

Provincial Governments have an equally important role with regard to victims of crime.

In 1981, a Federal-Provincial Task Force on Victims of Crime was formed. It submitted its report in 1983 and made over 75 recommendations regarding the prompt return of a victim's property, restitution, compensation, victim impact statements, and access to information.

In 1988, prompted by the United Nations Declaration of Basic Principles of Justice for Victims of Crime, the Federal Minister of Justice entered into an agreement with his provincial/territorial counterparts concerning victims and their treatment by the system. All Canadian Ministers of Justice agreed to adopt a uniform policy statement of victims' rights that would be used to guide their legislative and administrative initiatives in the area of criminal justice. The statement of principles (see Appendix 2) reads that victims should be treated with courtesy and compassion, should receive prompt and fair redress for the harm they suffered, information regarding services available, information about the system and the progress of the case, and that their views should be considered.

In 1996, the Reform Party of Canada introduced a motion in the House of Commons to have the concept of a National Victims' Bill of Rights examined by the Standing Committee on Justice and Legal Affairs. As part of the motion, a draft bill was presented (see Appendix 3) which addressed issues such as information about services, information about the progress of the case and the offender, information about plea bargains, and the right of sexual assault complainants to know if their alleged attacker is HIV positive.

Victims' rights have amounted to much more than reports and vague principles. Over the years several amendments have been made to the Criminal Code respecting victims of crime. In 1988, Bill C-89 was passed and it amended the Code to allow victims to present victim impact statements at the time of sentencing, created provisions for restitution (which were never proclaimed because the cost benefit analysis showed the cost of the implementation of the program would outweigh the benefits to the victim), gave judges the

power to impose publication bans on the identity of victims and witnesses in sexual assault cases and impose victim fine surcharges, etc.

In 1988, Bill C-15, "An Act to Amend the Criminal Code and the Canada Evidence Act" became law and in 1993, Bill C-126 was adopted. Bill C-126 built on Bill C-15 and together, the bills provided further protection for child witnesses. An accused person who represents him/herself could be prevented from cross-examining a child complainant/witness. Child witnesses could have a support person with them when they testify. Videotapes of interviews with young complainants made during investigations could be used as evidence and children could testify from behind screens or through the use of closed circuit televisions.

In 1992, the Corrections and Conditional Release Act was passed. It included several sections relating to a victim's right to receive information about offenders, attend parole hearings and present written impact statements to the Board.

In 1996, Bill C-41, which amended the provisions relating to victim impact statements to remove the discretion of the court to consider them at the time of sentencing, became law. It also expanded the use of such information to ensure that families of murder victims could present evidence at judicial review hearings (a right that the Government later removed with Bill C-45 and then gave back with Bill C-17). It also amended the restitution provisions to make enforcement easier.

In the 1997 Federal Election, both the Reform Party and the Progressive Conservative Party declared that if elected, they would enact a Victims' Bill of Rights.

Concern that victims' involvement would bog down the system or result in harsher penalties has simply not been proven. In fact, some studies indicate this is not the case at all (see Chapter 4). It is also important to note that none of the rights that victims have been given takes anything away from the accused person's right to a fair trial. All Canadians, whether they have been personally affected by crime or not, support and demand that all accused persons in Canada have a right to a fair trial. No one wins when

innocent people are convicted but keeping a victim informed of court dates, plea bargains, compensation programs and victim services programs does not interfere with an accused person's right to a fair trial. Allowing a victim to tell the court how a crime has affected him/her is but one piece of information a judge must consider when deciding on the appropriate sentence. Providing victim information about an offender's parole dates and location in no way interferes with the offender's potential rehabilitative efforts.

Critics should also remember that victims do not chose to be victims, but criminals chose to be criminals. Sexual assault victims do not chose to be raped; parents do not raise their children to be murdered; women do not get married to be abused. Part of the point of providing victims basic rights is a recognition that they have done nothing wrong, and they are not responsible for what happened although they may bear the burden for the rest of their lives. If victim impact statements result in harsher sentences (which again, studies show they do not), then it is part of the offender's responsibility for what he/she has done. If a victim's information makes it more difficult for an offender to get parole, that flows directly from the offender's actions.

Consider what we as a society provide to convicted criminals: the right to a fair trial, the right to a lawyer, shelter, three meals a day, work training, education, prison wages, rehabilitation programs, etc. Victims of crime do not get work training, free lawyers and they must often rehabilitate themselves. This is not to say that we as a society do not benefit when these amenities offered in prisons help an offender turn his/her life around - the best protection society can have is for an offender to change his/her behaviour. But it is only fair that we also pay equal attention to the victim's needs.

Another benefit in a system that responds to victims is that it encourages confidence in the system, which means people will be more willing to turn to the system when they need it. For example, less than 1/3 of serious violent incidents are reported to police. The drop in reporting of sexual assaults in the last three years may be an indication that fewer victims are willing to come forward due to recent decisions by the Supreme Court alone. In the 1990's alone, the Court has ruled against the rape shield law, ruled that if you are really, really, really drunk, it is not a crime if you rape

someone, and that defence lawyers may have access to a complainant's private medical/counseling records (seems only the accused has a right privacy and to be presumed innocent). In all three cases, the Government has had to respond with legislation.

This Report will not continue the debate about whether victims should or should not have a role in the system. That debate has been settled - they are part of the system. The question that this Report will examine is to what extent and how victims should be a part of the system. Recommendations will be made to both Provincial Governments and the Federal Government regarding the enforceability of victims' rights, criminal injuries compensation programs, the expansion of victims' rights under both the Criminal Code and the Corrections and Conditional Release Act, the creation of provincial and federal victims' ombudsman, etc.

Finally, this report will examine the future of the involvement of victims in the ever-growing concept of restorative justice, including victim-offender reconciliation programs. To date, such programs have been managed and operated without the assistance of victims' rights groups. The possible danger may result in an offender-oriented approach that once again does not address the needs of victims of crime.

Much has been done to improve the situation of victims of crime in the last decade, and still much remains to be done. It is no longer necessary to listen to horror story after horror story of how victims were mistreated. We know what needs to be done B this report is the blueprint for the future of victims' rights in Canada.

PROVINCIAL VICTIMS OF CRIME LEGISLATION

Victims, and those who advocate on their behalf, are invariably asked by media, lawyers and others what victims want from the justice system. The answer can be summed up in two words - "not much." When we really get down to what victims expect from the system, it pales in comparison to what the offender is guaranteed.

Victims do not want to control the justice system. They do not expect to have the power to tell the Crown Attorney how to handle a case or to decide upon the appropriate sentence. But they do expect that when those decisions are made, they have the right to explain their positions and to know that their opinions are given serious consideration. They expect to be provided certain information concerning court dates, information about their role in the process, how a trial works, what services may be available, when an offender is coming up for conditional release, etc. In short, they want to be a part of the process. Nothing that the victim needs from the system takes away from what the offender receives.

Provincial governments have jurisdiction over most of the legislation that can address the needs of victims of crime as well as the services they can access. Provinces have the task of prosecuting offenders so they deal with victims from the outset of the crime to the end of the case (whether it is a conviction, acquittal, no charges, etc.). Therefore, if a victim needs information about the case, plea bargains or court dates, it is the provinces that legislate what kind of information a victim can have access to. While victims have no formal role at court appearances, it is important to some that they be present and kept up to date.

Most provinces have passed legislation affecting victims of crime and the types of things they can expect from the justice system. Manitoba was the first province to pass victims of crime legislation in 1986, and Alberta became the most recent to pass legislation in 1997. Most legislation of this kind reflects the principles set out in the Canadian Statement of Principles adopted by the Federal and Provincial Governments in 1988 (see Appendix 2). The Yukon Territories has no rights for victims; only legislation that established a fund for victim services.

As good as some of the legislation governing victims rights is, it must be noted that the notion of "rights" for victims is not exactly accurate. While most provinces have some type of Victim of Crime legislation, a careful examination of the wording shows that nothing is guaranteed. The language and terms used are very non-committal, such as "Victims should have access to..." or "Subject to limits imposed by the availability of resources..." Manitoba's legislation is perhaps the worst examples of non-committal language. The Northwest Territories' Act does not provide for any rights. Instead, the Victims Assistance Committee is legislated to "promote" what other provinces grant as rights. Again, promoting rights and guaranteeing them are two different things. Alberta, for example, makes it clear that the release of information depends on the availability of resources.

Simply recognizing that victims should have access to services is not the same as guaranteeing that victims will have access to services. The difference may appear subtle at first, but it is important to note. This is not to say that this type of legislation is useless, only that it has serious limitations.

While an in depth analysis of each provinces' legislation is too broad for the purposes of this Report, we will attempt to highlight the positive and not-so-positive elements of legislation. Although legislation and the rights afforded vary from province to province (see Appendix 4 for a summary of all provincial legislation), there are some standard principles that are recognized throughout the country (based largely on the Statement of Principles discussed in Chapter 1). Most legislation addresses the following issues:

1. victims should be treated with respect, courtesy and compassion;
2. victims should be protected from harassment/intimidation;
3. Victims of Crime Fund (money from Victim Fine Surcharges used for things like services, fund projects, research, compensation programs, etc.);
4. no cause of action created (victims cannot sue the Government if rights under the Act are violated);
5. victims' views considered when appropriate (impact statements at time of sentencing, plea bargains, etc.);
6. victims should be informed of services;

7. victims have the right to be informed of court dates, role in the system, etc.;

DEFINITIONS

It should not be difficult to define who a victim is, but there is some controversy over who constitutes a victim for different legal purposes. For example, the parents of a boy who was murdered in Edmonton have filed a civil suit against the boys involved in the death of their son and the boys' parents. The family requested copies of the Crown's records relating to the prosecution of their son's killer. The Alberta Department of Justice turned down their request, as they did not consider the parents "victims" under the Young Offender's Act. Their logic was that the couple's son was murdered and therefore he was the victim, not the parents. To claim that the parents/siblings/spouses of those killed are not victims for any purpose is neither humane, nor logical.

One of the most important issues regarding any type of policy or regulation affecting victims of crime is the definition of a victim. Surprisingly, it varies from legislation to legislation and depends largely on the purpose of the legislation. The definition of "victim" for the purpose of victim impact statements under section 722(4) of the Criminal Code reads as follows:

(a) means the person to whom harm was done of who suffered physical or emotional loss as a result of the commission of the offence; and

(b) where the person described in paragraph (a) is dead, ill or otherwise incapable of making a statement referred to in subsection (1), includes the spouse of any relative of that person, anyone who is in law or fact the custody of that person or is responsible for the care of support of that person or any dependant of that person.

With the passage of the Victims of Crime Act in 1995, British Columbia established itself as a leader in the area of victims' rights, including the recent decision to allow victims the right to give oral statements at BC Parole Board hearings. One very important aspect is BC's definition of victim in that it specifically includes families of homicide victims. It is not surprising that the more serious the offence, the more interest many victims have in the justice system.

Since murder is the most serious offence in the Criminal Code, families of murder victims need to be involved in the process. Therefore it is essential that any victims of crime legislation include homicide survivors. The Northwest Territories' Victims of Crime Act (passed in 1988) also has a very broad definition of victim, which specifically includes immediate family members, as does Quebec.

Ontario's Act Respecting Victims of Crime (1995), appears to limit the definition of the family of homicide victims to children or spouses. This would seemingly exclude siblings for example. New Brunswick's Victim Services Act (passed in 1987) is unique in that it contains no definition of who a victim is, and empowers the Victim Services Committee to determine for a "victim" for the purposes of the Act.

INFORMATION

Another common element of the legislation is recognition of a victim's need for information. As already mentioned, most provinces provide for the basics (services, court dates, and role in the system, etc.). Because some victims may not want any information, victims are required to ask for the information.

The following is a list of the most common types of information that victims should receive:

status of the police investigation;

role of the victim;

opportunity to make a victim impact statement;

information about disposition;

information about release/escape from custody;

Some provinces have gone further, such as BC and Ontario. For example, BC and Ontario both ensure that victims are informed of the Criminal Injury Compensation Act. BC includes a provision that the victim is to be informed of the Freedom of Information and Protection of Privacy Act and it sets out very specifically the kind of information that victims should have access to including status of

the investigation/prosecution and the offender's sentence/conditional release dates. It includes any diversion programs the offender enters into if the offender is a youth.

Ontario's list of information that should be made available to victims is also exhaustive. It is the only province to make specific reference to cases where offenders have gone through the mental health system.

Manitoba and Newfoundland require victims to be informed of alternative resolution programs and even go so far as to encourage victims to participate. One has to question the appropriateness of this section in legislation devoted to victims' rights. It makes sense that victims be informed of these programs so that they can become involved if they so wish, but the question is whether this is the place to do it and whether it should be "encouraged."

For victims and the public at large, one of the most controversial issues in the criminal justice system is the practice of plea-bargaining. Plea-bargaining is a practical reality of the justice system (a necessary evil), and will likely continue to exist. Plea bargains can outrage victims as they feel that the harm done to them is not being taken seriously and that their case is not worth the time and effort of a trial. While informing the victim and providing them an opportunity to discuss their views does not guarantee their satisfaction with the ultimate outcome, it does help if they understand the reasons behind it (i.e. lack of evidence) and are given the chance to provide some input.

Most provinces require Crowns to at least inform victims of a deal and some even require Crowns to ask the victims' opinions. Some American states go even further. Minnesota requires prosecutors to notify a victim of a plea and the victim can file an objection. In Arizona, a court cannot accept a plea bargain unless reasonable attempts have been made to inform the victim and tell the victim that he/she has the right to be present and if present, the right to be heard. However, the US, like Canada, does not give victims veto power of the plea decision.

When property is stolen, especially when it has special meaning to a person, it is important that it be returned as soon as possible.

Several provinces call for the prompt return of the victim's property. For the protection of victims, other provinces ensure that the victim's address will not be disclosed if the victim so desires. Some provinces, like BC, have provisions that allow for victims waiting to give evidence to be kept separate from the accused or the accused's witnesses. A waiting room should be available, for example, for the family of a murder victim. To have them wait in the hallway with the accused and/or his family during the trial, even if not a witness, would be uncomfortable to say the least. This may sound trivial to some, but for many victims it is quite important.

Many victims would like their own lawyers to consult. However, given their limited role in the system, a victim's lawyer would have little impact. The only possible exception is BC in that it provides for legal representation for victims, albeit under strict circumstances pertaining to disclosure of personal information about the victim.

CIVIL PROCEEDINGS

Ontario has attempted to make it easier for victims to sue their assailants. This may be an attempt to discourage fewer victims to turn to the government for financial assistance. How much of a real impact this will have is doubtful given the fact that most victims are not in the financial position to sue and most offenders are not in the financial position to make a civil suit worth while. However, it may prove beneficial for some.

Victims of domestic assault, sexual assault or attempted sexual assault are now presumed to have suffered emotional distress. Under the amendments, a judge shall not consider the length of the offender's sentence when setting an amount for damages, except in the case of punitive damages.

Other amendments are aimed at ensuring protection for child witnesses equals those found in the Criminal Code. For example, the Evidence Act was amended to allow for the videotaping of witnesses under 18, and the use of closed circuit televisions and screens. A support person may also accompany witnesses. The court will also have the power to prevent a personal cross-

examination of an adverse party, i.e. someone representing him/herself.

ENSURING VICTIMS KNOW ABOUT THEIR RIGHTS

No law will help any victims if they are not aware of what they can ask for and expect. One positive aspect of some provincial legislation is the requirement that victims be told of their rights under the Act (i.e. Ontario). For example, victims should know they have the right to ask for certain information. In a 1991 Report on the Victim Services Program in PEI, it was recommended that police should give victims cards or pamphlets explaining their rights and how to go about finding someone to help them enforce those rights. The Ontario Provincial Police orders require OPP officers to ask if victims wish to submit a victim impact statement.

Ontario has a 1-800 Victim Support Line (1-888-579-2888) which victims can access 24 hours a day, seven days a week, available in French and English. Victims can find out the release status of the offender (in provincial system) by registering with an automated callback system, where to find help and services in their community, how the justice system works for victims and how to make sure their concerns are considered when decisions are made about the release of the offender.

A common problem is that no one within in the system is given the task of informing victims of their rights. Victims' legislation in Colorado specifically sets out what information police are required to give to victims of crime immediately after the initial contact with the victim, including information about services, what their rights are, compensation plans, etc. The legislation also explains what information police when it becomes available including the name and number of the prosecutor, file number of the case, etc. Also listed in the legislation is the information that the prosecutor shall give to the victims including an explanation of the charges that were laid, date and time of hearings, etc. The benefit of this is that it makes it clear who is to tell the victim what pieces of information so both the police and prosecutors know what they are responsible for.

Education for those in the system, such as Crowns and police, as to what victims have the right to is essential. If those who work

within the system can be convinced that victims are important and are a part of the system, they will be more willing to provide that assistance to victims of crime. This may require changing the attitudes of some.

Getting the legislation is only the first step. The key is ensuring that Crowns and police understand their responsibilities and that dealing with victims and answering their questions is not an extra, but it is part of their duty. No doubt these people are overworked already, but victims must be a priority in practice as well as on paper.

RECOMMENDATIONS

1. All provinces and territories enact victims of crime legislation that respects victims' needs;

2. All provinces and territories expand the definition of victim like BC:

"victim" means an individual who suffers, in relation to an offence:

(a) physical or mental injury or economic loss as a result of an act or omission that forms the basis of the offence, or

(b) significant emotional trauma and is an individual against whom the offence was perpetrated or, with respect to an individual against whom the offence was perpetrated, is a spouse, sibling, child or parent of the individual;

3. All provinces and territories adopt a preamble similar to Ontario's.

"The people of Ontario believe that victims of crime who have suffered harm and those whose rights and security have been violated by crime, should be treated with compassion and fairness. The people of Ontario further believe that the justice system should operate in a manner that does not increase the suffering of victims of crime and that does not discourage victims of crime from participating in the justice process."

4. All provinces and territories provide the following information to victims of crime:

services available;

criminal injuries compensation;

protection from intimidation;

progress of investigation;

if charges are/are not laid (if not, reasons why not);

what charges are and reasons why;

name of accused;

victim's role in prosecution;

court procedures;

dates/times of court appearances;

outcome of all proceedings;

pretrial arrangements relating to a plea;

length of disposition and date it begins;

interim release (bail);

disposition under s.672.54 (not criminally responsible) or s.67258 (unfit to stand trial);

right to make victim impact statement at time of sentencing, at parole hearings and judicial review hearings (if applicable);

means to contact parole board;

application for release;

release from custody;

escape from custody;

means for victim to report any breaches of terms of supervision/release;

any hearings relating to s.672.54;

legislation relating to access to information;

where offender serving time;

ombudsman's office if one exists;

the act itself;

crime prevention;

victim-offender reconciliation programs (if interested);

5. All provinces and territories indicate who and how victims are notified of rights (police – information cards/pamphlets in plain language);

6. All provinces and territories remove non-committal language and make the rights of victims enforceable;

7. All provinces and territories remove no cause of action clauses allowing victims to sue the Crown if rights under the Act are violated;

8. All provinces and territories update their Crown Policy Manuals regarding victims of crime and the responsibility of Crowns under the Victims of Crime legislation;

9. All Crown files shall contain a checklist of the various rights victims have to ensure that the victims was informed of what their rights were and which rights they chose to exercise;

10. All provinces and territories should have a victims' ombudsman/advocate who in addition to those powers set out in Chapter 6.

11. Before accepting any plea bargain, a Crown must inform the court that the victim has been informed of the plea and that have been given an opportunity to voice their opinion which the Crown has taken into consideration.

12. Victims be given the opportunity to consult independent lawyers through legal aid.

13. Judges should be given more education on the impacts of crime on victims and the needs of victims.

CRIMINAL INJURIES COMPENSATION

State compensation for victims of crime is a relatively recent phenomenon. In fact, it was not until 1963 that New Zealand became the first jurisdiction in the world to enact legislation to provide compensation to victims of crime, and in 1964 Great Britain became the second. Now, almost every province in Canada, Australia, the United States, Japan, Finland and others have similar legislation.

RATIONALE FOR COMPENSATION PLANS

Compensating victims of violent crime for expenses reasonably incurred as a result of a criminal offence is an initiative society has supported since legislation was first passed. It should be noted that there is no obligation on the state to compensate victims of crime, except perhaps a moral one. Several rationales for compensation have been offered over the years, including a belief that society owes something to those it could not protect; punishment to the state for failing to protect victims; sympathy/pity for the victim; to address the inadequacies of the treatment between the victim and the offender; help ease the financial burden crimes can cause to victims, etc. In his book Criminal Injuries Compensation (1992), Peter Burns concludes that "are primarily a form of state charity designed to soothe the public..." Whatever the true motivation behind compensation programs for victims of crime is, the reality is that many victims have benefited.

Some effects of the offence may remain with the victim for the rest of his/her life. While monetary awards will never make up for the injuries suffered, it can compensate for some of the financial losses and provide victims with a means to get their lives back in order. The purpose of the legislation is not to see victims profit from the crime.

While victims can sue their offender in civil court, it is an expensive and long drawn out process that is not a realistic option for many victims. In most cases, the offender will be unable to pay an award the court orders anyway so the victim may never collect any money. Others simply want to be reimbursed for the expenses they have incurred and therefore may not feel a civil trial is a worthwhile process.

In 1970, at the fifty-second Annual Meeting of the Conference of Commissioners on Uniformity of Legislation in Canada recommended that the following be provided for in compensation plans:

1. expenses actually and reasonably incurred or to be incurred as a result of the victim's injury or death;
2. pecuniary loss or damages incurred by the victim as a result of total or partial disability affecting the victim's capacity for work;
3. pecuniary loss or damages incurred as a result of the victim's death;
4. maintenance of a child born as a result of rape;
5. other pecuniary loss or damages resulting from the victim's injury and expense that, in the opinion of the Board, it is reasonable to incur.

In 1983, the Federal-Provincial Task Force on Justice for Victims of Crime recommended the following:

1. an increase in funding by both the federal and provincial governments (#13);
2. more public awareness (#16);
3. hearings are a benefit to victims (#18);
4. pain and suffering/mental and nervous shock be compensated (#20);

GENERAL INFORMATION ON COMPENSATION PROGRAMS

The Federal Government used to aid the provinces with the financial burden of compensation programs. In 1992, however, the Federal Government withdrew its financial support and some provinces abandoned the program completely where as most have paid the entire tab.

Like legislation governing victims' rights, legislation governing compensation to victims of crime is equally inconsistent from province to province. One province and two territories no longer provide compensation for victims: Newfoundland (1992), the Yukon (1993) and the Northwest Territories (1996). Some provinces, like Ontario, have a Board, which can meet with applicants to discuss the application. Others, like Nova Scotia, merely do file reviews. BC runs their program through the Workman's Compensation Board.

Criminal injury compensation programs in virtually every province have experienced a steady growth in applications over the last number of years. This is hardly surprising given the increased public attention being given to victims of crime, and in particular sexual abuse and domestic violence victims.

Applications must be made in the province where the crime took place, but it is not necessary that the applicant live in that province. Applicants do not need a lawyer to apply for compensation, but can have one if they feel it is necessary. It costs nothing to apply, but in most provinces it takes an average of 1-2 years before an application is processed and a decision is made.

Anyone who has been a victim of a violent crime can apply for compensation. However, not everyone who applies will be successful. In order to qualify for compensation, the injury or death must be the result of one of the following:

(a) the commission of a crime of violence constituting an offence against the Criminal Code and outlined in the Schedule of offences prescribed by the legislation (every province but Ontario has a schedule of offences);
(b) lawfully arresting or attempting to arrest an offender or suspected offender, or assisting a peace officer in executing his or her duties, or
(c) preventing or attempting to prevent the commission of an offence or suspected offence.

Physical assaults and sex related offences are the most common cases that initiate applications. Most provinces have a schedule of offences for which they will compensate, except Ontario it is restricted to violent crimes. Most provinces do not compensate victims of automobile related offences unless the vehicle was used as a weapon. Therefore, impaired driving victims are not eligible for compensation in most provinces. Victims may be required to provide medical reports, psychological reports, police reports, etc. (some provinces get this information on their own).

Much has been made about the fact that compensation programs favour "worthy" victims and refuse compensation to those who were responsible for the offence. All provinces have some requirement

that the Board consider "any behaviour of the victim," or the "character of the applicant" in assessing a claim or if the claimant was a party to the offence or was involved in illegal behaviour. A Board can deny or reduce an award.

The Board members must assess the application and apply the principles and rules set out in the Act which governs each province to decide (a.) if someone meets the criteria for an award and (b.) if so, the amount of the award. Simply being a victim however does not guarantee compensation. A successful applicant will have suffered from a "real" crime, reported the offence to police and cooperated with them; not contributed to offences, etc. Examples of the most common reasons for applications being denied are:

request not made within time limit (most provinces require the application to be made within one year of the actual crime; some will waive the rule for certain situations);

offence was not reported to the police or the applicant was not cooperative with the police (most provinces do not require a conviction to make an award, but most do require that the offence at least be reported to the police and that the applicant was cooperative);

applicant contributed to offence (an award will not be made for example if the applicant was injured in a fight he started);

no evidence of a crime;

Compensation schemes generally make awards for two types of damages: pecuniary (monetary) and non-pecuniary (non-monetary) damages. Non-pecuniary are more difficult to measure and are more open to fraud and abuse. Examples of each are:

PECUNIARY DAMAGES

worsening of person's financial position as result of injury;
support of child born as result of sexual assault;
loss of earnings;
medical costs; funeral expenses;
loss of support experienced by dependants due to a victim's death;

NON-PECUNIARY DAMAGES

loss of enjoyment of life/amenities;
loss of expectation of life (victim can expect a shortened life span due to injury);
pain and suffering;

One of the most difficult types of damages to assess is pain and suffering. Although most provinces do provide compensation for pain and suffering, it is to varying degrees. Saskatchewan and Manitoba do not compensate for pain and suffering at all. Others limit it only to good Samaritans. Most US jurisdictions do not allow compensation for pain and suffering, but most jurisdictions of the British Commonwealth do.

There are two types of awards that a Board can grant: lump sum or periodic. Lump sum payments are one-time payments which cannot exceed the maximum amount set out in the legislation (which varies from province to province). Periodic payments can be made on a monthly basis, for example. This kind of award is usually reserved for those whose injuries require long term treatment (i.e. physical injuries, child born as result of a sexual assault) and the anticipated length of recovery is unknown.

Awards can be varied if new and unforeseen circumstances arise after a decision is made. Awards can be increased if, for example, a victim discovers further plastic surgery is needed for facial injuries. Awards can also be stopped if the need for compensation ceases, i.e. the individual returns to work. Benefits from other sources, i.e. insurance or a judgement in civil court, will be deducted from an award. It should also be noted that interim or emergency compensation could be given if the applicant requires compensation while the application is being processed.

DECISION MAKING PROCESS

Victims who feel they are eligible for compensation must get an application form (some provinces require that applicants get forms directly from the Boards while others allow police and victim service workers to give them to victims). Victims will have to fill out the form and give some details of the crime, including whether or not charges were laid or a conviction was obtained (although charges need not be laid for an applicant to be successful). Victims

will also have to give a description of any injuries or treatment they have received as a result (i.e. medical reports, dentist report psychological reports, etc.). Finally, victims will have to outline the expenses incurred as a result of the crime and must have receipts. Victims may also be required to provide additional information about their income and income tax returns.

Diversity in criminal injuries legislation also extends to the composition of the decision making body. Some provinces use a Board to make decisions, and a decision can be made by one member of the Board or by a two-member panel. Ontario is one of the few provinces to use a board decision making body. This type of process allows some victims an opportunity to address the decision-makers, although paper reviews can be done. PEI, New Brunswick and Alberta do strictly paper reviews and do not hear directly from applicants. Once an application is investigated, a Department of Justice lawyer makes a recommendation to the Minister who decides on an award.

The latter process may be more administratively efficient, but hearings can provide some victims an opportunity to tell people in authority about what happened to them and how they feel. It can be an important part of the healing process for some victims. Some victims have said that the money is secondary to the opportunity to tell the Board about the offence. The 1983 Federal-Provincial Task Force on Justice for Victims recommended hearings.

If an applicant is not satisfied with the decision, whether it be with the amount of compensation or eligibility for compensation, they can appeal it. The process again differs from province to province. In PEI, for example, appeals can only be made to a superior court on a question of law (and therefore a lawyer is required). In Ontario, a decision by a single board member can be appealed to a two-member panel, but the decision of a two-member panel can only be appealed in court on a question of law. Other provinces, such as Alberta and Nova Scotia, have established Appeal/Review Boards who will hear appeals. The decision of that board is final (except on a question of law).

HOMICIDE SURVIVORS

When Sharon and Gary Rosenfeldt's son Daryn was murdered in 1981, they applied for compensation under the BC Criminal Injuries Compensation Act (CICA), and they were told they were not victims, their son was. When the Lauzon family asked the Ontario Criminal Injuries Compensation Board (CICB) for money to help get their two daughters counseling after their sister had been murdered, they were told that their suffering was not profound enough and the Board usually requires evidence of hospitalization. When the Kemp family turned to the BC CICB after their son Noah was murdered, they were told that they were not eligible because they had not witnessed Noah's murder.

One of the most contentious issues in relation to compensation for victims of crime is homicide survivors. In virtually every other area of the justice system, homicide survivors are given equal status as direct victims (i.e. victim impact statements). However, not every province recognizes that homicide survivors are true victims who deserve the same consideration as direct victims.

Despite a recommendation from the 1983 Federal-Provincial Task Force on Justice for Victims that family members of murder victims be provided counseling (recommendation #63), only British Columbia specifically includes immediate family members of homicide victims to be considered in the BC CICA. This change was a result of some high profile cases, including the Kemp case mentioned above.

All provincial legislation governing crimes compensation allows for homicide survivors to be compensated for pecuniary expenses that they incur as a result of a murder. For example, funeral costs are common. Even the awards for funeral costs (Ontario gives a maximum of $4000) rarely cover the entire costs of even the most basic funerals. A man in Ontario was sued by a funeral home because he could not afford the cost of his son's funeral. Even worse is Quebec, which only awards $600 for funerals. Compensation related to costs of moving a body may also be given.

There is in most provinces a lack of clear direction with respect to families of murder victims who may need compensation for grief counseling. In some of the provinces that do allow awards for

family members (i.e. Ontario and PEI), an applicant must establish that he/she has suffered "mental or nervous shock." The mental or nervous shock standard is one that is apparently higher than the normal amount of grief that a parent would suffer after having a child murdered.

Therefore, "normal" grief that a parent would feel after a child has been murdered is not enough to equal pain and suffering. In order to qualify for mental or nervous shock, an applicant must be able to show that he/she was unable to function normally over an extended period. This normally means the applicant has been hospitalized.

What this "distinction" fails to recognize is that there is not a clear and accepted method of dealing with the murder of a loved one. Some people need to continue functioning in society to deal with the loss, while others may appear to stop functioning normally. The point is that each person is doing what it takes for him/her to survive. One should not have to have a nervous breakdown, be committed to a hospital or attempt suicide to show that he/she is experiencing pain and suffering.

What this "distinction" succeeds in doing is insulting many victims by telling them that they have not suffered enough, or that they did not love their child enough. While this is surely not the intended effect of the legislation, it is far too often the result.

Prior to recent changes, BC also used the "nervous shock" standard, and some high profile cases led to an in depth examination of the BC CICA. In a paper submitted to the BC Ministry of Attorney General regarding the Criminal Injury Compensation Program, Janet Kee wrote,

"Distinguishing between 'primary' and 'secondary' victims so as to disentitle these people whose suffering is primal, intense and long-term is simply abhorrent to our sense of justice. Unless there is some monetary recognition of the injuries of such claimants, the criminal injuries compensation system will continue to be the target of highly emotional and persuasive criticism (p.10)."

The British Columbia Attorney General amended the BC Criminal Injury Compensation Act to specifically include immediate families

of murder victims. In essence, all that was done was to substitute the sections which allowed for compensation to the victim's dependant(s) with the following definition of immediate family:

"a spouse, child, sibling, step-sibling, half sibling or parent of the victim or a person who, although not a parent of child of the victim, was like a parent or child to the victim..."

Under this new legislation, which is retroactive until 1991, a couple whose son was murdered in 1994 were allowed compensation for grief counseling. They were originally only permitted compensation for expenses surrounding their son's funeral.

Quebec grants $2000 to parents of a child who is murdered if the child was a minor. With all the shortcomings in the Ontario legislation and, until recently, the BC legislation, some provinces do not provide for any conditions in which families of murder victims could receive compensation.

No one is suggesting that any amount of money could ever bring back a murder victim, and even the largest cheque will not ease the survivor's pain. Simply throwing money at victims is not the answer, and it is not what most people are asking for. What they do want, and what they may need, is the assurance that grief counseling will be provided. Some families never take nor want counseling but for those who feel they could benefit from it, the legislation should provide for it.

HOLDING OFFENDERS ACCOUNTABLE FOR PAYMENTS

Traditionally, the funding for compensating victims of crime has come from the government. Funding from the provinces for compensation programs will always be necessary to some extent, but as much as possible we should be looking at other parties to compensate victims of crime. The taxpayers should not have to bear the entire burden. The most obvious place to look is at the person responsible for the crime: the offender.

Some provinces, such as Ontario, have the ability to get reimbursement from convicted offenders for awards (subrogation), but it is not commonly used due to problems in getting the payment from the offender.

There are different models of holding offenders responsible for compensating victims, such as providing victims access to legal aid lawyers to assist them obtain the compensation from the offender. Another suggestion, and perhaps a more attractive one, is for Governments to make the initial compensation award, and then retrieve some or all of the award from the offender. This could be done by garnishing the offender's prison wages, any pension benefits the offender may receive and/or employment cheques.

Kentucky, Massachusetts and New York are three American states that attempt to recover some costs of compensation from offenders and in doing so, hold offenders accountable for awards under their compensation plan. They require any person who contracts "with any person accused or convicted of a crime, with respect either to the reenactment of that crime or to the expression of the accused person's thoughts, feelings or emotions regarding that crime, shall pay to the Crime Victims Board any monies which would be payable to the accused or the convicted person..." Other states like Washington and Florida state that an award paid to a victim under the compensation plan constitutes a debt owed by the offender to the state but it is unclear if any serious attempts are made to retrieve the money from offenders.

Whatever the process, the point is that the offender must understand that there are consequences to his/her actions, and compensating the victim for expenses incurred as a result of the crime is one of them (Note: limitations on this model may exist in cases where no offender has been identified, and there may be difficulties in cases where has been no conviction).

COMPENSATING OFFENDERS

Not only are offenders not currently being held financially accountable to their victims, they are also eligible to benefit from crimes compensation legislation if injured while in prison. Take for example child serial killer Clifford Olson. Before committing the eleven child murders, Olson was awarded compensation after he was stabbed in prison.

Many applications from offenders who are assaulted in prison may be able to be denied if they refuse to cooperate with the authorities (which is a condition of compensation in some provinces). It is not

surprising that cooperating with authorities and identifying offenders is not necessarily a wise thing to do in prison.

Offenders in prison should be protected in prison as the public should be protected, but whether they deserve the same consideration from a criminal injuries compensation program is another matter. There are provisions in all compensation legislation to allow the Board to consider any behaviour of the victim that may have contributed directly or indirectly to the injury. Perhaps the fact that someone is in a prison should be interpreted to mean they contributed to the injury. In other words, if the individual had not broken the law, he/she would not have been the prison in the first place and therefore not have been in the position to be assaulted. The cost of applications and the processing of them can be expensive, and the money spent on inmate's applications is money that could be better spent.

Given the increase in the number of applications for compensation facing every province, ways of finding more funding and ensuring that only those who truly deserve compensation must be examined. Manitoba appears to partially deny inmates compensation in that they cannot collect on any award granted until they are released from prison. Several American states, including Kentucky, Montana and Washington, deny compensation to persons incarcerated in state prisons.

NOTIFICATION OF OFFENDERS

A final issue related to crimes compensation is the practice of notifying offenders of applications put forth by victims. For example, Ontario practice this procedure, which is part of their policy, not the legislation. This is unacceptable, especially in cases where a conviction has been rendered. Imagine notifying a convicted killer that the parents of his victim have applied for compensation for funeral expenses or a sex offender that his victim needs counseling. However, it may be necessary to notify an accused person in a case where no charges were laid or no conviction was rendered.

DOES THE FEDERAL GOVERNMENT HAVE A ROLE?

Should Canada continue its piecemeal approach to compensating crime victims as we do now where depending on what province a

crime takes place, a victim might be compensated adequately, inadequately or not at all? Or is there a more practical solution that sees victims everywhere treated equally?

As mentioned earlier, the Federal Government used to help with the financial burden of compensation programs, but that is no longer the case. Given that crime is a national problem, it is only practical that the Federal Government at the very least share in the cost of compensation programs.

Others have suggested the Federal Government should consider the idea of a National Criminal Injuries Compensation Program, which is conducted under one Federal law. It could operate similar to the National Parole Board in which there are board members in each province. The overwhelming advantage of this is one consistent approach to compensating victims of crime based on the same set of principles and legislation.

Provincial governments would still bear some of the financial burden to be shared with the Federal Government. Money obtained from proceeds of crime legislation currently in the Criminal Code could be used to assist. In addition, money gained from Liberal MP Tom Wappel's Private Member's Bill (if and when it becomes law) to prevent criminals from profiting from crimes from book/movie deals could also be used. The Federal Government could garnish wages from federal inmates to help offset the costs of awards.

Provincial crimes compensation programs have literally helped thousands of victims over the years and the programs must be protected to ensure future victims have access to the same help.

RECOMMENDATIONS:

1. The Federal Government should examine the issue of a National Criminal Injuries Compensation Program.
2. All provinces adopt legislation to compensate victims of crime.
3. The Federal Government should share the financial burden of crime victim compensation programs on the condition that follow set conditions, i.e. compensate families of homicide survivors for counseling.
4. All crimes compensation legislation should recognize homicide survivors as compensable victims.
5. The practice of notification of convicted offenders must cease.
6. All provinces should retrieve awards from offenders.
7. All provinces should provide for interim awards.
8. All provinces add criminal harassment to their schedule of offences (currently only BC compensates for stalking).
9. All provinces adopt a uniform schedule of offences.
10. Amend provincial medicare to include families of homicide victims for free psychological counseling.
11. Amend definitions of victims to include same sex partners.

VICTIMS OF CRIME AND THE *CRIMINAL CODE*

As already discussed, much of what victims of crime need and expect falls under the jurisdiction of the provinces. However, the Federal Government's role cannot be overlooked. It has passed legislation in the last number of years which impacts on victims of crime, namely in the *Criminal Code* and the Corrections and Conditional Release Act (see Chapter 5). Victims have the right to present victim impact statements at sentencing, parole and judicial review hearings. Provisions in the Criminal Code permit victims to seek restitution from offenders for financial losses suffered as a result of an offence as well as provides for victim fine surcharges. Finally, the Code offers specific protection to sexual assault victims and young witnesses when testifying in court.

VICTIM IMPACT STATEMENTS

Not surprisingly, victims are often dissatisfied with the justice system because their role is not recognized. Therefore, the opportunity to tell the court what the effect of the crime has been on them is one of the most positive ways for victims to be involved in the process. Even if victims were not satisfied with the sentence, many still feel that the opportunity to present an impact statement was important to them.

First used in California in 1974, victim impact statements have been a part of Canada's common law for many years before legislated in 1988. Originally, such statements were used only at sentencing hearings, but their use has grown to include parole hearings, judicial reviews and possibly even bail hearings. In the US, they have been used in death penalty cases.

Supporters argue that the criminal justice system benefits from the involvement of victims, and in particular victim impact statements (VIS). They can make the process more democratic and as a result, the system better reflects the public's response to crime. VIS can also result in an increased level of satisfaction on the part of the victim and they can even promote psychological healing. And given that victim-offender reconciliation programs are growing, it should be noted that victim impact statements are based on that philosophy in that they can encourage offenders to face up to what they have done. VIS can help the offender confront the reality of what he/she has done and the harm his/her actions has caused.

Victim impact statements are not mandatory. Victims have the option of preparing one if they so chose, but do not have to do so. However, as mentioned earlier, the simple act of telling the court what the crime has done to them can be an important part of the healing process.

1. Sentencing hearings

In 1988, Bill C-89 was passed, which among other things, amended the Criminal Code to provide victims the right to present victim impact statements. Recent changes to the Young Offenders Act in Bill C-37 also allows VIS to be presented in youth court. When the legislation was first passed, there was nothing to mandate a judge consider them. The legislation read that a court "may" consider statements, which indicated some choice. However, that was amended in 1996 when Bill C-41 was passed requiring judges to consider the statements. Section 722.(1) reads as follows,

"For the purpose of determining the sentence to be imposed on an offender or whether the offender should be discharged pursuant to section 730 in respect of any offence, the court shall consider any statement that may have been prepared by the victim of the offence describing the harm done to, or loss suffered by, the victim arising from the commission of the offence."

Victim impact statements usually cover three areas:

personal/emotional reaction;

physical injuries;

financial impact;

The definition of a victim for the purposes of victim impact statements is sufficiently broad so that it permits family members of homicide victims to present statements. The legislation does not specify how the statement is to be presented to the court. It does refer to a statement in writing, but nothing prevents statements from being made orally or by other means. While traditionally statements have been limited to written form, more and more victims are being permitted to provide oral statements. Some

victims have even been permitted to provide video statements. In a precedent setting case in New Brunswick, the victim of a drunk driver was allowed to present a video at the sentencing hearing to show the judge the progress he made regarding his physical injuries. Carol Mazerolle made the 70 minute tape of her husband Frank's recovery because she did not believe that words could convey the impact of the offence. Debbie Mahaffy was permitted to do so during the sentencing hearing of the man who murdered her daughter, Leslie.

Victims who decide to present VIS at sentencing hearings (or judicial reviews) should be aware that they might be required to undergo cross-examination. Because the statement is considered information that will be used for the purposes of sentencing, the defence has a right to question its accuracy. If there is some concern over anything contained in the statement, the defence may question the victim. Questions should be limited to what is contained in the statement and should not be an opportunity for the defence to humiliate or embarrass the victim. It should be noted that it is very unlikely that a defence lawyer would question a victim, especially at a 745 hearing, because of the negative message it might send to the jury/judge.

2. Judicial review hearings

In 1976 when the Liberal Government enacted s.745, victims had no rights. Therefore, the victim was not given any formal recognition in the 745 process. The process was set up to focus on the offender's behaviour in prison. Judges presiding over these types of hearings did, however, have the discretion to allow the victim impact statement.

In 1994, the Supreme Court of Canada (SCC) had its first opportunity to rule on s.745 when a killer appealed the outcome of his judicial review hearing. The jury who heard his case denied Roman Swietlinski any reduction. In 1977, he had stabbed a woman over 80 times. He complained to the SCC that he had not received a fair hearing because the Crown made inflammatory comments like the fact that his victim would not get a chance at a reduction in her life sentence because she was dead.

At the same time, the Court had an opportunity to comment on the admissibility of victim impact statements at 745 hearings. The hearing judge had denied the victim's family the opportunity to present any information. The majority of the Court agreed with Mr. Justice Major who stated,

"Evidence of the impact of the crime on the victim clearly has no relevance to a jury's assessment of an applicant's conduct while in custody or of his character...To the extent that the impact of the victim is relevant to...the nature of the offence...this relevance will usually, but not always, have been exhausted at the applicant's initial sentencing hearing. The victim's suffering in the years since the crime was committed does nothing to alter the nature of the offence, and should not automatically be admitted into evidence for this purpose."

Major added that impact statements can be admitted under the fourth category (such matters as the judge deems relevant), but gave this warning,

"A judge should be cautious in admitting such statements, for to focus the jury on the victim, some 15 years after the crime was committed, is to invite the jury to assess the appropriateness of the applicant's sentence in terms of its retribution, denunciation and punishment goals...these principles do not form the focus of a s.745 hearing."

The Supreme Court decision on victim impact statements was echoed at the judicial review hearing of convicted killer Jon Rallo. Mr. Rallo murdered his wife, Sandy, and their young two children, Jason and Stephanie in 1976. His son's body has never been found, and the family buried the wrong body thinking it was Jason. At Rallo's 745 hearing, Mrs. Pollington (the mother and grandmother of the victims) wanted to testify, but was limited to only addressing the issue of the impact of burying the wrong body and still not knowing where Jason's body is. The judge felt that this went directly to the character of the applicant since he has never told the family where Jason's body is (he still claims he is innocent). The judge, referring to Mr. Justice Major's decision, stated,

"the impact of the murders on the victim as it extends and continues over the eighteen years since conviction are not relevant

to the factors and issues that must be determined by s.745 as legislated by the Parliament of Canada."

What these decisions show is that left to their own devices, judges may be likely to interpret 745 as to exclude victim impact statements as irrelevant to the issues at hand. That danger was addressed when the Government introduced Bill C-41 in 1994. The bill amended s.745 to give victims the right to present impact statements at 745 hearing. During a debate in the House of Commons, the Minister of Justice made reference to a meeting he had with Marie King Forest. Two men murdered her husband, RCMP Constable Brian King, in 1977. After the judicial review of one of the men, she met with the Minister to explain the difficulties she had with her victim impact statement.

On January 9, 1997, Bill C-45 became law which amended s.745 and introduced a screening process for applicants, denied the section to multiple killers (for crimes committed after January 9, 1997) and changed the existing 2/3 majority to a unanimous jury decision. The bill also inexplicably took away the right of victims to present victim impact statements at 745 hearings until the year 2012. Ironically, on that same day in Saskatoon, Marie King Forest and her daughter were presenting their impact statements to a jury in the hearing of the second man convicted of killing Brian King. After much outrage, the right of victims to present impact statements at 745 hearings was once again provided for after the Government amended Bill C-17 to reverse their amendment in Bill C-45 (which had reversed their amendment in Bill C-41).

While the amendments provide for the right to present victim information, it is silent on how that information is to be put before the court (i.e. written or oral). It is once again left up to judicial discretion. One of the first cases that took place after the change in the law was the hearing of William Frederick. He murdered Collingwood police officer Ron McKean in 1978. At that hearing, the officer's widow and three children were permitted to read oral statements.

Victims' groups are united in their fight to get s.745 repealed. The public supports them in that battle. Section 745 is difficult enough for families of murder victims, but victim impact

statements provide them with an opportunity to be a part of it. It allows them to inform the court and the jury that their loved one, whether it be a child, husband or parent, was a real person who was loved and who is still missed to this day. As one mother put it, "My son is not here to speak for himself, but as his mother I know what he would say about it. I am his Mom and I need to speak for him."

3. Plea bargains

One of the most controversial concerns about victim impact statements is their use, or lack of it, in cases where a plea bargain has been arranged. The legislation makes it clear that they are to be used at sentencing hearings, and even if a plea bargain has been reached between the Crown and the defence, a judge has the ultimate decision on the sentence. Therefore, VIS can be used even if a plea has been made.

A problem may arise if a Crown wants the judge to accept the deal and does not want him/her to be affected by the victim's words. It should be noted that the *Criminal Code* does not appear to give the Crown any discretion or choice to use a VIS (except if he/she knows it contains false information). And given that most provinces have victims' rights legislation that call upon the Crown to inform the victim of a plea bargain before it takes place, there is no justifiable reason that VIS should not be presented, if the victim so chooses.

4. What do victim impact statements say?

One of the main concerns about victim impact statements (mainly from defence lawyers) is that they are simply an opportunity for the victim to condemn the offender. Neither is this the intent of the legislation, nor is it the reality. Impact statements are exactly that – an opportunity for the victims to tell the court how the offence has affected their lives - emotionally, financially and physically. If the offence involved an assault, the victim may wish to speak about financial losses due to missed work. Sexual assault victims may talk about their emotional loss if they are unable to trust people or be close to people. Homicide survivors often talk about facing life without their child or spouse.

The Alberta John Howard Society, in a 1991 paper entitled Victim Impact Statements said that,

"Victim impact statements are not, as was originally feared, used as a retributive tool; there is no evidence showing that the statements are vengeful in nature. Also, the statements do not duplicate existing material."

Yet despite this, the Society still does not support the use of victim impact statements at sentencing hearings.

Statements are not an opportunity for the victim to tell the court how bad the offender is or to go over the offence again. Victims do not make recommendations to the court on what the appropriate sentence should be or what the offender deserves.

5. Do impact statements make a difference?

While it is difficult to determine what the true impact of victim impact statements presented at sentencing hearings really is, research suggests they do not increase the sentence. Research also suggests that VIS rarely include inflammatory, prejudicial or other objectionable statements and exaggerations. Studies in the US and Australia show that judges found VIS to be helpful in determining the impact of the crime on the victim.

The therapeutic effect victim impact statements can have for victims who decide to present them cannot be overlooked. Many victims say it is important to them to be a part of the process and inform the court/jury/parole board how the crime has affected them. For some, it can be part of the healing process.

6. Problems/concerns

The most disturbing aspect of victim impact statements is that many victims are never even told that they have the right to present them. While most provincial victims' of crime legislation sets out that victims are to be informed that they can prepare VIS, too many victims are not informed.

There are some Crowns who no doubt feel that VIS are not necessary and do not support them. However, it is not for the Crown to decide if a victim can or cannot prepare one. The legislation makes it clear it is their right and that the court must

consider them. Many Crown offices and police forces have VIS forms, but an emphasis must be made to ensure victims are told that they are an option. On more than one occasion, the VRC has spoken with victims who have never heard of their right to prepare victim impact statements, and as a result of our intervention they have been able to present one and felt better about the process.

Many victims express concerns that the offenders will be able to see/read their impact statements, whether it be at parole hearings, sentencing or judicial review hearings. Offenders do have the right to see the statements because it constitutes information that will be used to make decisions about them.

Another major concern specific to judicial reviews is that the statements may have to be edited before the jury will hear/see them. This is done to ensure the guidelines of the statements are followed and that no adverse statements are made that may influence the jury.

Judges do have to be more careful about what they allow victims to present when a jury is involved (as they are in judicial review hearings). However, many argue that more guidance for courts is required so victims have a better understanding prior to the hearing and therefore understand why important passages are removed. In addition, more guidance would result in more consistency across the country.

Critics fail to recognize that the VIS is but one piece of evidence that a judge may consider. There is little or no evidence that sentences in which a VIS was presented resulted in a more severe sentence. And not all victims want longer sentences. A family in Windsor whose son was killed in an impaired driving accident in which the boy's friend was the driver asked the judge not to jail the young man. Instead, the boy travels to schools and tells the students about what he did and what it cost him.

There are those who say that statements favour articulate victims and offenders who victimize people who can express themselves better than others will receive harsher sentences. Once again, the reality is that statements have little, if any, impact on sentences. If given the chance, victims of all classes and

educational levels can prepare statements. Formal education is not required to tell someone how you feel. Victim impact statements remain one of the most positive means that victims of crime have to be a part of the criminal justice system.

PROTECTION OF WITNESSES

Other provisions of the *Criminal Code* that affect victims of crime are those sections that offer special protection to complainants and witness (especially young ones) when they are required to testify in a court of law. Several important bills (Bill C-15, Bill C-126, Bill C-27) have been passed over the last decade to make the court process as comfortable as possible for victims without jeopardizing the accuseds' rights to a fair trial.

The first piece of legislation was Bill C-15 which was a direct result of a report released in 1984 known as the Badgely Report. It was based on the recommendations of the Committee on Sexual Offences against Children and Youth chaired by Dr. Robin Badgely. Through a comprehensive examination of the issues facing child sexual abuse victims, some much needed light was shed on the topic. Bill C-15, "An Act to Amend the Criminal Code and the Canada Evidence Act" became law on January 1, 1988. It created several new offences relating to sexual assault crimes, and dealt specifically with sexual assault complainants and young witnesses.

There were five main elements to Bill C-15:

1. s.486(3) - publication of identity;
2. s.486(2.1) - permitting testimony outside courtroom/behind a screen (under 18);
3. s.486(1) - exclusion of public;
4. s.715.1 - permitting use of videotaped evidence (under the age of 18);
5. Canada Evidence Act - victims/witnesses under 14 who do not understand the nature of an oath, to give unsworn evidence if the child is able to communicate and "promises to tell the truth;"

Built into Bill C-15 was a mandatory review that resulted in Bill C-126 which became law in 1993. Bill C-126 elaborated on Bill C-15 and amended s. 486 of the Criminal Code to ensure that an accused could be prevented from cross examining child witnesses (under the age of 14) (s.486(2.3)) and that a support person could

be allowed to sit with child witnesses (under the age of 14) during his/her testimony (s.486(1.2)).

The most recent piece of legislation to offer special protection to witnesses was Bill C-27, which became law in 1997. It provided protection aimed specifically at juvenile prostitutes to encourage them to testify against pimps. Section 486(2.1) was also expanded to cover offences relating to prostitution and assault so those complainants under the age of 18 could testify behind a screen or with the use of a closed circuit television.

Despite all of these well-intentioned amendments that are aimed at providing increased protection for young witnesses and sexual assault victims, problems still exist. In 1992, the Department of Justice conducted research into the impact of the changes. They found that publication bans are widely used and if requests are made to clear a courtroom while a victim testifies, judges usually agree. Support persons also seem to be a common feature as well as non-legislative imaginative ways of assisting young victims such as allowing them a favourite toy/blanket, booster seat, etc.

Some provinces have made an effort with regards to the above mentioned protections. For example, in the last couple of years, Saskatchewan funded 14 softrooms (interview rooms with video equipment and furniture aimed at providing comfort and ease to videotape young witnesses).

However, despite the fact that the use of screens have been upheld as constitutional, they are seldom used. The most common reasons for not using screens is that there are no resources to buy them, they are too difficult to set up and Crowns believe that the impact of the child's evidence is greater if there is no screen. The same can be said for closed circuit televisions which are rarely available, are almost never used although Charter challenges against their use have been unsuccessful.

The history of sexual assault victims in the courts and how the Government has had to continually protect victims from court decisions is remarkable. Consider the activity in this area alone: in 1976, the Criminal Code was amended so a woman's previous sexual history could not be raised unless the judge permitted it;

1983 B the Government amended the Criminal Code to enact the "rape-shield" law so that a woman's sexual history with anyone but the accused was irrelevant; 1991 - Supreme Court struck down the rape-shield law; 1993 - Government introduced new rape-shield law; 1993 - Supreme Court ruled that extreme drunkenness is a defence to sexual assault; 1995 - Government amended law so that extreme drunkenness is not a defence to sexual assault; 1995 - Supreme Court ruled that counseling/personal records of complainant can be produced if accused asks for them; 1997 - Government passed Bill C-46 which sets strict new guidelines for when such records are to be produced; 1997 - Edmonton judge ruled C-46 infringes on rights of accused.

An additional area where victims, in particular young victims, should be better protected is with regards to Dangerous Offender/ Long Term Offender hearings. When the Government introduced Bill C-55 (High Risk Offenders), the VRC suggested an amendment that would allow previous testimony of victims at the original hearing to be used for DO/LTO hearings. For example, consider an 8 year old boy who is a victim of a repeat pedophile who testified at the original trial. The pedophile is convicted of sexual assault with a weapon and the Crown intends to apply to have the offender declared a Dangerous Offender and jailed indefinitely. In order to have the offender declared a DO, the Crown may have to provide evidence of what the offender has done to his victims.

Is it really necessary to recall the young boy to repeat his testimony and tell the court how it affected him? The system assumes that sexual assaults committed against a child causes serious personal injury (this is seen as well when the parole board detains an offender for his entire sentence – if the offence was a sexual one against a child it is presumed it caused serious harm) and there are transcripts of the boy's testimony. Perhaps the witness's testimony could be taped if the Crown knows early enough that he/she is going to attempt to have the offender declared a DO.

The concern over whether or not a convicted serial killer would be able to cross examine the parents of his victims almost became a reality during the judicial review hearing of Clifford Olson. Some of the families wanted to present oral statements at the hearing, but the judge refused their request due to the possibility that Olson

would want to question them. Therefore, to prevent this in the future and to ensure victims can present oral statements if they so chose, we recommend amending s.745.6(3.1) as follows,

"Where a victim gives oral evidence as a witness pursuant to subsection (2), the applicant shall not personally cross examine the victim unless the presiding judge is of the opinion that the proper administration of justice requires the applicant to personally conduct the cross examination.

Where the judge determines pursuant to subsection (3.1) that the applicant should not conduct the cross examination of a victim personally, the judge shall appoint counsel for that purpose."

RESTITUTION

The final section of the *Criminal Code* that deals specifically with victims of crime is that governing restitution. Section 738 allows courts to order offenders to provide payment to the victims of the offence for expenses reasonably incurred as a result of the offence, i.e. damaged property. They do not prevent victims from suing the offenders civilly.

Restitution is an example of a method of allowing the offender to accept responsibility for what he/she has done and the financial harm caused by his/her actions. It can also be beneficial for the victim because the offender is addressing the harm caused to the victim, not the state as is the case with prison sentences or fines.

The Law Reform Commission of Canada said:

"Restitution involves the acceptance of the offender as a responsible person with the capacity to undertake constructive and socially approved acts. It challenges the offender to see the conflict in values between himself, the victim and society. In particular, restitution invites the offender to see his conduct in terms of the damage it has done to the victim's rights and expectations..."

Under restitution, the victim, first of all is no longer used largely as a means of protecting society's collective values...An important part of this recognition is the victim's psychological need that notice be taken of the wrong done."

Restitution used to be permitted in the context of probation orders, but amendments in Bill C-89 made it possible for restitution orders to be part of the sentence. However, those sections were never proclaimed after a cost benefit analysis revealed that the cost of implementation would outweigh the benefits to the victim. The sections were amended in Bill C-41 and proclaimed in the fall of 1996. Restitution can now be ordered as an additional sentence on the court's own initiative (previously it required the victim to bring an application). However, the enforcement of the order is still the responsibility of the victim. Section 738(2) puts the enforcement of restitution orders via probation or conditional sentences in the hands of the provinces.

For this reason, and also because very few offenders have the financial means to pay restitution orders, victims rarely benefit from restitution orders that are ordered by the court. Informal restitution plans are another way for victims to get financial compensation from offenders. This may take place as part of a plea bargain or as a way of diverting the case away from the system (i.e. offender offers to pay victim if charges not laid).

In fact, one study done in the late 1970's by John Klein, Director of the Pilot Alberta Restitution Centre, found that "approximately one-third of the offenders who entered into restitution agreements later reneged on these agreements." A study in the Yukon in the early 1980's found that only 60% of restitution orders were paid in full.

Restitution orders are not benefiting victims the way they potentially could or the way they were intended. Much of this is because they are still seen by many in the system as a civil matter. For restitution orders to mean anything, there has to be more than a threat of civil enforcement attached to them. In other words, penal consequences may ensure that offenders take the orders more seriously.

SEXUAL ASSAULT VICTIMS AND AIDS

As public awareness and concern about HIV/AIDS grows, so does the interest in the issue of testing sex offenders for sexually transmitted diseases. This issue has been addressed in a Private Member's bill drafted by Liberal MP Derek Lee.

The issue of testing accused sex offenders for sexually transmitted diseases is one that the former Minister of Justice reviewed and said he did not believe is necessary. The former Minister, to his credit, met with Margot B., a Quebec grandmother who was raped in the basement of the church where she worked. The offender, Louis Beaulieu, was serving a prison sentence but was taking part in a work release program. She asked that he be tested for AIDS but the court said it did not have the authority to order him to undergo a test. Mrs. B. had to be tested regularly and is currently suing CSC.

The Minister rejected the notion of testing accused sex offenders because of the problems with AIDS/HIV tests. False positives and false negatives may give the victim a false sense of security or doom. The victim, Mr. Rock maintained, should be tested. The point is that Mrs. B. and other sexual assault victims are informed of the risks of tests and realize that they have to be tested themselves. Knowing the risks and facts, Mrs. B. felt that the offender's test results would be another piece of information her and her doctor could discuss. Since then, an Ontario judge ordered convicted serial killer/rapist Paul Bernardo to undergo such tests and the results were to be given to some of the women he sexually assaulted.

RECOMMENDATIONS:

1. Amend s.722.(1) of the *Criminal Code* to allow victims the choice to present oral or written victim impact statements at the time of sentencing.

2. Amend s.28 of the *Young Offender's Act* to allow victims to present victim impact statements, oral or written, at hearings to review dispositions.

3. Amend s.745.6 of the *Criminal Code* to allow victims the choice to present oral or written victim impact statements at judicial review hearings.

4. Expand all sections of the *Criminal Code* providing protection for young witnesses to include children under the age of 18.

5. Amend s.486(1.1) and s.486(2.3) of the *Criminal Code* to allow a judge the power to prevent accused person's from personally cross-examining sexual assault complainants, including adults.

6. All provinces shall provide more funding for screens and closed circuit televisions and Crowns should be encouraged to make better use of them.

7. Amend the Dangerous Offender/Long Term Offender provisions of the *Criminal Code* to allow a Crown to use a young witness' prior testimony (transcripts, videotapes, etc.) in lieu of calling the witness to repeat the testimony at the hearing.

8. Amend s.738 of the *Criminal Code* to provide for penal consequences if an offender does not pay restitution order in specified period of time.

9. Provinces should garnish wages/pensions/prison wages of offenders to fulfill restitution orders.

10. Funds from Victim Fine Surcharge programs should be used to provide legal aid lawyers to victims to help them pursue restitution orders.

11. The *Criminal Code* should be amended to provide for, at a victim's request, the testing for sexually transmitted diseases of anyone accused of a sex offence if there are reasonable grounds to believe that a sexually transmitted disease could have infected the victim of the offence. The results will be disclosed to the victim.

VICTIMS AND THE CORRECTIONS/PAROLE SYSTEM

The concerns and interests of victims about the justice system are not limited to the investigation, prosecution and trial of the offender. Many victims want to know where the offender is serving his/her sentence, when he/she can apply for parole and when he/she is released.

In 1992, the Corrections and Conditional Release Act (CCRA) was passed. It governs both the National Parole Board (NPB) and the Correctional Service of Canada (CSC). The CCRA contains several provisions relating to victims of crime including the right to attend parole hearings, the right to receive certain information about the offender, the right to provide information to the parole board, etc.

The National Parole Board governs offenders who are serving a sentence of more than two years as well as the provincial offenders in the majority of provinces. Only three provinces have their own parole boards and they are BC, Ontario and Quebec. All other provinces operate under the National Parole Board. The Correctional Service of Canada has the task of dealing with inmates serving sentences of more than two years. Offenders serving two years less a day are under the provincial correctional systems.

The definition of "victim" is the same as that found in the Criminal Code. The agencies also consider people victims if harm was done as a result of an act of the offender whether or not the offender was prosecuted or convicted of that act and that a complaint was made to the police or a Crown, or an information was laid.

INFORMATION

If a victim of an offence wishes to receive information about an offender, he/she may write to either the National Parole Board or Correctional Service of Canada. Provisions under the CCRA require that certain information be released to victims of an offence (or someone they have designated to act on their behalf). When victims (or their agents) make the request, the offender's file is flagged to ensure that information is provided in a timely fashion. Section 26 (CSC) and s.142 (NPB) sets out information the agencies can release. They:

(a) shall disclose to the victim the following information about the offender:

i. the offender's name;

ii. the offence of which the offender was convicted and the court that convicted the offender;

iii. the date of commencement and length of the sentence that the offender is serving, and

iv. eligibility dates and review dates applicable to the offender under this Act in respect of temporary absences or parole;

(b) may disclose to the victim any of the following information about the offender, where in the Commissioner's/Chairperson's opinion the interest of the victim in such disclosure clearly outweighs any invasion of the offender's privacy that could result from the disclosure:

i. the offender's age;

ii. location of the penitentiary in which the sentence is being served;

iii. the date, if any, on which the offender is to be released on unescorted, escorted temporary absence where the Board has approved the absence as required by s.747(2) of the Criminal Code, work release, parole, or statutory release;

iv. the date of any hearing for the purposes of a review under section 130;

v. any of the conditions attached to the offender's unescorted temporary absence, work release, parole, or statutory release;

vi. the destination of the offender when released on any temporary absence, work release, parole, or statutory release, and whether the offender will be in the vicinity of the victim while traveling to that destination;

vii. whether the offender is in custody and, if not, why; and

viii. whether or not the offender has appealed a decision of the Board under section 147, and the outcome of the appeal; Victims can also request to receive the Board's decision sheets outlining the reasons for the position taken by the Board.

It is important to note that victims must request to be informed of this information. Neither CSC nor the NPB will send information to a victim unless it has been requested. Many victims do not want to know or be reminded of the offence. It is essential though that victims be told they have the option. If victims do not want to personally receive information they can appoint an agent to act on their behalf (such as the Victim Resource Centre).

The Board can refuse to release information to anyone if it has reasonable grounds to believe information should not be disclosed on the "grounds of the public interest" or that its disclosure would jeopardize the safety of the person, security of the prison or the conduct of any lawful investigation. There is an example given in the Commissioner's Directive #784 of a situation where the disclosure of information may be questionable. The example given involves an offender who has been granted a temporary absence pass and there is reason to believe the victim may follow or harass the offender if the victim is informed of the date of the release, the time and destination. "In such a case, it may be appropriate to provide, for example, that the inmate is approved for one unescorted temporary absence per month and the general vicinity where the absence will take place."

ATTENDANCE AT PAROLE HEARINGS

Section 140(4) allows members of the general public, including victims, to attend parole hearings if they so choose. In making the decision whether to allow someone to observe a hearing, the Chairperson must consider the offender's point of view, as well as whether or not the person's presence would disrupt the hearing or adversely affect those who have provided information to the Board including victims and member's of their families.

Victims are not allowed to attend Ontario or Quebec Parole Board hearings due to privacy issues, however victims in BC can.

INFORMATION FROM VICTIM

As mentioned, both the National Parole Board and Corrections Canada can accept information from victims. In fact, s.4 of the CCRA outlines the principles that shall guide the service referring to information obtained from victims and the communication and exchange of information with victims. Section 101 (NPB) sets out similar guidelines for the parole board. Section 23(e) (CSC) goes even further in that it states that the Service shall take all reasonable steps to obtain "existing information from the victim, the victim impact statement, etc."

Victim impact statements presented at the sentencing hearing or a new one prepared by the victim can be used. The Board uses the information when making decisions regarding conditional release to

help assess the offender's potential risk. Not only can the information provide the Board with the impact the offence has had on the victim and therefore the gravity of the offence, it can also provide the Board with insight and information not available elsewhere. Often the full details of an offence are not heard in court due to plea bargains or other technical reasons. Therefore, an account from the victim of the impact the offence had can allow the Board to question the offender on information they may not have had before them otherwise.

The victim's account of the impact of the crime presented at parole hearings is also important because it can help the Board assess the offender's understanding of the offence. As well, it can assist the Board in setting any conditions of any release they may grant (i.e. no contact with the victim).

Information from the victim may be particularly important in cases where the offender has been referred to the parole board for detention (meaning the offender may be required to serve his entire sentence) since information about the harm the victim suffered is critical for CSC (who must decide to make the referral) and the NPB (who must decide to detain the offender). Such information can also be used by CSC when doing community assessments to see where offenders should or should not be placed when freed on conditional release.

Statements at hearings of the National Parole Board are limited to written statements. The BC Parole Board now allows victims the opportunity to present oral statements, however the Ontario Parole Board will meet with interested victims prior to hearings but it is a policy and not legislated.

Victims in the US report considerable appreciation with being able to testify at parole hearings and the opportunity to be heard.

Section 27 says that all the information that was considered to make any decision relating to the offender (i.e. parole, temporary pass, etc.) must be given to the offender. This includes information from the victim unless the Commissioner has reasonable grounds to believe it would endanger the safety of any person. If the victim requests that the information not be shared with the offender, then

the victim will be informed that the victims impact statement may not be legally permissible to use to make a decision affecting the offender.

COMMUNICATION FROM INMATE

Victims can write to the heads of correctional institutions and request that the offender not be allowed to communicate with them (Regulations, s.95). For example, the family of a homicide victim likely will not want to receive mail from the inmate. Therefore, the family simply has to write to the warden of the prison where the inmate is incarcerated and ask that any mail from the offender addressed to the family be stopped. Concern about this section surrounds the fact that the Warden must inform the offender of this and "shall give the inmate an opportunity to make representations with respect thereto."

BOARD OF INVESTIGATION REPORTS

As good as the Canadian parole and corrections system is, tragedies involving offenders on conditional release happen far too often in society. An offender on conditional release murders an average of one person a month. Another one person a month is the victim of attempted murder, almost two people a month are sexually assaulted. While some people in society are satisfied with those numbers (in comparison to the number of people released on conditional release every year), society is not, and fortunately the NPB and CSC do not seem satisfied either. Whenever a serious crime is committed by someone serving a federal sentence, NPB and CSC order a joint investigation (or one will do it if it involved only one agency) into the case.

The purpose of the investigation is to discover what, if anything, went wrong in the process, and to make any necessary changes to ensure that same mistake does not happen again. The most common problems identified in report after report are lack of communication, lack of information to make informed decisions, policies not understood or followed, inadequate supervision in the community, etc. It may be discovered, for example, a parole board member did not follow policy. In recognition of the severity of one of those shortcomings, there is now a procedure in which members of the Board can be disciplined and even removed from the Board if they have shown negligence.

When someone is murdered or sexually assaulted, dealing with the emotional trauma plus the trial/justice system is difficult enough. Add to that the knowledge that the offender was on parole at the time and the victim's ability to deal with the crime is tested even more. Very often in these circumstances, victims want answers as to why that person was on parole, who was supervising him, etc. Not getting those answers prevents many victims from dealing with their own grief and denying them a sense of closure. Board of Investigation Reports can very often provide those answers that are so important to victims.

Problems needlessly arise when reports are not released for months, even years. Much of this is due to policy that only permits the release of the reports when an action plan has been completed as well as media notes (potential questions and appropriate answers) in case there is any public interest in the matter. While CSC and the NPB must adhere to strict privacy legislation, there is no justification for the length of some delays. Accountability is not just providing the answers, it means providing the answers in a timely fashion. Lengthy delays simply foster skepticism and result in victims not trusting what the report says for fear it must have been a cover-up.

Furthermore, when victims receive a report in which paragraphs and whole pages are blacked out, it is difficult to understand why this is so. If it is to protect third parties, that is acceptable, but if it is to protect the offender's privacy, then it is not acceptable.

CORONER'S INQUESTS

In order to ensure a complete examination of the issues surrounding homicides committed by offenders on conditional release, it is necessary to probe much deeper than CSC and the NPB do in their own internal investigations. This is not to say that they do not do an adequate job most of the time, but one must always keep in mind that those investigations are done by members of each agency along with a community member who is often not even identified. True accountability must ensure a measure of independence which CSC/NPB investigations of themselves cannot offer.

The Inquest into the death of Christopher Stephenson stands out as one of the best examples of a review of a murder committed by a federal parolee. Joseph Fredericks was a sexual predator with a long history of molesting children when he murdered 11 year old Christopher in 1988. Fredericks was on parole at the time of the murder. A three month inquest was held into the case and the findings eventually led to the creation and passage of Bill C-55 which made significant improvements to the current Dangerous Offender legislation as well as created the new category of long term offender.

Therefore it is imperative that whenever someone dies at the hands of a parolee or escapee, a Coroner's Inquest be automatic. Currently, it must be shown that there is sufficient cause to warrant an inquiry. And it is not enough to simply hold an Inquest if there is no mechanism to ensure that the recommendations made by the jury are not seriously considered.

In addition, it is essential that victims be given standing at the inquests, and that their standing be automatic (if they so wish). They should not have to petition for standing in the Inquest that will examine the circumstances surrounding the death of their loved one. It is often impossible or at least very difficult for victims to hire a lawyer. The Stephensons had to do a tremendous amount of fundraising and make substantial personal financial commitments to have representation at the inquest into the murder of their son until the government finally decided to cover the remainder of their costs. Victims should be given assistance to ensure representation.

RECOMMENDATIONS

1. Amend the CCRA to give victims the choice of presenting oral or written victim impact statements at parole hearings.

2. Amend s.141(4) to ensure that information provided to CSC/NPB is kept confidential from the offender.

3. Expand s. 26 and s.142 to allow victims to receive information about the offender's conduct in prison, rehabilitative/employment training programs and educational training the offender has taken.

4. Amend s.26(b) and s.142(b) to remove the discretion of the agencies to release information to victims.

5. Amend s.95(2) of the CCRA Regulations to remove discretion of warden with regards to offender sending victims unwanted mail or telephone calls. Better monitoring of phone calls made by inmates is also necessary.

6. Amend s.26 and s.142 to ensure victims are informed if an offender is charged with or has been convicted of a new offence while on conditional release or unlawfully at large.

7. Amend s.26 and s.142 to ensure victims are informed if an offender is returned to custody while on conditional release or unlawfully at large.

8. Victims should be allowed to attend all federal and provincial parole board hearings if they so chose.

9. Ensure that CSC/NPB Board of Investigation Reports are released in a timely fashion and that the only information that is withheld is that involving third parties who had nothing to do with the commission of the offence.

10. All provinces should amend their Coroners' Acts to ensure automatic inquiries whenever someone is killed by an offender out on any form of early release (provincial or federal). The victim's family is to be given automatic standing (if they wish) at the Inquest and their legal fees are to be covered.

11. Enact a procedure to regularly review the recommendations made by the jury.

THE VICTIMS' OMBUDSMAN

In 1993, federal parolee Paul Butler murdered 23 year old Dennis Fichtenberg in Prince George. Butler was serving a thirteen-year sentence in New Brunswick for a variety of offences including armed robbery and was released to a halfway house in Whitehorse on statutory release. Not long after, he was caught trying to break into the office of the hotel where he was staying. He was charged and returned to prison. He was eventually given a one-day sentence and the NPB revoked his statutory release but granted him day parole. While in prison, Butler was approached by another inmate about committing a murder when Butler was released. Butler contacted the RCMP and eventually worked for them as an agent.

His involvement with the RCMP around the time he was granted parole despite the new conviction led to serious questions about why he was released after having committed a new offence while on parole. Dennis' mother, Marjean, embarked on a three-year campaign to uncover the truth about her son's murder. With the assistance of the Victims Resource Centre, an inquest was held which provided several answers but also highlighted how she was mistreated by both CSC and the NPB.

Mrs. Fichtenberg was lied to, information was withheld from her and not distributed to her in a timely fashion. After the Inquest, she sued Corrections Canada, the National Parole Board and the RCMP and settled out of court last year. Looking back, she remembers how difficult it was fighting three levels of bureaucracy by herself. Even with the help of the VRC, there was no one within the system fighting for her.

As mentioned in Chapter 1, the balance between the offender's rights and the victim's rights is not an equal one. The list of amenities and rights that offenders have is simply too long to detail in this report. Those services are not limited to the right to a fair trial. They extend into the offender's sentence, and the system even provides the offender an avenue in which to file complaints if those rights are violated. This is something that we have noted is seriously lacking for victims.

THE FEDERAL VICTIMS' OMBUDSMAN

With the adoption of the CCRA, the Government created the office of the Correctional Investigator. Section 167 of the CCRA sets out the mandate of the office:

"...to conduct investigations into the problems of offenders related to decisions, recommendations, acts or omissions of the Commissioner or any person under the control and management of, or performing services for or on behalf of the Commissioner that affects offenders either individually or as a group."

The existence of this office, as well as the mandate is communicated to all offenders in federal prisons along with information as to how to use the services provided.

The Investigator may commence an investigation at the request of an offender, the request of the Minister or on his/her own initiative. The Investigator has the authority to "hold any hearing and make such inquiries." While conducting an investigation, the Investigator can summon and examine under oath anyone who he/she believes can provide information. The Investigator reports any findings to the Commissioner of CSC and/or the Chairperson of the NPB. In doing so, the Investigator can make any recommendations that he/she considers appropriate but neither the Commissioner nor the Chairperson is bound to act on any finding or recommendation.

It is a summary offence to obstruct, hinder or resist any investigation of the Correctional Investigator, refuse to comply with any lawful requirement or to make any false statements to the Investigator.

Victims have no "Correctional Investigator" or any equivalent if they feel that their rights have been ignored or violated. There is no official office where victims can go if they have concerns/complaints about issues where they feel they have been mistreated or are not getting access to the information they deserve. This was a concern of the jury at the Coroner's Inquest into the death of Dennis Fichtenberg, which took place in 1996. One of the recommendations of that inquest was that the NPB and CSC work jointly to:

"establish an independent regional advocate, with the authority to require information be made available by the National Parole

Board and the Correctional Service of Canada, to assist victims and families of victims in understanding the facts surrounding an incident involving a federal parolee."

One option would be to consider expanding the mandate of the Correctional Investigator to include investigating complaints from victims but there are obvious concerns about having one office attempt to address the concerns of both victims and offender. As many people have noted, the Correctional Investigator has become an advocate for offenders.

The powers and structure of the office of the Victims' Ombudsman would mirror that of the Correctional Investigator except that the clients would be victims. The Victims' Ombudsman would accept complaints from victims and would be able to conduct investigations including the right to hold hearings and have witnesses testify under oath. Concerns such as those of Marjean Fichtenberg about the stalled release of investigative reports, concerns about information withheld under the Privacy Act or the Access to Information Act could be investigated.

Also, the Victim's Ombudsman would be responsible to provide consistent information regarding victims' rights to not only victims, but to police agencies, Crown Attorneys, defence lawyers, judges, victims service agencies and others within the justice system.

PROVINCIAL VICTIMS' OMBUDSMAN

All provinces have an Ombudsman Act except for Newfoundland, PEI, and the territories. Under their current application, the offices are for general complaints and not restricted to concerns about the criminal justice system.

For example, the BC Ombudsman Act allows victims to file a complaint if they feel their rights under the BC Victims of Crime Act have been violated. But there is no real power of enforcement. The Ombudsman cannot, for example, investigate a Crown's decision with respect to charges, staying charges, etc. In Alberta, victims can complain to the Director who can give them information about how to resolve their concerns.

The Ombudsman's' powers should be strengthened to allow him/her to recommend that a Crown be disciplined if he/she ignores his/her duties under the Act. His/her powers should mirror those of the Federal Ombudsman as well as recognize the specific concerns that will undoubtedly arise with respect to the application of victims' rights legislation.

If a victim feels that a plea bargain was entered into without proper consultation with the victims or their family, the Ombudsman should have the authority to investigate a Crown's decision with regards to why he/she accepted a plea bargain and whether or not the victim was informed and given the opportunity to make representations to the Crown. While it is not practical that the Ombudsman have the authority to reverse the disposition of a case once it has been completed or order an appeal, the Ombudsman should be granted the power to delay criminal proceedings if he/she is satisfied that a victim's rights were violated, i.e. not told of their right to prepare a victim impact statement for the purposes of sentencing.

RECOMMENDATIONS:

1. The Office of the Federal Victims of Crime Ombudsman be created with the mandate

"to conduct investigations into the problems of victims of crimes related to decision, recommendations, acts or omissions of the

Commissioner of the Correctional Service of Canada, the Chairperson of the National Parole Board or any other person under the control and management of, or performing services for or on behalf of the Commissioner or the Chairperson that affects victims of crime either individually or as a group."

(a.) The Office will have the power to commence investigations (either on his/her own initiative, at the request of a victim of crime or their representative or at the request of the Minister). The office will granted the authority to hold hearings and can summon and examine under oath anyone who he/she believes can provide information.

(b.) The Office will make any recommendations he/she considers appropriate, and the Minister must respond to those recommendations in one of the two following ways:

i. outline steps that have been taken and/or are proposed to be taken to address the complaint/concern; or

ii. if no steps have been taken or are proposed to be taken, the reasons for not following through on the recommendation.

(c.) The Ombudsman will submit an annual report to the House of Commons and will be appear before the Standing Committee on Justice and Human Rights.

(d.) It is a summary offence to obstruct, hinder or resist any investigation of the Ombudsman or refuse to comply with any lawful requirement or to make any false statement.

(e.) Proceedings and/or decisions of the Ombudsman must not be challenged, reviewed or called into question by a court, except on the ground of lack or excess of jurisdiction.

2. All provinces and territories shall enact legislation to create a Provincial Victims' Ombudsman, which will have the powers as the Federal Ombudsman (where applicable).

3. The Provincial Victims' Ombudsman will also have the power to: investigate complaints by victims' of violations of their rights under the provinces victims' of crime legislation; investigate complaints by victims that plea bargains were accepted without proper consultation with the victim and/or consideration of the

victim's views; delay ongoing proceedings or upon receipt of a complaint from a victim that he/she was not given the right to present a victim impact statement was received;

4. The Victim Ombudsman would be responsible to provide consistent information regarding victims' rights to not only victims, but to police agencies, Crown Attorneys, defence lawyers, judges, victims service agencies and others within the justice system.

NATIONAL VICTIMS' BILL OF RIGHTS

In 1997, the Reform Party of Canada introduced the following motion:

"That the House urge the Government to direct the Standing Committee on Justice and Legal Affairs to proceed with the drafting of a Victims' Bill of Rights, and that, in such areas where the Committee determines a right to be more properly a provincial concern, the Minister of Justice initiate consultation with the provinces aimed at arriving at a national standard for a Victims' Bill of Rights."

During the debates in the House of Commons concerning this motion, one of the concerns raised about a National Federal Victims' Bill of Rights was the issue of federal vs. provincial jurisdiction. The Bloc Quebecois, for example, did not support the motion because they argued that victims' rights was a provincial issue, but that they supported victims in general.

The Bloc argued that a national standard can only be arrived at in an area of exclusive federal jurisdiction, such as defence, the Criminal Code, etc. Such areas are listed in s.91 of the British North America Act (1867). Therefore, the Bloc maintained that the Federal Government could only legislate on the rights of victims in an indirect fashion, such as provisions for victim impact statements in the Criminal Code. The Bloc went on to site two decisions of the Privy Council (abolished in 1949) which acknowledged that the provinces had exclusive jurisdiction over victim compensation.

When entering this debate, we must be clear about what a National Victims' Bill of Rights will and will not do. Such a piece of legislation will not really give any rights to victims. That must come from the provinces themselves, and Chapter 9 outlines methods of doing that.

A National Victims Bill of Rights would be a statement of intent of those principles which Canadians believe that victims should be entitled to; that the principles set out in the bill will help guide our system and the actors in it when dealing with victims of crime. It will also act as a national standard to provincial governments for victims' entitlements. We know that some provinces already offer

victims a wide range of rights, but those rights are not uniform across the country.

This issue is no different from the general scheme of how criminal justice operates in this country. The Federal Government reforms and enacts criminal law and the provinces enforce and administer those laws. A National Victims' Bill of Rights would be no different. The Federal Government would pass the law and set the standard and the provinces would administer the law.

It could be compared to the Statement of Principles found in S. 3 of the Young Offenders Act or the preamble found in Bill C-72 regarding the defence of drunkenness. A National Victims Bill of Rights would act as a statement of principles or a preamble to the Criminal Code. It would send a clear message that Canadians are concerned about the way victims are being treated. The VRC has drafted a version of a National Victims' Bill of Rights (see Appendix 6). The Federal Government should set the standard, and the provinces should provide the resources and the enforcement policies.

National legislation regarding victims' rights would not replace provincial legislation of the same kind. It would merely act as a national standard to which the provinces could look for guidance. The fact is that some provincial legislation is very good (except for the fact that there are no enforcement provisions) and some provincial legislation is non-existent or may as well be. The delivery of those rights would still remain the task of the provinces. We would fully expect that a national standard would be created with the cooperation of the provinces and the Federal Government would work with the provinces to ensure that their legislation was consistent with the national standard.

AMENDING THE *CRIMINAL CODE*

Alternatively or in addition to the National Victims' Bill, the *Criminal Code* (which is the jurisdiction of the Federal Government) should contain a preamble regarding how victims of crime should be treated. Once again, it would be similar to the Statement of Principles found in s.3 of the YOA. It would guide users of the system on the involvement of victims and how they should be treated.

Let's face it - the *Criminal Code* (and the Charter) may provide for the same rights for all of us, but the majority of us never use those rights. The reason is simple - most of us are never charged with a criminal offence. The *Criminal Code* is an accurate name in that it is a code of treatment for criminals - it sets out what offenders can be charged with, what police must do to collect evidence, what Crowns must prove, what defences an accused person can use, what judges must consider when sentencing an offender, etc. If we accept that victims are a part of the system, and in Canada we do, then we must enshrine those principles in the *Criminal Code*. Once again, it must be noted that there is nothing in what victims are asking for that interferes with the accused person's right to a fair trial.

SHOULD VICTIMS BE NAMED IN THE CHARTER?

Whenever one discusses the issue of victims' rights at a national level, the question of naming victims of crime in the Charter arises. Of course there are those who will say that victims, like the rest of us, are already protected by the Charter and therefore it is not necessary to specifically include them. If that argument were true, then s.15 of the Charter would not have to refer to race, colour, sex, physical disability, etc. The point is they are included because they are vulnerable groups in society that have been discriminated against. Victims are also vulnerable groups in the criminal justice system.

While the difficulties in amending the Charter are recognized, an amendment is necessary not only respecting the treatment of victims, but as well, the prevention of future victims. Currently, there are no guarantees of fairness for victims or future victims.

RECOMMENDATIONS:

1. The Federal Government should pass a National Victims' Bill of Rights based on model found in Appendix 6.

2. A preamble to the Criminal Code should be drafted to recognize victims of crime and their role in the justice system.

3. The Charter of Rights and Freedoms should be amended to reflect the Statement of Principles & provide protection for victims of crime and potential victims of crime.

VICTIM SERVICES

As the criminal justice system became more and more aware of the needs of victims of crime, it was recognized that legislation was only one part of the solution. Before much of the legislation, provinces began developing victim service programs to provide information, guidance and explanations about how the system works and what the victim's role in it was. For some victims, the entire process from start to finish can take up to two years, if not longer. There are many questions and concerns that arise during that time period that victims need someone to help them with.

The number of these services has grown in virtually every province, and with the adoption of victims of crime legislation in almost every province, victim service workers are now able to help victims more. Services for victims require more than good intentions. Programs must be developed to ensure the interests and needs of victims are truly being met.

There are four basic types of victim service programs:

i. police based victim services: usually located in police detachments/departments, these types of programs are designed to help the victims as soon as possible after their contact with the justice system begins. The types of services that police based programs may include are: death notification, information about the justice system, information about the investigation, assistance with victim impact statements and criminal injuries compensation applications, referrals, etc.

ii. Crown/court based victim/witness services - usually located in courthouses, and work very closely with the Crown's office. The emphasis is on court preparation. The types of services offered may be: information about court process, tours of courthouse, emotional support throughout the court process, facilitate meeting with Crown, work with child witnesses/victims, etc. Obviously, victims usually only have contact with the Crown/court based programs if the police identify and arrest a suspect.

iii. community based victim services - these types of programs are usually not government operated, but may benefit from government funding. These programs also usually specialize in the types of victims they deal with, i.e. sexual assault centres, domestic violence transition homes, etc.

iv. system based services - this is a relatively new approach to providing assistance to victims in that it is not "police" or "crown" based but "system" based. This means that the victim only has to go to one place to get the types of services they can access from both police and crown based programs. Both PEI and Nova Scotia have adopted the service based model. It is a one-stop shopping service for a victim where he/she can get information about the system or about the progress of the case, assistance with victim impact statements and criminal injuries compensation applications, tours of the courthouse, assistance meeting with the Crown, referrals, someone to go to court with, etc.

Many provinces have a series of different types of programs. For example, BC has 63 police based programs, 24 Crown based programs, 39 specialized programs and 12 sexual assault centres. Ontario has a similar model and some of the services are excellent where victims report little benefit from others.

PEI has in recent years developed a model program that other provinces should be closely considering and reviewing. PEI uses a "system based" model of providing support and assistance to victims, not part of a police department, Crown office or court staff. The program is based in the Community and Correctional Services Division, PEI Department of Justice and Attorney General.

"Victims Services are in fact part of the criminal justice system on Prince Edward Island, and we try to assist victims in their dealings with any part of the system, from police through to parole and probation." Direct services provided include: information, counseling and referral, court-related, financial (i.e. crimes compensation), etc. It is a client-centered approach with the recognition that the needs and wishes of victims may not coincide with those of the Crown or police. While the program may not have any official power to make decisions, they can make the victims wishes known and mediate solutions, which address both parties wishes.

The PEI victim services contact victims, or their families, as a follow up to the police response. A 1991 report showed that most victims were contacted between one week and one month after the offence. The program focuses on victims of the more serious types of

offences (i.e. domestic violence, sexual assault, families of murder victims, robberies, etc.). Specific services provided by the PEI Victim Services are:

liaison between police officer and victim;

attend arraignments;

contact victim with outcome (i.e. plea outcome, court date, sentence, etc.);

provide information;

help set up meetings with Crown;

attend court with victim;

assist with Victim Impact Statements;

help with criminal injuries compensation;

information about complaint procedures;

intervention with employers;

transportation to court;

Victim Services staff even have a formal role in the criminal injuries compensation program in that they investigate claims. Part of the reason for this is that it helps integrate the compensation program with other types of services for victims.

Nova Scotia uses a similar model as PEI, with the addition of a Child Victim/Witness Pilot Program. In 1996, Nova Scotia completed "An Evaluation of Victims' Services Division." The Victims' Services Division (VSD) in Nova Scotia was formed in 1989 "with a mandate to deliver a comprehensive criminal justice-based service to victims of crime in Nova Scotia." The five core offerings of the VSD are:

i. information on the criminal justice system;
ii. case specific information;

iii. assistance with Victim Impact Statements;
iv. referral service;
v. Criminal Injuries Compensation Program;

Also part of the VSD was the Victims' Services Funding Program (VSFP) which provides funding to short term one time community based projects for victims. One of the key findings of the report was the VSFP was no longer a necessity and that it should be replaced by "a process that focuses on the strengthening and integration of essential victim support services at the community level into an overall system of service delivery to victims."

The major finding of the Nova Scotia report was that there were many different services available to victims ranging from early intervention (RCMP Volunteer Assistance Program) to emotional support (community based programs) to family violence initiatives (police based services).

"What remains to be put into place is an integration of the several pieces to provide victims of crime in Nova Scotia with a seamless of integrated services ."

In other words, one integrated, coordinated system of support for victims.

Probably the model victim service is one that can assist different types of victims through the system. For example, what domestic violence victims need is different than what the parents of a murdered child need. The model service is also one that can provide assistance and information on all the rights that victims have such as: compensation programs, what the provincial victims' of crime acts says, what protections the Criminal Code offers young witnesses and sexual assault victims, what services are available in the community, etc. The service should also help victims communicate with both police and the Crown. And finally, it must be recognized that what victims in downtown Regina may need will differ from what communities in Northern Saskatchewan need.

Victim services require flexibility to deal with the variety of issues that face different victims of crime ranging from sexual assault to domestic violence to impaired driving to murder.

RECOMMENDATIONS:

1. All provinces review their victim service programs to ensure that the needs of victims of crime are being met and that a seamless delivery of service is being provided.

ENFORCEABILITY

"...promising victims rights that are not delivered may involve a certain danger: providing rights without remedies would result in the worst of consequences, such as feelings of helplessness, lack of control and further victimization...Ultimately, with the victims' best interests in mind, it is better to confer no rights than "rights" without remedies."

Rights with no remedies are not really rights at all. This is the problem that plagues the "rights" victims have been granted - nothing happens if they are violated. If Ontario Crowns do not inform victims that they have a right to present a victim impact statement, as they should do under the victims legislation in that province, nothing happens. If a victim in BC is not told about a plea bargain and reads about it in the newspaper the next day, the plea is not overturned.

Imagine if we told someone accused of murder that he had the right to a lawyer even if he cannot afford one, the right to a fair trial, the right to be presumed innocent, etc., but all of these rights are conditional on resources, whether or not the Crown feels the need to allow the accused to exercise those rights. Furthermore imagine that all of this was based on the assumption that the accused was even told about his rights. That does not happen in our society, and if it does, the accused is eligible for a new trial or have the charges against him stayed or dropped. Accused persons, and convicted criminals have rights, and if those rights are violated, they have remedies. Victims do not.

One of the reasons that some Crowns may not adhere to the victims legislation in their province is because there is no legal recourse for victims, and they know it. Since there is nothing in this kind of legislation that guarantees rights to victims, the question becomes one of enforcement. First of all, should victims of crime legislation be enforceable and if so, how? Perhaps victims should be given the right to stop or postpone criminal proceedings if their rights have been violated. For example, if victims have the right to be informed of a plea bargain before it goes to court and the Crown fails to tell them about it, a victim should have the ability to stop the plea from being accepted. However, the system is already overburdened, and this model would only add to the problem. Nova

Scotia, for example, contains a specific provision that states that this cannot happen.

Another option is to create an onus on the Crown to follow the rights set out under the Act, and if they were not followed, a cause of action would be created. This means that victims could sue the Government if their rights were violated. Currently all provincial legislation specifically sets out that nothing in the Act creates a cause of action. It would certainly act as a reminder to Crowns/police/others that these rights are to be respected.

Crown Attorneys, police and others in the system need to be aware that victims do have rights, and know what those rights are. It is equally important to ensure that victims be informed that they do have some "rights," which means those within the system who interact with victims know they have a responsibility to inform the victims of their rights (just as they do with offenders). Getting rights for victims is only half the battle - ensuring they know about them is the other half.

Most of the American states are the same as the Canadian provinces - they offer rights with no remedies. However, there are some that have, or are considering allowing, victims legal recourse when their rights are abridged. Some examples are:

Colorado - established a Victims' Rights Committee that investigates and attempts to resolve complaints regarding the provision of rights; DA must, if practical, inform the victims of any motion that may substantially delay prosecution. The DA then must inform the court of the victim's position on the motion and if the victim objects to the motion the court shall state in writing or on the record prior to granting any delay that the victim's objection was considered (s.3); The Committee may refer a case to the Governor who must ask the Attorney-General to bring an action (few actions have resulted, attendance rates of justice officials at training programs for victim's rights have been very high);

Hawaii - failure of officer/employer to comply with the victims' rights laws may provide a basis for disciplinary action but such failure does not create liability in any civil action;

South Carolina/Minnesota - have established statewide victims ombudsman programs which are empowered to investigate complaints of non-compliance and make recommendations for remedial action to which government agents must reply;

Utah - established a Victims' Rights Committee that may hold hearings and publish their findings. Utah also allows injunctive actions for failure to comply with victims' rights laws to be brought by an individual victim or a member of the committee. In addition, victims or the committee are allowed to file amicus briefs in cases affecting crime victims;

Maryland - permits victims to ask for leave to file an appeal to the State Court of Special Appeals for any final order that denies victims their statutory rights;

Arizona - grant victims the right to set aside post-conviction release decisions resulting from hearings where they were denied the opportunity to receive notification, attend the hearing and be heard. Arizona also allows victims to bring an action for money damages against the government entity responsible for the "intentional knowing or gross negligent violation of the victims' rights."

Deborah Kelly and Edna Erez, in their paper "Victim Participation in the Criminal Justice System," warn that,

"Creating rights with remedies would cause the fragile alliance of victims advocates, legislators and prosecutors to shatter. As a result, victims are likely to remain where they are, hoping to work with sympathetic criminal justice personnel who will inform them of their rights and help to exercise them, but more likely to remain ignorant of their rights to participate in the criminal justice system."

If "rights" given to victim remain unenforceable, they are merely paper promises. Telling victims they have rights but not giving them a remedy if those rights are violated will only add to the victim's dissatisfaction with the justice system, which is exactly what the purpose of giving the rights in the first place was.

RECOMMENDATIONS

1. Allow victims to bring an action against the Government if their rights have been violated if it can be shown there was a failure to use reasonable efforts to perform a duty or provide one of more rights.

2.Establish both Federal and Provincial Victims' Ombudsman Offices (see chapter 6).

3. Grant victims the power to delay a sentencing hearing if they have not been granted an opportunity to present a victim impact statement.

4. Grant victims the right to set aside post-conviction release decisions if they were not given the opportunity to present victim impact statements.

THE FUTURE OF VICTIMS' RIGHTS IN CANADA

Victims of crime have made progress in the criminal justice system B this report is evidence of that. They are no longer completely on the outside looking in. This report was not intended to continue the debate about whether or not victims should be included in the system - that debate is over. The issue is to what extent they should be involved and how.

This Report outlines what access victims currently have to the justice system and makes over 50 recommendations to both federal and provincial governments about what the future of victims of crime in Canada should include. The recommendations vary from the formidable (a Charter amendment to recognize victims) to the minor (expanding current protections for witnesses) to the long overdue (creation of a victim ombudsman).

No report on the future of victims' rights would be complete without reference to a growing trend in the justice system: Restorative Justice. This new philosophy on how crime and justice is currently led in Canada by the faith community within the justice system, Restorative Justice sees crime as affecting victims, the community and the offender, and it is necessary to address the needs of each party. It relies on input and participation from all parties, and looks to innovative, less formal ways of dealing with crime. It emphasizes the healing of victims, the community and the offender, instead of the focussing on punishment.

Of major interest to victims and victims groups is the concept of victim-offender reconciliation programs that is an integral part of the Restorative Justice model. This allows victims the chance to meet the offender in the presence of a professional mediator to discuss the offence, why it happened and what the impact of it was. This method of dealing with criminal offences is growing in Canada. Information from those involved in this initiative report that victims who have participated find it a beneficial and positive experience.

The concept of victim-offender reconciliation programs is a worthy one. It gives victims the chance to tell the offender how his/her actions have affected the victim's life. Whether this be the owner of a car that was vandalized by a teenager, the victim of an assault or

possibly even the parents of a murdered child, the process can be beneficial to victims of crime if they chose to take part.

Victims' groups have raised concern about the initiative, not because they disagree with the concept, but because they have questions about its implementation. They fully support victims being given the option of participating in this type of programs, but have apprehensions about victims being "encouraged" to participate.

It is really a question about who mediation programs are intended for. To date, it has largely been an initiative of the faith community within corrections and organizations that work with and support offenders. There has been little involvement of any person or group that is solely concerned with the victim. Victims groups, therefore, are apprehensive that the process is offender based and with too much of a focus on the offender's needs, making the victims' needs secondary. While this may not be the intent of those involved in the process, it is something that will have to be addressed in the near future.

As a final comment on this process is its underlying philosophy that the best way for victims to find "closure" is to confront the offender, to forgive the offender. Again, this may be the path that some victims chose, but it should not be held up as the solution for all victims. Many victims will never forgive the offender, but they will go on to lead productive lives. There is no single way for victims to survive - they all must deal with the victimization in their own, personal ways. No one should judge how they deal with it.

The decision or the inability to forgive does not mean a constant sense or rage or hatred for the offender will consume the victim. As Mr. Jim Stephenson said of the man who murdered his son, "Joseph Fredericks was a non-entity for me after the conviction."

The victims who were consulted for this report are examples of people who have taken tragic situations and affected positive change using their experiences. This report would not have been possible without them. Their suggestions for improvement have been incorporated wherever possible, and this report is better because of their input. Readers will note that save for the historical

or factual information, little academic research was used for this report. That was no accident - this is not an academic report aimed at an academic audience. It is a report based on the experiences of real people who have had their lives affected by crime.

The stereotype portrayed by many academics and defence counsel of victims, as being motivated by vengeance, is not accurate. Their goals have little to do with the offender in their case. They want to ensure that the needs of victims and future victims are met by the system and they want prevent what happened to them from happening to you.

Victims who have provided valuable input for this report, and many others who have worked towards improvement the criminal justice system, should be commended for their courage, their dedication and their desire to prevent crime. It is for them that this report was done. They have taught us, and our justice system is better for it. This report is the blueprint for the future of crime victims' rights in Canada. We call upon our political representatives to right the wrongs identified in this report. It only requires human compassion and the political will to do the right thing.

APPENDIX 1
SUMMARY OF RECOMMENDATIONS

1. All provinces and territories enact victims of crime legislation that respects victims needs;

2. All provinces and territories expand the definition of victim like BC:

"victim" means an individual who suffers, in relation to an offence:

(a) physical or mental injury or economic loss as a result of an act or omission that forms the basis of the offence, or
(b) significant emotional trauma and is an individual against whom the offence was perpetrated or, with respect to an individual against whom the offence was perpetrated, is a spouse, sibling, child or parent of the individual;

3. All provinces and territories adopt a preamble similar to Ontario's.

"The people of Ontario believe that victims of crime who have suffered harm and those whose rights and security have been violated by crime, should be treated with compassion and fairness. The people of Ontario further believe that the justice system should operate in a manner that does not increase the suffering of victims of crime and that does not discourage victims of crime from participating in the justice process."

4. All provinces and territories provide the following information to victims of crime:

- services available;
- criminal injuries compensation;
- protection from intimidation;
- progress of investigation;
- if charges are/are not laid (if not, reasons why not);
- what charges are and reasons why;
- name of accused;
- victim's role in prosecution;
- court procedures;
- dates/times of court appearances;
- outcome of all proceedings;

- pretrial arrangements relating to a plea;
- length of disposition and date it begins;
- interim release (bail);
- disposition under s.672.54 (not criminally responsible) or s.67258 (unfit to stand trial);
- right to make victim impact statement at time of sentencing, at parole hearings and judicial review hearings (if applicable);
- means to contact parole board;
- application for release;
- release from custody;
- escape from custody; means for victim to report any breaches of terms of supervision / release;
- any hearings relating to s.672.54;
- legislation relating to access to information;
- where offender serving time;
- ombudsman's office if one exists;
- the act itself;
- crime prevention;
- victim-offender reconciliation programs (if interested);

5. All provinces and territories indicate who and how victims are notified of rights (police - information cards/pamphlets in plain language);

6. All provinces and territories remove non-committal language and make the rights of victims enforceable;

7. All provinces and territories remove no cause of action clauses allowing victims to sue the Crown if rights under the Act are violated;

8. All provinces and territories update their Crown Policy Manuals regarding victims of crime and the responsibility of Crowns under the Victims of Crime legislation;

9. All Crown files shall contain a checklist of the various rights victims have to ensure that the victims was informed of what their rights were and which rights they chose to exercise;

10. All provinces and territories should have a victims' ombudsman/advocate who in addition to those powers set out in Chapter 6.

11. Before accepting any plea bargain, a Crown must inform the court that the victim has been informed of the plea and that have been given an opportunity to voice their opinion which the Crown has taken into consideration.

12. Victims be given the opportunity to consult independent lawyers through legal aid.

13. Judges should be given more education on the impacts of crime on victims and the needs of victims.

14. The Federal Government should examine the issue of a National Criminal Injuries Compensation Program.

15. All provinces adopt legislation to compensate victims of crime.

16. The Federal Government should share the financial burden of crime victim compensation programs on the condition that follow set conditions, i.e. compensate families of homicide survivors for counseling.

17. All crimes compensation legislation recognize homicide survivors as victims.

18. The practice of notification of convicted offenders must cease.

19. All provinces should retrieve awards from offenders.

20. All provinces should provide for interim awards.

21. All provinces add criminal harassment to their schedule of offences (currently only BC compensates for stalking).

22. All provinces adopt a uniform schedule of offences.

23. Amend provincial Medicare to include families of homicide victims for free psychological counseling.

24. Amend definitions of victims to include same sex partners.

25. Amend s.722.(1) of the Criminal Code to allow victims the choice to present oral or written victim impact statements at the time of sentencing.

26. Amend s.28 of the Young Offender's Act to allow victims to present victim impact statements, oral or written, at hearings to review dispositions.

27. Amend s.745.6 of the Criminal Code to allow victims the choice to present oral or written victim impact statements at judicial review hearings.

28. Expand all sections of the Criminal Code providing protection for young witnesses to include children under the age of 18.

29. Amend s.486(1.1) and s.486(2.3) of the Criminal Code to allow a judge the power to prevent accused person's from personally cross-examining sexual assault complainants, including adults.

30. All provinces shall provide more funding for screens and closed circuit televisions and Crowns should be encouraged to make better use of them.

31. Amend the Dangerous Offender/Long Term Offender provisions of the Criminal Code to allow a Crown to use a young witness' prior testimony (transcripts, videotapes, etc.) in lieu of calling the witness to repeat the testimony at the hearing.

32. Amend s.738 of the Criminal Code to provide for penal consequences if an offender does not pay restitution order in specified period of time.

33. Provinces should garnish wages/pensions/prison wages of offenders to fulfill restitution orders.

34. Funds from Victim Fine Surcharge programs should be used to provide legal aid lawyers to victims to help them pursue restitution orders.

35. The Criminal Code should be amended to provide for, at a victim's request, the testing for sexually transmitted diseases of anyone accused of a sex offence if there are reasonable grounds to believe that a sexually transmitted disease could have infected the victim of the offence. The results will be disclosed to the victim.

36. Amend the CCRA to give victims the choice of presenting oral or written victim impact statements at parole hearings.

37. Amend s.141(4) to ensure that information provided to CSC/NPB is kept confidential from the offender.

38. Expand s. 26 and s.142 to allow victims to receive information about the offender's conduct in prison, rehabilitative/employment training programs and educational training the offender has taken.

39. Amend s.26(b) and s.142(b) to remove the discretion of the agencies to release information to victims.

40. Amend s.95(2) of the CCRA Regulations to remove discretion of warden with regards to offender sending victims unwanted mail or telephone calls. Better monitoring of phone calls made by inmates is also necessary.

41. Amend s.26 and s.142 to ensure victims are informed if an offender is charged with or has been convicted of a new offence while on conditional release or unlawfully at large.

42. Amend s.26 and s.142 to ensure victims are informed if an offender is returned to custody while on conditional release or unlawfully at large.

43. Victims should be allowed to attend all federal and provincial parole board hearings if they so chose.

44. Ensure that CSC/NPB Board of Investigation Reports are released in a timely fashion and that the only information that is withheld is that involving third parties who had nothing to do with the commission of the offence.

45. All provinces should amend their Coroners' Acts to ensure automatic inquiries whenever someone is killed by an offender out on any form of early release (provincial or federal). The victim's family is to be given automatic standing (if they wish) at the Inquest and their legal fees are to be covered.

46. Enact a procedure to regularly review the recommendations made by the jury.

47. The Office of the Federal Victims of Crime Ombudsman be created with the mandate,

"to conduct investigations into the problems of victims of crimes related to decision, recommendations, acts or omissions of the Commissioner of the Correctional Service of Canada, the Chairperson of the National Parole Board or any other person under the control and management of, or performing services for or on behalf of the Commissioner or the Chairperson that affects victims of crime either individually or as a group."

(a.) The Office will have the power to commence investigations (either on his/her own initiative, at the request of a victim of crime or their representative or at the request of the Minister). The office will granted the authority to hold hearings and can summon and examine under oath anyone who he/she believes can provide information.

(b.) The Office will make any recommendations he/she considers appropriate, and the Minister must respond to those recommendations in one of the two following ways:

i. outline steps that have been taken and/or are proposed to be taken to address the complaint/concern; or

ii. if no steps have been taken or are proposed to be taken, the reasons for not following through on the recommendation.

(c.) The Ombudsman will submit an annual report to the House of Commons and will be appear before the Standing Committee on Justice and Human Rights.

(d.) It is a summary offence to obstruct, hinder or resist any investigation of the Ombudsman or refuse to comply with any lawful requirement or to make any false statement.

(e.) Proceedings and/or decisions of the Ombudsman must not be challenged, reviewed or called into question by a court, except on the ground of lack or excess of jurisdiction.

48. All provinces and territories shall enact legislation to create a Provincial Victims' Ombudsman, which will have the powers as the Federal Ombudsman (where applicable).

49. The Provincial Victims' Ombudsman will also have the power to:

(a) investigate complaints by victims' of violations of their rights under the provinces victims' of crime legislation;

(b) investigate complaints by victims that plea bargains were accepted without proper consultation with the victim and/or consideration of the victim's views;

(c) delay ongoing proceedings or upon receipt of a complaint from a victim that he/she was not given the right to present a victim impact statement was received;

50. The Victim Ombudsman would be responsible to provide consistent information regarding victims' rights to not only victims, but to police agencies, Crown Attorneys, defence lawyers, judges, victims service agencies and others within the justice system.

51. The Federal Government should pass a National Victims' Bill of Rights based on the model found in Appendix 6.

52. A preamble to the Criminal Code should be drafted to recognize victims of crime and their role in the justice system.

53. The Charter of Rights and Freedoms should be amended to reflect the Statement of Principles and provide protection for victims of crime and potential victims of crime.

54. All provinces review their victim service programs to ensure that the needs of victims of crime are being met and that a seamless delivery of service is being provided.

55. Allow victims to bring an action against the Government if their rights have been violated if it can be shown there was a failure to use reasonable efforts to perform a duty or provide one of more rights.

56. Establish both Federal and Provincial Victims' Ombudsman Offices (see chapter 6).

57. Grant victims the power to delay a sentencing hearing if they have not been granted an opportunity to present a victim impact statement.

58. Grant victims the right to set aside post-conviction release decisions if they were not given the opportunity to present victim impact statements.

APPENDIX 2
STATEMENT OF BASIC PRINCIPLES OF JUSTICE FOR VICTIMS OF CRIME

In recognition of the United Nations Declaration of Basic Principles of Justice for Victims of Crime, Federal and Provincial Ministers Responsible for Criminal Justice agree that the following principles should guide Canadian society in promoting access to justice, fair treatment and provision of assistance for victims of crime.

1. Victims should be treated with courtesy, compassion and with respect for their dignity and privacy and should suffer the minimum of necessary inconvenience from their involvement with the criminal justice system.
2. Victims should receive through formal and informal procedures, prompt and fair redress for the harm that they have suffered.
3. Information regarding remedies and the mechanisms to obtain them should be made available to victims.
4. Information should be made available to victims about their participation in criminal proceedings and the scheduling, progress and ultimate disposition of the proceedings.
5. Where appropriate, the views and concerns of victims should be ascertained and assistance provided throughout the criminal process.
6. Where personal interests of the victims are affected, the views or concerns of the victim should be brought to the attention of the court, where appropriate and consistent with criminal law and procedure.
7. Measures should be taken when necessary to ensure the safety of victims and their families and to protect them from intimidation and retaliation.
8. Enhanced training should be made available to sensitize criminal justice personnel to the needs and concerns of victims and guidelines developed, where appropriate, for this purpose.
9. Victims should be informed of the availability of health and social services and other relevant assistance so that the might continue to receive the necessary medical, psychological and social assistance through existing programs and services.
10. Victims should report the crime and cooperate with law enforcement authorities.

APPENDIX 3
REFORM VICTIM BILL OF RIGHTS

DEFINITIONS

"Victim": anyone who suffers, as a result of an offence, physical or mental injury, or economic loss; or any spouse, sibling, child, parents of the individual against whom the offence was perpetrated, or anyone who had an equivalent relationship, not necessarily a blood relative.

Victims have a right to:

1. be informed of their rights at every stage of the process, including those rights involving compensation from the offender. they must also be made aware of any victims' services available.
2. be informed of the offender's status throughout the process, including but not restricted to, notification or any arrests, upcoming court dates, sentencing dates, plans to release the offender from custody (including notification of what community parolee is being released into), conditions of release, parole dates, etc. All information is o be made available upon request.
3. choose between giving oral and/or written Victim Impact Statements before sentencing, at any parole hearings, and at judicial reviews.
4. be informed in a timely fashion of the details of the Crown's intention to offer a plea bargain before it is presented to the defence.
5. know why charges were not laid, if that is the decision of the Crown or the police.
6. protection from anyone who intimidates, harasses or interferes with the rights of the victim.
7. have police follow through on domestic violence charges. Once a victim files a complaint, police should have the authority to follow through to the end.
8. know if the person convicted of a sexual offence has a sexually transmittable disease.

APPENDIX 4
VICTIMS OF CRIME LEGISLATION SUMMARY

The following is a chart summary of the major points and highlights of each provincial/territorial victims of crime act. Please note that the following is intended for reference only and the original statutes should be consulted for purposes of interpretations or application of the law.

Alberta's Victims of Crime Act (1997)

Definition	S.1(k)(i) with respect to financial benefits, a person who is injured or dies as a result of an act of omission described in s.12 (1), and (ii) with respect to a program, a person who suffers a loss or injury as the result of the commission of an offence. S.4(2) For the purposes of receiving information, victim "means a person to whom harm has been done or who suffers physical or emotional loss as a result of the commission of the offence and, if the person is dead, ill or otherwise incapable, includes the spouse*, cohabitant or any relative of that person or anyone who has custody of that person in law or in fact or who is responsible for the care of that person."
Principles	S. 2 (1)(a). courtesy and compassion; b. financial benefits; c. information made available about participation, scheduling/progress of case, disposition; d. views and concerns should be considered; e. views and concerns should be brought to attention of court when appropriate; f. protection from intimidation and harassment; g. should be informed of services;
Information	S. (4)(1)(a) status of police investigation and prosecution (if it will not harm investigation);

	b. role of victim and other persons involved in prosecution; c. court procedures; d. any opportunity for victim to make representation to court on impact of offence;
Victims of Crime Program Committee	S. 5 & 6 - evaluate application for grants for programs; provide information with respect to programs and services that assist victims;
Victims of Crime Fund	9 & 10 - to be used for a. grants (s.11 - programs that benefit victims of crime); b. and c. costs incurred by Committee and Appeal Board; d. compensation paid to victims; e. pay costs of administering this Act;
Criminal Injuries Compensation Act	under same legislation - s.12
Cause of Action	no cause of action, right of appeal, claim for damages or other remedy in law exists because this Act or anything or anything done or omitted to be done under this act - s.18;
Limitations	s. 4 - the release of information is subject to "the limits imposed by the availability of resources..."

British Columbia's Victims of Crime Act (1996)

Definitions	S.1 (a) physical or mental injury or economic loss as a result of an act or omission that forms the basis of the offence, or (b) significant emotional trauma and is an individual against whom the offence was perpetrated or, with respect to an individual against whom the offence was perpetrated, is

	a spouse*, sibling, child or parent of the individual; * spouse includes members of the same gender;
Principles/Goals	S. 2 victims should be treated with courtesy and respect; no discrimination; S. 4 reasonable opportunity to present impact of offence to court before sentencing; S. 8 (a) develop victim services/equal access; b. protection from intimidation/retaliation; c. property returned; d. personnel trained to deal with victims; e. proper recognition of needs re: investigation and prosecution; f. waiting rooms in courthouses; g. equal access - disabilities, interpreters, minorities; S.15 employers not to penalize victims who appear as witnesses or attend a meeting with justice system personnel to assist in investigation/preparation for prosecution; S.16 the contravention of s.15 is an offence and liable to a fine of not more than $2000 or to imprisonment of not more than 6 months or both;
Annual Report	S.14
Legal representation for victim	S. 3 On request by a victim, the Attorney General must take reasonable measures to provide victim with advice and representation by a lawyer if (a) the victim requires representation independent from that of Crown counsel in response to an application for disclosure of information, not in

	possession of the police or Crown counsel, relating to the personal history of the victim, and (b) the victim would not otherwise receive this representation because of a lack of financial resources.
No cause of action/validity of proceedings	S.11 - No cause of action, right of appeal, claim for damages or other remedy in law exists S.12 proceedings not stopped or appealed because sections of this act not complied with;
Ombudsman	S.13 (1) Ombudsman Act applies; (2) cannot investigate decision made by Crowns with respect to approve/decline prosecution of offence, delay proceedings, stay of prosecution, conduct/decline an appeal, to exercise any other aspect of prosecutorial discretion;
Criminal Injuries Compensation	separate act;
Information	S. 5 information that must be offered: a. structure and operation of justice system; b. victim services; c. the Freedom of Information and Protection of Privacy Act; d. the Criminal Injury Compensation Act; e. this Act. S.6 (1) information that must be given upon request: a. status of police investigation; b. charges; c. reasons why decision made respecting charges;

d. name of accused;
e. court appearances;
f. outcome of court appearances;
g. length of sentence and date it began;
h. means for victim to report breaches of terms of supervision;
i. means to contact parole boards;
j. eligibility and review dates and how to make representations re: conditional release.

S. 7(1) information that will be given in appropriate circumstances:
a. whether offender is in custody and if so, where;
b. date of release and terms of supervision;
c. nature and date of changes to supervision;
d. area where offender being supervised;

Manitoba's Justice for Victims of Crime Act (1986)

Definition	no definition
Principles	S.1(2) concerns and needs to be considered (3) victims should be assisted in addressing their particular needs and concerns; (4) offenders owe debt to society generally and to victims; S.2 victims have a responsibility to report a crime and assist the authorities; S.3(1) police, lawyers, judges, media, etc. should treat victims with courtesy, compassion, respect their privacy, etc. (2) victim should have access to services as well as victim's dependants, guardians and spouse; S.5(2) property should be returned; (3) police/Crown/judges should consider the needs of and concerns of victims including prompt dispositions of prosecution, restitution, compensation, etc.

Information	S.4(1) early information re: services and remedies available; (2)(a) scope, nature, timing and progress of prosecution; (c) role of victim and others involved in prosecution; (d) court procedures; (e) crime prevention;
Alternative resolutions	S.5(1) victims should be encouraged to participate in mediation, conciliation and informal reconciliation;
Victim assistance committee	S. 7 establishment of The Victims Assistance Committee; S. 8 (2) receive applications for grants; (3) develop guidelines to promote principles in this act; (4) make recommendations to Minister on the use of the fund, development of policies respecting victims services, etc.; (5) promote research and distribution of information; (6) review victim services and research projects given money from the fund; (8) annual report;
Victim Assistance Fund	S.12 establishes The Victims Assistance Fund;

S.13 provincial victim fine surcharge;

S.15 grants from fund for victim services, research, distribution of information, cost of committee;

No cause of action

S.19 This act does not create any civil cause of action, right to damages or a right of appeal on behalf of any person.

Criminal Injuries Compensation — Separate legislation

New Brunswick's Victims Services Act (1987)

Definition

No definition

Principles

S.2 courtesy and compassion, minimum inconvenience;
S.4(1) views and concerns of victims should be ascertained;
(2) views and concerns brought to attention of court;
S. 5 personnel should be trained;

Information

S.3(1) remedies;
(2) participation in proceedings, scheduling and disposition of proceedings;
S.6 availability of health and social services and programs/services;

Victim services committee

S.8 Victims Services Committee established;
S.11(2) Committee may determine whether or not a person or a class of persons is a victim for purposes of this Act;

(3) to receive benefits under this Act, crime must have taken place after commencement of this Act;

S. 12(1) receive applications for funding;

(2) make recommendations to Minister of use of fund, policies respecting victims services, etc.;

S.13 promote research;

S.14 Committee shall work with Crown, police, courts, social agencies, etc. to develop guidelines that promote principles of this Act;

S.15 annual report

Victim service fund

S.17 Victim Services Fund established;

S.24 money may be used for:

(a) promotion/delivery of services;

(b) research

(c) distribution of information;

(d) Committee expenses

No cause of action

S.25 This Act does not create any civil cause of action, right to damages or any right of appeal on behalf of any person.

Criminal Injuries Compensation

separate legislation;

Newfoundland's Act Respecting Services for Victims of Crime (1988)

Definition

S.2 "person who has suffered harm, including physical or mental injury, emotional suffering or economic loss, because of acts that are in violation of criminal laws.

Principles

S.3(1) victims should be treated with courtesy, compassion, respect;

(2) victims should suffer minimum necessary inconveniences;

(3) victims should receive prompt and fair redress;

S. 4(1) hardships created by offence should be shared by society as a whole and victims should be helped;

(2) criminals owe debt to society generally and to victims;

S.5 recognized that victims, dependents, guardians and spouses should have access to services;

S.6 protection from intimidation/retaliation

S.8(2) property returned;

(3) needs and concerns should be considered re: restitution and prompt dispositions;

S. 9(1) victims should report crimes and cooperate with authorities;

(2) views and concerns of victims should be ascertained and help should be provided throughout the criminal process;

S.10 training for personnel;

Information

S.7(1) services, remedies;

(2)(a) scope, timing and progress of prosecution;

(b) role of victim and others;

(c) court proceedings;

(d) crime prevention

Victims of Crime Services Division

S.11(2) Victims of Crime Services Division part of Department of Justice;

Alternative Measures

S.8(1) where appropriate, victims should be encouraged to participate in mediation, conciliation and informal reconciliation;

No cause of action

S.13 This Act does not create a civil cause of action, right to damages or right of appeal of a person.

Criminal Injuries Compensation

NO

Northwest Territories' Victims of Crime Act (1988)

Definition

S.1 (a) means persons who, individually or collectively, have suffered harm including,
i. physical or mental injury,
ii. emotional suffering,
iii. economic loss, or
iv. substantial impairment of their fundamental rights, through acts of

omissions which are in violation of criminal laws or laws that have penal consequences, regardless of whether the perpetrator is identified, apprehended, prosecuted or convicted, and includes persons who have suffered harm in intervening to assist victims in distress or to prevent victimization, and where appropriate, the immediate family or dependents of the direct victims.

Victims Assistance Committee

S. 2 Victims Assistance Committee established;

S.5 Comm. shall promote:

a. courteous and compassion treatment for victims;

b. prompt redress for victims;

c. availability of information: progress of prosecution, role of victim, remedies/services, responsibility of victim to cooperate;

d. research;

e. help victims bring concerns/views to court;

f. minimize inconvenience for victims and ensure safety of victims;

g. training for personnel

S. 6 Committee may work with Crown/police/courts/social agencies to assist them in developing programs to promote this Act;

	S.7 receive and consider applications for funding: a. needs and concerns of victims; b. research; c. services; d. distribution of information; e. delivery of services; S.10 annual report;
Victims Assistance Fund	S.11 Victims Assistance Fund is established; S.14 payments for a. promotion/delivery of services; b. research; c. distribution of information;
Committee expenses;	
	S.15 no direct compensation to individual victims;
No cause of action	S.18 This Act does not create any civil cause of action, right of damages or any right of appeal on behalf of any person.
Criminal Injuries Compensation	NO

Nova Scotia's Victims' Rights and Services Act (1989)

Definition

S.2(e) " an individual who has suffered bodily harm, mental or nervous shock, pain, suffering, economic loss or deprivation of property as the result of an act or omission that forms the basis of an offence and includes where the individual is dead, ill or otherwise incapable of exercising the rights granted by this Act, the spouse or next of kin of that person or anyone who has, in law or in fact, the custody or guardianship of that person or who is responsible for the care or support of that person."

Absolute rights

S.3(1)(a) right to be treated with courtesy, compassion, dignity;

(b) right to access to services;

(c) right to return of property;

Limited rights

S.3(2) subject to limits imposed by availability of resources and to any other limits that are reasonable in the circumstances of each case, a victim has

(a) the right to be informed of

i. name of accused;

ii. charges;

iii. scope/progress/timing of prosecution;

iv. role of victim and others/opportunities to make representation on restitution/impact;

v. court procedures;

vi. crime prevention

(b) services/remedies;

(c) separate waiting rooms;

Director of Victim Services

S.4(2) Director shall make recommendations to Attorney General re: expenditures from fund, policies respecting services; develop programs; promote research; review services/projects who receive moneys from Fund;

S. 5 Attorney General may appoint advisory committee on matters relating to victims and victims' rights;

Victims' Assistance Fund

S.6 Victims' Assistance Fund established;

S.9 Fund may be used

(a) to promote delivery of victim services;

research;

distribution of information re: victims;

S.10 (1) not to provide direct compensation to individual victims;

Criminal Injuries Compensation

same act

Proceedings not affected

S.12(1) proceedings not affected if rights under this Act ignored;

(2) no sentence, order or conviction may be appealed if right under this Act infringed or denied;

No cause of action

S.13 There is no cause of action for anything arising, directly or indirectly, out of anything done or not done or omitted to be done pursuant to this Act.

Ontario's Act Respecting Victims of Crime (1995)

Preamble

The people of Ontario believe that victims of crime, who have suffered harm and those whose rights and security have been violated by crime, should be treated with compassion and fairness. The people of Ontario further believe that the justice system should operate in a manner that does not increase the suffering of victims of crime and that does not discourage victims of crime from participating in the justice process.

Definition

S.1 "a person who, as a result of the commission of a crime by another, suffers emotional or physical harm, loss of or damage to property or economic harm and, if the commission of the crime results in the death of the person, includes,

(a) a child or parent of the person, within the meaning of section 1 of the Family Law Act, and

(b) a dependent or spouse of the person, within the meaning of section 29 of the Family Law Act, but does not include a child, parent, dependent or spouse who is charged with or has been convicted of committing the crime.

Principles	
	S.2(1) victims should be treated with courtesy, compassion and respect;
	S.5 victims of sexual assault should be interviewed by officer of same sex if so requested;
	S.6 property returned;
Criminal Injuries Compensation	
	separate act
Limitations	
	S.1(2) Principles/information subject to availability of resources and information, what is reasonable in the circumstances of each case, what is consistent with the law and the public interest and what is necessary to ensure that the resolution of criminal proceedings is not delayed.
No cause of action	
	S.2(5) No new cause of action, right of appeal or other remedy exists in law because of this section or anything done or omitted to be done under this section.
Civil proceedings	
	S.3 (1) person convicted of a crime is liable in damages to victim for emotional distress, and bodily harm resulting from distress;
	(2) The following victims are presumed to have suffered emotional distress:
	i. spousal assault;
	ii. sexual assault;
	iii. attempted sexual assault;

Victims' Justice Fund Account	S.5(4) used to assist victims, whether by supporting programs that provide assistance to victims, by making grants to community agencies assisting victims or otherwise;
Evidence Act	S.18 makes it easier for young people to give evidence in civil hearings; i.e. s.18(1) person under the age of 18 presumed to be competent to give evidence; use of videotapes, screens, support person, closed circuit television, etc.
Information	S.2(1)2 victims should have access to information about: i. services/remedies available; ii. provisions of this Act and Criminal Injuries Compensation Act; iii. protection from intimidation; iv. progress of investigation; v. charges laid; vi. victim's role in prosecution; vii. court procedures; viii. dates/places of significant proceedings; ix. outcome of al significant proceedings; x. pretrial arrangements relating to a plea;

xi. interim release; sentencing;

xii. disposition under s.672.54 or s672.58 unfit to stand trial/not criminally responsible);

xiii. rights to make victim impact statement;

3. if requested, victim should be notified of:

i. application for release or pending release;

ii. escape of custody;

4. if requested, victims should be notified (if offender found unfit to stand trial or not criminally responsible), of:

i. any hearing with respect to Review Board;

ii. any order of Review Board with respect to a discharge of accused;

iii. escape from custody

Prince Edward Island's Victims of Crime Act (1989)

Definition

S.1(i) person who has suffered harm, including physical or mental injury, emotional suffering or economic loss, by reason of acts which are in violation of criminal laws.

Principles

S.2(a) victims should be treated with courtesy and compassion;

(b) victims should receive prompt and fair redress;

(c) victims should be informed of and have access to services;

(e) victims are entitled to have their views and concerns brought to attention of court;

(f) victims and families should be protected from harassment

(g) victims should have property returned;

Information

S.2(d) Victims should be informed of progress of investigation and prosecution of offence, court procedures, role of the victim and disposition;

Victim Services Advisory Committee

S.3 Victims Services Advisory Committee established;

S.4 The Committee shall:

(1)(a) review policies and procedures and make recommendations;

(b) assist police and social agencies promote principles of this Act;

(c) ensure victim complaint procedures established and updated;

(d) & (e) research

(3) make recommendations to the Minister relating to development of policies; provision of services (including CICA), etc.

S.5 annual report

Victim Services Program

S.7 Department of Justice shall establish and administer Victim Services Program to:

(a) assist personnel and community agencies providing services to victims;

(b) assist victims through contact with justice system;

(c) help victims access other services;

(d) publicize and administer compensation program;

(e) provide specific services to victims;

Victim Assistance Fund

S.8 Victim Assistance Fund established;

S. 11 use of fund:

(a) expenses re: Victim Services Program;

(b) crimes compensation;

(c) any other purpose Minister considers necessary;

Criminal Injuries Compensation

same legislation

No cause of action

S.34 This Act does not create any civil cause of action, right to damages or any right of appeal on behalf of any person except the right f appeal under s.29 (compensation);

Quebec's Act Respecting Assistance for Victims of Crime (1989)

Definition

S.1 a natural person who suffers from physical or psychological injury or material loss by reason of a criminal offence committed in Quebec, whether or not the perpetrator is identified, apprehended, prosecuted or convicted.

The immediate family and dependants or a victim are also considered victims.

Principles/rights

S.2 victim has right to be treated with courtesy, fairness, respect;

S.3 victim has a right to:

(a) reasonable compensation for expenses incurred to testify;

(b) restitution or compensation;

(c) return of seized property;

(d) due consideration of views and concerns at appropriate stages;

S.6 Victim has right to:
(a) medical/psychological/social care protection against intimidation/retaliation;

S.7 Victim has duty to cooperate with authorities.

Information

S.4 Victims have a right to be informed of:
(a) rights/remedies available;

(b) role in justice process, participation in proceedings and on request, progress and final disposition: availability of services;

S.5 Victims has right to be informed of progress and outcome of investigation;

Bureau D'Aide Aux Victimes

S.8 Bureau established.

S.9 Functions are:

(a) support promotion of victims' rights and helping develop assistance programs;

(b) advise Minister on matters relating to victims of crime;

(c) support establishment and maintenance of victims of crime assistance centres;

(d) support development and implementation of education/training programs;

Victim Assistance Fund

S. 11 Fonde d'aide aux victimes d'actes criminels established;

S.15 Funds may be used to assist victims of crime assistance centres, educational/training programs and research

Saskatchewan's Victims of Crime Act (1995 - original passed in 1989)

Definition

S.2(e) person who has suffered harm, including:
i. physical or mental injury;

ii. emotional suffering; or

iii. economic loss;

by reason of an act that is in violation of criminal laws.

Purpose

S.4 The purpose of this Act is to establish a fund to be used to promote the following principles:

(a) victims should be treated with courtesy, compassion, respect;

(b) victims should suffer minimum inconvenience;

(c) views and concerns of victims should be taken into account and appropriate assistance and information should be provided to them;

(d) when reasonable, victims should receive prompt and fair redress for harm they have suffered;

Act does not affect other rights or remedies

S.5 Nothing in this Act establishes, supplements or derogates from any right, power remedy, cause of action or appeal for or with respect to damages, compensation or restitution by, or on behalf of or on account of a victim against the Crown or any other person.

Victims' Services Fund

S.6 Victim's fund established;

(6) annual report

S.11 use of fund:

(a) promote/deliver services;

(b) research;

(c) distribute information;

(d) crime prevention

(2) funds may be used for:

(a) programs mentioned in (1);

(b) administrative costs of programs mentioned in (1);

(d) crimes compensation;

Criminal Injuries Compensation

S.11

APPENDIX 5
CANADIAN RESOURCE CENTRE FOR VICTIMS OF CRIME
FEDERAL VICTIMS OF CRIME ACT

DEFINITION OF VICTIM

"A person who sustained any loss or physical, psychological or other harm as the result of the offence and the spouse, parents, family members or other lawful representative of that person."

STATEMENT OF PRINCIPLES

1. Victims should be treated with compassion and dignity at all stages of the criminal justice process.

2. Victims should have their privacy respected.

3. Victims should have to suffer the minimum degree of inconvenience.

4. Victims should not be discriminated against on the basis of age, race, religion, economic status, profession/employment, disability, etc.

5. Victims have the right to prompt and fair financial redress.

NOTIFICATION

1. Victims have the right to be informed of their rights when contact with the criminal justice system begins and have their role in the process explained.

2. Victims have the right to be notified of the progress of the investigation, the arrest of any suspects and the whether charges have been laid.

3. Victims have the right to be notified of any pre-trial hearings, trials, sentencing hearings and if necessary, any appeal hearings.

4. Victims have the right to be notified of any release hearings, both before and after conviction.

5. Victims have the right to be notified if the offender is released on any form of early release or warrant expiry.

Victims have the right to be notified of any plea negotiations that have been entered into.

Victims have the right to be notified of any social, medical, legal and mental health services.

Victims have the right to be notified if the offender has escaped.

RIGHT TO BE PRESENT

Victims have the right to be present at any pre-trial hearings, trials, sentencing hearings and appeal hearings.

Victims have the right to be present at any conditional release hearings.

CONFER WITH CROWN

1. Victims have a right to meet with the Crown Attorney who has the carriage of the prosecution of the offender responsible for their victimization.

2. Victims have a right to provide their opinions to the Crown on any proposed plea negotiations before a Crown accepts such a negotiation.

PROTECTION

Victims have the right to be protected from intimidation, harassment or threats of harm from the accused or someone acting on his/her behalf.

Victims have the right to the minimal amount of contact with the accused and his/her family and associates.

3. Whenever possible, victims should not to be questioned in court by the accused, if the accused is representing him/herself.

Victims have the right to be protected in the event that the accused escapes and the victim is in danger.

COMPENSATION

Victims have the right to be promptly and fairly compensated for their losses incurred or harms suffered as a result of the crime.

Victims have the right to have their property returned when appropriate.

Victims have the right to access to any social, medical, legal and mental health services and will receive any necessary counseling.

Victims have the right to full restitution in a reasonable amount of time when possible. The Crown Attorney will have a duty to enforce restitution orders made against the offender.

VICTIM IMPACT STATEMENTS

Victims have the right to present a victim impact statement at all sentencing hearings, conditional release hearings including judicial review hearings. The victim

will be given the option of providing the statement in either oral form or written form.

SPECIAL PROCEDURES FOR SEXUAL ASSAULT VICTIMS AND YOUNG VICTIMS

Victims of sexual assault have the right to be interviewed by a police officer of the same gender if so desired.

Young victims should be made to feel as comfortable as possible when testifying.

APPENDIX 6
SELECTED BIBLIOGRAPHY

BC Front Lines Victim Services Division Report. Issue #1, March/1996.

Peter Burns, Criminal Injuries Compensation . Butterworths: Toronto. 1992

Canadian Federal-Provincial Task Force Report on Justice for Victims of Crime. 1983.

Collins Management Consulting and Research Limited, An Evaluation of Victims' Services Division - Final Report, on behalf of the Nova Scotia Department of Justice. 1996.

Coroner's Report into the death of Dennis Fichtenberg. Prince George, BC. 1996.

Robert Davis, Arthur Lurigo and Wesley Skogan. Victims of Crime - 2nd Edition. Sage Publications: California. 1997.

Department of Justice Canada, A Review of the Implementation of the Child Sexual Abuse Legislation In Selected Sites. 1992.

Department of Justice. Child Victims and Witnesses: The Social Science and Legal Literature. 1988.

Department of Justice Canada, Is Bill C-15 Working? An Overview of the research on the Effects of the 1988 Child Sexual Abuse Amendments. 1992.

Department of Justice. Protecting the Identify of Victims of Crime, 1991.

Department of Justice. Victim Fine Surcharge, 1992.

Department of Justice. The Victim Impact Statement, 1991.

Department of Justice. Victims of Property Crime, 1991.

Donylchuk, Jack. Victims' pressure on judges disturbing, lawyer says, Edmonton Journal. May 13/1995.

Globe and Mail Editorial. The dangers of victims power, Globe and mail. June 14/1995.

Fischer, Doug. Active role of victims in fate of accused spurs legal debate, Ottawa Citizen. September 5/1995.

Harmison, Gemma. Criminal Injuries Compensation. for Victims of Violence Canadian Centre for Missing Children. 1997.

House of Commons Debate - Official Hansard. Volume 134, #35, 2nd Session of 35th Parliament. April 29, 1996.

John Howard Society of Alberta, Victim Impact Statements, 1991.

Juristat. Victims' Use of Police and Social Services, Volume 15, #6. March/1995.

Juristat. Canadian Crime Statistics, Volume 17, #8. July/1997.

Law Reform Commission of Canada. Working Paper #5, Restitution and Compensation, 1974.

Markestyn, Trevor. The Psychological Impact of Non-sexual Criminal Offences on Victims, Solicitor General. 1992.

National Parole Board. Offenders Charged with Serious Community Offences while on Conditional Release 1987-1988 - 1995-1996.

NOVA. Survivors of Homicide Victims, Network Information Bulletin Volume 2, #3. October/1985.

Pittaway, Kim. Sex Assault, in Chatelaine. October/1997.

Richardson, Greg. Restorative Justice. 1997.

Richardson, Greg. The Purposes and Process of Victim-Offender Mediation. 1997.

Tim Roberts, Focus Consultants. Evaluation of the Victim Offender Medication Project, Langely, BC. March 1995.

SafetyNet Report. CAVEAT. 1994.

Stern, Leonard. Victims Rights: Have they tipped the scales too far? Ottawa Citizen. November 8/1995.

Thompson, Joey. Victims' tears wasted on tough guy lawyer, Vancouver Province. February 28, 1996.

Victims of Violence Canadian Centre for Missing Children. Victim Impact Statements - A Discussion Paper, 1994.

Victims of Violence Canadian Centre for Missing Children. Victims' Rights - A Discussion Paper, 1994.

SELECTED PROVINCIAL REPORTS

ALBERTA:

Crimes Compensation Board Annual Report. 1992.

Victims' Programs Assistance Committee Annual Report. 1991-1992.

Victims' Programs Assistance Committee Annual Report. 1996-1997.

MANITOBA:

Criminal Injuries Compensation Board Annual Report. 1992-1993.

Criminal Injuries Compensation Board Annual Report. 1995-1996.

NEW BRUNSWICK:

Compensation for Victims of Crime Act Annual Report. 1992-1993.

Compensation for Victims of Crime Act Annual Report. 1994-1995.

NOVA SCOTIA:

Victims' Services Division Progress Report. 1995-1996.

ONTARIO:

Criminal Injuries Compensation Board 24th Annual Report. 1994-1995.

PRINCE EDWARD ISLAND:

Victims Services of PEI Summary Report Volumes I and II. 1991.

Premier's Action Committee on Family Prevention progress Report. 1995-1996.

Victims of Crime Act Seventh Annual Report. 1995-1996.

QUEBEC:

Annual Activity Report of Indemnisation des victimes d'actes criminels. 1995.

SASKATCHEWAN:

Victims' Services Program Annual Report. 1995-1996.

SELECTED LEGISLATION AFFECTING VICTIMS OF CRIME
ALBERTA:

Victims of Crime Act, S.A. 1996, c.V-3.3.A

BRITISH COLUMBIA:

Criminal Injury Compensation Act, R.S.B.C. 1996, c.85.

Ombudsman Act [RSBC 1996] Chapter 340.

Victims of Crime Act, R.S.B.C. 1996, c.478.

MANITOBA:

The Justice for Victims of Crime Act, S.M. 1986-7, c.28.

The Criminal Injuries Compensation Act, R.S.M. 1987, c.C305.

NEW BRUNSWICK:

Victims Services Act, S.N.B. 1987, c.V-21.

Compensation for Victims of Crime Act, R.S.N.B. 1973, c.C-14.

NEWFOUNDLAND:

An Act Respecting Services of Victims of Crime, R.S.Nfld. 1988, c. V-5.

NORTHWEST TERRITORIES:

Victims of Crime Act, R.S.Nwt. 1988, c.9.

NOVA SCOTIA:

An Act to Provide Rights & Services to Victims of Crimes, S.N.S. 1989, c.14.

ONTARIO:

Compensation for Victims of Crime Act, R.S.O. 1980. C.C.24.

Victims Bill of Rights, S.O. 1995, c.6.

PRINCE EDWARD ISLAND:

Victims of Crime Act, S.P.E.I. 1988, c.67.

QUEBEC:

An Act Respecting Assistance for Victims of Crime. 1996, c. A-13.2.

Crime Victims Compensation Act. 1991. C. 1-6.

SASKATCHEWAN:

An Act Respecting the Victims of Crime,1995, S.S. 1995, C. V-60111.

FEDERAL:
Criminal Code of Canada. 1998.

Corrections and Conditional Release Act. 1992, c.20 [C-44.6].

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