

**Brief to the House of Commons' Standing Committee  
on Justice and Human Rights on *Bill C-75, An Act to  
amend the Criminal Code, the Youth Criminal Justice  
Act and other Acts and to make consequential  
amendments to other Acts***

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**CANADIAN RESOURCE  
CENTRE FOR VICTIMS  
OF CRIME**



**CENTRE CANADIEN DE  
RESSOURCES POUR LES  
VICTIMES DE CRIMES**

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## 1 - The CRCVC

Since 1993, the Canadian Resource Centre for Victims of Crime (CRCVC) has provided support, research, and education to survivors of serious crime in Canada. We tirelessly advocate for victims' rights, and firmly believe that victims of crime must be supported and empowered in order to regain control over their lives. The CRCVC is a charitable organization working to ensure the voices of victims are heard. We believe we can offer our expertise in this area and hope that the government will take our recommendations seriously as they come as a direct result of the needs expressed to us by the crime victims we work with on a daily basis.

Bill C-75 is an ambitious and broad piece of legislation pertaining to 12 different Acts and designed to reform the criminal justice system and expedite court proceedings. As victims' advocates, the Canadian Resource Centre for Victims of Crime applauds initiatives aimed at improving the judicial process for all involved and shifting focus to crime prevention and victim support.

Per your request, we focus this brief on the issue of the Federal Victim Surcharge. We provide a background on the issue, a detailed account of our position on this issue over the years, an examination of the results of the mandatory surcharge since 2013, and some general and pointed recommendations. We also briefly mention the Bill's handling of intimate partner violence in the final section.

## 2 - Victim surcharge: background on proposed amendments

The Federal Victim Surcharge, currently detailed in section 737 of the Criminal Code, requires every person convicted of a criminal offense to pay a post-sentencing fine which consists of 30% of any fine, or \$100 for each summary conviction and \$200 for each indictable offense. Though the system has been in place since the late 1980s, surcharges were routinely ignored until five years ago. Research performed in the early 1990s showed the surcharge was being ignored in most cases and collections were not high. In 2000, surcharges were made mandatory but the system allowed for discretion on the part of the judge, who could waive the extra fine in cases of "undue hardship". Further research was conducted in the mid-2000s in three provinces / territories that showed similar result: the surcharge was being waived in most cases. In 2013, the *Increasing Offenders Accountability to Victims Act* doubled victim surcharges and made them mandatory. The Act also eliminated judicial discretion to waive the surcharge in cases of "undue hardship".

Bill C-28 was first introduced in October 2016 after the mandatory surcharge faced several Charter challenges. This bill has been rolled into Bill C-75 and attempts to give back discretion to the sentencing judge, availing him/her of exceptions and exemptions when it comes to imposing the surcharge.

### **3 - CRCVC's historical position on the victim surcharge (2008; 2011; 2014; 2016)**

The CRCVC has had several interactions with both victims and members of government on the issue of the Federal Victim Surcharge over the years. Our position has always been to staunchly protect the interests of victims and push for a more victim-centric criminal justice system. Victims should be at the heart of the system, and their rights should be elevated and respected so that they are never overlooked. It is our firm belief that elevating the rights of victims, and making sure their needs are met in the immediate aftermath of a crime and, equally importantly, over the long term, is of great benefit to society as a whole. As such - funds for victim services, which are too often scarce and hard to access, must be maintained and enhanced.

#### **2008**

In a letter to then-Minister of Justice Rob Nicholson, we expressed our frustration and dismay following the publication of a study of the victim surcharge that found that judges in New Brunswick had waived the surcharge in two-thirds of the 62,000 cases they had reviewed over the past five years, costing the province millions in lost resources for victims. The report stated that ~~mere~~ assertions of an inability to pay by offenders or perceptions by judges that the offender [could not] pay [were] sufficient to prove undue hardship+. While judges were supposed to justify their decision for waiving the surcharge, this information was not included in 99% of the 861 cases reviewed for the study. As a result, provincial programs designed to support victims of crime were improperly funded. We argued, and maintain, that **support services and compensation are paramount in ensuring the resiliency of crime victims in Canada, and that the interests of perpetrators of crime should NOT be placed above those of victims of crime.**

#### **2011**

In February 2011, we wrote once again to Minister Nicholson, commending the government on its remarks in the media about reinstating the mandatory victim surcharge. We urged the Minister to make the surcharge ~~automatic~~+, and only waivable if ~~undue hardship~~+was proven to the satisfaction of the judge. We argued, and maintain, that many critical victim services programs are in need of funding, and that the **surcharge is one way of making sure worthwhile victim services programs can continue to serve our society.**

We followed up with a letter to then newly elected Prime Minister Harper, asking him to honour his promise to amend the *Criminal Code* and make the surcharge mandatory.

#### **2013**

We were satisfied that the surcharge was doubled and made mandatory in the *Increasing Offenders Accountability to Victims Act* of October 2013. The decision stipulated that judges who imposed a fine were to add a surcharge of 30%, and if no fine was imposed, an automatic \$100 charge for each summary conviction (less serious) and \$200 charge for each indictable offense (more serious) was to be imposed

on the offender. We provided the following comment about judges routinely waiving the fine:

"Judges' actions are "extremely disrespectful to victims, not to mention having the effect of hindering the proper funding of victim services."+

## 2014

Following a Judge's decision to strike down the victim surcharge as unconstitutional, we published an article on our website detailing our position on the matter. We wrote the following comments in conclusion:

"The CRCVC is left wondering **what the government will do to address proper funding for victim services in Canada. Is legislation the best response given the number of courts who have now found that a mandatory fine is unreasonable for many offenders who live in poverty?** Perhaps it is time for all three levels of government in Canada to substantially fund support services for victims from their annual justice and corrections budgets instead of relying on measures such as fines that few can pay. Don't the people who have been harmed by crime and violence deserve this much? We dedicate billions in budgets annually in response to those who commit crime whether it is via policing, criminal trials or prison budgets. **It is time to stop funding victim serving agencies on scraps or leftovers and ensure that persons harmed by crime have access to stable, consistent and properly-funded support.**+

## 2016

It was announced in September 2016 that the newly elected government had taken the first steps to amending the mandatory victim surcharge. Sue O'Sullivan, Canada's Federal Ombudsman for Victims of Crime, said at the time that she hoped any changes would not result in a significant loss of funding to programs essential to supporting victims. We added the following:

"We] think there has to be some discretion, particularly for the most hard-pressed, vulnerable people, who are very poor, very marginalized and just can't afford to pay the fines. [...] Our problem with it before was that you would see cases that they were just automatically waiving it all the time without any inquiry into whether someone could actually pay such a fine or not."+

## 4 - Our present stance

We believe the collection of the Federal Victim Surcharge represents a necessary stream of funds for provincial victims services. While we concede that it should not be applied in certain cases of extreme hardship, we would urge the government to set the bar high to waive the surcharge. We would also caution against creative judicial decisions to skirt the surcharge, and ask that judges be held accountable for their decisions by performing regular and thorough audits of the program. The below subsections examine the results of a 2016 study of the Victim Surcharge, and use the

example of Ontario's Victims Justice Fund (VJF) to show the importance of the Federal Surcharge and the services provided to victims as a result of monies collected by the province.

### Clear results of the 2013 policy

At the request of the Research & Statistics Division of the Department of Justice Canada, an extensive study was performed in 2016 to evaluate the 2013 amendments of the Federal Victim Surcharge and their implementation in nine jurisdictions.

We recap in the below table the effect in terms of money collected from the imposition of the Federal Victim Surcharge.

Province/Territory	Growth in surcharge collected 1Y after surcharge made mandatory	Growth in surcharge collected 2Y after surcharge made mandatory	Trend in surcharge collected in 2Y prior to surcharge made mandatory
Alberta	+16%	+27%	Large YoY fluctuations
Saskatchewan	+64%	+313%	Moderate growth (33% over two years)
Manitoba	-10%	+60%	YoY fluctuations
New Brunswick	+37%	+109%	Attrition of 17% over 2yrs
Newfoundland & Labrador	-6%	+56%	Large YoY fluctuations
Nova Scotia	+27%	+78%	Small decline (-2% over 2y)
PEI	-17%	-6%	Fluctuating but generally down
Ontario	+14%	+175%	Fluctuating, with 2 yrs. of moderate decline
Yukon	+0.3%	+330%	Significant decline

All provinces / territories aside from one (PEI) reported an increase in their Victim Services Fund as a result of the mandatory imposition of the surcharge in late 2013.

Increases two years post implementation ranged from 27% to 330%. Meanwhile, the survey also mentions that aside from two provinces, the administrative load from the mandatory surcharge created minimal to zero additional paperwork.

The table below shows the ratio of surcharge collected versus imposed for the six provinces / territories that provided this information:

Province / Territory	2010-11	2011-12	2012-13	2013-14	2014-15	# collection methods
Saskatchewan	75%	78%	94%	91%	73%	2
New Brunswick	88%	88%	87%	69%	43%	1
Newfoundland & Labrador	105%	117%	114%	76%	35%	3
Nova Scotia*	91%	98%	93%	41%	41%	3
Ontario	70%	77%	62%	40%	33%	1
Yukon	72%	72%	67%	49%	56%	0

\*Nova Scotia reported calendar year data for 2011, 2012, 2013, 2014, 2015

The 2016 report pointed to several worrying trends, such as %creative+judicial approaches to either avoid imposing the surcharge, or to impose meaningless or unenforceable conditions. This is evidenced in the generally significant drop in the surcharge collected versus imposed ratio seen after the 2013 change. It should be noted that, where %creative+judicial approaches have been used, victims have a tendency to lose faith in the criminal justice system.

#### **Victim services funded via the mandatory victim surcharge**

Monies collected from the imposition of the surcharge are used for meaningful and worthwhile victim services programs at the provincial level. In Ontario for instance, the Federal Surcharge collection represents the following proportion of the province's Victims Justice Fund (VJF):

Fiscal Year	VJF Revenue*	Surcharge collected	Surcharge as % of VJF revenue
2011-12	45,650,114	1,222,701	2.7%
2012-13	46,971,411	1,278,499	2.7%
2013-14	45,956,168	1,342,272	2.9%

2014-15	47,549,939	3,240,072	6.8%
2015-16	47.4M	4M	8.4%

\*Includes interest and recoveries

In the study, informants stated that ~~the~~ increase [in revenues coming from the Federal Victim Surcharge collection] may not be considered significant in terms of total dollar revenues collected; **however the increase has allowed the ministry to sustain its existing levels for spending on victim programs.**

Let us list below the general categories of help available for victims in Ontario, so that it is clearly understood how vital these services are to the well being and resilience of victims, and to Canadian society at large:

Support services for victims and families of victims:

- Domestic Violence Court Program
- Family Court Support Worker Program
- Help for child victims
- Internet Child Exploitation Counselling Program
- Legal Services
- Partner Assault Response Programs
- Male Victims . Support services for male survivors of sexual abuse
- Sexual Assault/Rape Crisis Centres
- Victim Crisis Assistance Ontario
- Victim/Witness Assistance Program
- Free Legal Support for Human Trafficking Survivors

Financial assistance programs for victims and families of victims:

- Criminal Injuries Compensation Board
- Financial Assistance for Families of Homicide Victims Program
- Victim Quick Response Program
- Vulnerable Victims and Family Fund

Other initiatives for victims of crime:

- Human Trafficking - Online Training Initiative
- Victim Services Awards of Distinction

Our colleagues at MADD (Mothers Against Drunk Driving) Canada recently performed a survey of services available to victims and survivors of impaired driving<sup>1</sup>. They touched on the Federal Victim Surcharge as a portion of revenues used to fund victim services. They commented the following:

~~It~~ is widely accepted that victim services are underfunded. In Canada, most of those who provide services to victims and survivors are volunteers, not paid staff.

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<sup>1</sup> MADD's research project is not yet published.

Most funding is dependent on the number of people who are convicted of criminal offences or who receive provincial fines and can afford to pay fines. Across the country, provincial and territorial governments fund their provincial victim service programs with funds raise through victim surcharges.+

They included the following table in appendix, which recaps the funding available to victim services. It is interesting to note that the Federal Surcharge amounts are in no way negligible when one looks at the overall budget for victim services.

	Main type of service*	Federal Surcharge**	Prov Surcharge	Victim Services Budget (16-17)	Funding include general revenue
AB	Police	\$2.5 M	\$45.7 M	\$33 M	No
BC	Police/Com		\$13.5 M***	\$35M	Yes
MB	System	\$753,000	\$7.3 M	\$8.4 M	General revenue used for compensation
NB	System	\$536,000		\$2.5 M	Yes
NL	System	\$417,602	\$1.3 M	\$3 M (17/18)	Yes
NS	System	\$526,400		\$3.8 M	Yes
NT	Community				Yes
NU	System/comm	\$2,100			Yes
ON	Court/comm	\$5.3 M	\$43.7 M	\$82.3 M	Yes
QB	System/comm				No
PEI	PEI	\$85,000	\$163,000	\$890,000	Yes
SK	Police	\$3.5 M	\$10M	\$15 M	No
YK	System	\$43,000	\$39,000	\$1.3 M****	Yes
CA	System	N/A	N/A	\$26 M*****	N/A

\*Virtually every jurisdiction, with the exception of the Federal Government, funds community based services. Many provinces also have compensation programs, which are system based. So this category is meant to be the main type of service delivery in addition to community based services. Where community based is mentioned, it suggests it is a prominent method of service delivery. Police based services and community based services utilize volunteers.

\*\*Alberta, Manitoba, Ontario, Newfoundland and Labrador, PEI and the Yukon provided numbers directly to MADD Canada. The remaining information for the other jurisdictions is the latest available public data (2014-15)

\*\*\*This is the total amount of both Federal and Provincial surcharges as supplied by the province. They did not provide a breakdown.

\*\*\*\*Plus an additional \$750,000 provided by Justice Canada

\*\*\*\*\*This estimate may not be a completely accurate amount. It includes Justice Canada, Parole Board of Canada and Corrections Canada but not the Income Support Program and anything other departments may spend, i.e. Department of National Defence.

### Current concerns, Charter violations

Organizations such as the Pivot Legal Society have argued that forcing offenders who are members of society already living on skeletal income to pay a surcharge is simply

continuing the grinding cycle of poverty+. They argue that these surcharges can affect an offender's life forever, for example, if it constitutes most of a person's yearly income, or if the offender suffers from a serious illness, including a mental health problem.

Furthermore, they argue that the provision stating that alternative payment methods+ can help avoid hardship on low-income individuals is voided by the fact that these do not exist in all provinces.

As a result of such legal challenges based on the violation of Charter rights, a judge first declared the victim surcharge unconstitutional in 2014.

We agree that the surcharge should be waived for the very poor, the addicted and the homeless. However, we would caution against too many special exemptions, and encourage judges to use strict guidelines when determining undue hardship+. We would also request that any decision to waive the surcharge be clearly justified in writing.

## **5 - Recommendations**

### **Adopt a victim-centric approach**

Properly funded victim services (support and compensation) are a win-win for society. When considering Bill C-75, we urge you to focus on the rights of victims, who are far too often ignored. Victims need access to services, both in the immediate aftermath of a crime and over the long-term. They should also be encouraged and supported in seeking compensation, if appropriate. In order for this to happen, victim services must be well funded, with predictable resource streams.

### **Pointed recommendations with regards to Bill C-75**

#### Exception (subsection 737 (1.1))

Surcharge is to be imposed for each offense except if, in the case where many offenses have been committed and the total surcharge amount is satisfactory, an offense relates to failure to appear before a court or breach of condition of release that does not cause the victim emotional/physical harm, property damage or economic loss. This particular offense will not be subject to a surcharge.

We support this proposed change.

#### Exemption (to be added after subsection 737(4))

The offender could be exempted from paying the surcharge if it is proven that this would cause him/her undue hardship (i.e. precarious financial circumstances, including unemployment, homelessness, lack of assets, significant financial obligations). Imprisonment alone does not constitute undue hardship.

The CRCVC supports this exemption, but would like to add that clear criteria and guidelines must be stipulated to steer the sentencing judge. It must be clearly stated that any decision to waive or reduce the surcharge has to be justified in writing.

#### Compensatory work programs

It would be appropriate to establish compensatory work (Fine Option) programs in all provinces, in cases where the offender cannot pay the surcharge. There are currently some compensatory schemes available in certain but not all provinces. We believe this contributes to holding offenders accountable.

#### Time frame

We believe that a 6-month time frame for payment should be established in the Criminal Code. It is at present at the discretion of each jurisdiction, and must be payable within a reasonable time after its imposition.

#### Harmonization of collection methods

The 2016 study of the mandatory surcharge pointed to marked variability across jurisdictions in the processes used for the collection and enforcement of unpaid surcharge. Furthermore, knowledge of the collection and enforcement process is very compartmentalized, with each department only aware of their piece of the puzzle.

While it would be preferable to see standardized collection methods adopted across Canada that include a broad variety of tools/collection agencies (denial of driver's / vehicle license renewal or the CRA's Federal Refund Set-off Program), this should remain a matter of provincial jurisdiction.

### **6 - Other sections of the Bill: IPV**

Bill C-75 proposes significant and welcomed improvements in the area of intimate partner violence (IPV). While public discussion of this Act has largely focussed on amendments related to the reduction of delays and backlogs, as victims' advocates, we are pleased to see that the definition and treatment of intimate partner violence will be substantially strengthened.

It is vitally important that this epidemic be taken more seriously. The personal and often life long consequences of violence against women, including IPV are enormous. Those hurt by physical and sexual violence suffer emotional, psychological, physical, financial and spiritual losses. There are also serious social consequences of this particular kind of violence because offenders often socially isolate their victims. These social impacts include lost access to jobs, education, family, faith, community, friends, safety and the basic belief that all Canadians have a right to live a life free from violence.

We support the proposed changes in Bill C-75 as they relate to IPV, which include:

Imposing reverse onus at bail for an accused charged with an IPV offence if they have a prior conviction for IPV;  
Requiring courts to consider whether an accused is charged with an IPV offence when determining release;  
Clarifying that strangulation, choking and suffocation is an elevated form of assault;  
Defining intimate partner for all *Criminal Code* purposes and clarifying that it includes current or former spouses, common-law partners and dating partners;  
Clarifying that the current sentencing provisions, which treat abuse against a spouse or common law partner as an aggravating factor, apply to both current and former partners; and  
Allowing for the possibility of seeking a higher maximum penalty in cases involving a repeat IPV offender.

When survivors of IPV come forward to report the violence in hopes that it will stop, it is incumbent upon us to get it right because when we do not, the consequences can be deadly. If the violence is minimized by our courts, which it often is in our experience with our clients, and the risks facing victims are misunderstood or overlooked, which is also too often the case, this in turn results in increased violence and an increased likelihood that those victims never seek help again.

Our system of criminal justice and those responsible for providing Canadians access to justice need more tools and remedies to assist them to understand and interrupt this insidious violence. We must assist our criminal justice players to increase safety for those harmed by this serious and all too often deadly violence. We believe Bill C-75 will put in place needed and progressive reforms so that women and children will be kept safer.

Reforming the criminal law is one part of the solution. We applaud our Minister of Justice for this leap forward as we fully believe these reforms will concretely and practically increase the safety of women and children harmed by this violence.

As a nation, we also need to invest more fully so that all women can live free from violence. Survivors need increased access to anti violence advocacy and counselling services and access to affordable housing. Our family courts need to share information with our criminal courts, so that violence can be addressed when courts are making child custody decisions. We need to ensure everyone who responds to all forms of gender based violence have adequate training so that they can recognize the risks, understand the effects of trauma, do no harm and appreciate and respect what people need to heal.

Sexual and intimate partner violence is a reality for at least one in two (50%) women in Canada. Women who are Indigenous, trans, older, new to Canada, living with disability are at increased risk of experiencing violence due to systemic barriers and failures. In our work, we have seen that entire communities are affected by gender-based violence. Across Canada, a woman is killed every six days as a result of intimate partner

violence. It is a long-time coming that the criminal justice system shifts the way this crime is understood and dealt with.

**Other areas addressed by Bill C-75:**

We have some concern over the proposed changes to make certain offences hybrid. If this legislation is passed, numerous indictable offences would become eligible for summary convictions. We do not believe more lenient sentencing should be available for very serious crimes such as leaving Canada to participate in a terrorist group, participation in activity of a terrorist group, impaired driving causing bodily harm, abduction of a child under the age of 14 or forced marriage, etc. While it is important to try to increase efficiency across the criminal justice system, the most serious crimes should be treated and such and must receive just and fair sentencing outcomes. We urge you to think of the victims of terrorist attacks, of people who have been seriously wounded by a drunk driver, of young women forced into marriage against their will. For many, consequences in the form of mental health issues such as depression and PTSD, or lingering physical issues, are painful and lifelong. They deserve compassion, support, respect, and a criminal justice system that appropriately punishes their attackers.

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