

***Bill C-32, An Act to enact the Canadian Victims Bill of Rights
And to amend certain Acts***



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Introduction

Thank you for inviting the Canadian Resource Centre for Victims of Crime (CRCVC) to appear before the Standing Committee on Justice and Human Rights. Our agency is a federal Not-for-Profit corporation located in Ottawa, Ontario and was created in 1993 with a goal to provide a voice for victims harmed by serious crime in Canada. We are one of the few remaining national NGOs that offer advocacy, information resources and emotional support to survivors, regardless of whether the perpetrator of the crime has been identified, apprehended, prosecuted or convicted. We are here today in support of Bill C-32, but are calling for several amendments to strengthen this legislation.

We believe that persons victimized by crime need to feel supported, retain their dignity and feel respected in and by the Canadian justice system. We feel victims must be guaranteed a certain standard of treatment and support services in the aftermath of victimization. This can only be achieved by elevating the position of the victim in the criminal justice system. They are innocent and bare all of the brunt of victimization. Victims' rights must be promoted and respected across Canada as a distinct issue separate from the constitutional rights of persons accused of crime or discussions about criminal procedure reform. We believe that victims of crime and survivors of violence deserve enforceable rights because their human rights have been violated and infringed.

We are concerned that the Canadian Victims Bill of Rights will not fulfill the enormous promise made by the Justice Minister, "to transform the way victims are treated by the justice system". Prime Minister Harper said on April 3, 2014, "Victims will have enforceable rights in Canada's justice system, they will be treated with respect and fairness that they deserve and will have a stronger voice." We do acknowledge that for the first time in Canada, the Bill creates statutory rights at the federal level. However, mere recognition in a federal statute is not enough. Bill C-32 provides little recourse to victims who still go without legal status, a cause of action, or an appeal should they not be satisfied and in our opinion, is yet another statement of principles with respect to criminal proceedings only and it is silent about service rights such as victim assistance and compensation.

Rights Granted to Victims

1. Right to Information

INFORMATION

General information

6. Every victim has the right, on request, to information about

- (a) the criminal justice system and the role of victims in it;
- (b) the services and programs available to them as a victim, including restorative justice programs; and
- (c) their right to file a complaint for an infringement or denial of any of their rights under this Act.

Investigation and proceedings

7. Every victim has the right, on request, to information about

- (a) the status and outcome of the investigation into the offence; and
- (b) the location of proceedings in relation to the offence, when they will take place and their progress and outcome.

Information about offender or accused

8. Every victim has the right, on request, to information about

- (a) reviews under the *Corrections and Conditional Release Act* relating to the offender's conditional release and the timing and conditions of that release; and
- (b) hearings held for the purpose of making dispositions, as defined in subsection 672.1(1) of the *Criminal Code*, in relation to the accused, if the accused is found not criminally responsible on account of mental disorder or unfit to stand trial, and the dispositions made at those hearings.

The "Right to Information" states that victims will have the right to general information; as well as specific information about the investigation and proceedings, and information about the offender or accused. All of the information is provided to victims UPON REQUEST. The CRCVC feels that information should be offered to victims proactively ó they should not have to request it, given the trauma they have suffered and their general lack of knowledge about the criminal justice system and where to get help. We also feel the language of the Bill is too vague in that it does not specify who is to provide this information to victims; how the information is provided; or how victims will even know they have such a right to request information. We cannot rely on the good will of professionals in the

criminal justice system to provide the information ó we must require them in legislation to do so. The Bill should specifically require police, Crowns, and other criminal justice officials to provide the information above to victims.

In his appearance before the committee, Minister MacKay stated, “You will see a culture shift. It is our hope to bring about a greater sense of accountability throughout the system. They must ensure that the victims are in fact aware of their rights and aware of the obligation that exists, whether it’s from the time of the investigation - the very first contact is most often with the police - to that very first court appearance, to officials within the justice system and throughout the process, from sentencing on through the process of corrections and release.” The Minister is hopeful that a culture shift will happen, but if it is not required in legislation, we fear the status quo will continue.

Minister MacKay spoke at committee about the fact that victims sometimes receive incomplete information or information is not provided at all. He stated, “In many cases I truly believe this is never done with any sense of malice or even out of error. There is sometimes a genuine disconnect: one department or one individual may think that somebody else has already informed the victim. We heard this often during the consultation: the police thought the Crown had informed them, or the Crown thought victims services had done so.” If we do not hold those in the criminal justice system directly accountable for providing specific and timely information to victims and double checking that information has actually been shared with them, we risk continuing with the hit and miss situation of dealing with victims that currently exists.

Amendment #1: The Canadian Victims Bill of Rights be amended to state – “Victims of crime will automatically be provided with general information about their rights under the Bill and how to exercise them, the criminal justice process, and support services available to them; as well as specific information about the progress of the case, including information relating to the investigation, prosecution and sentencing of the person who harmed them by the responding police service and the Crown prosecutors’ office involved in their case. Information will be provided to victims in the medium of their choosing, whether by mail, over the telephone or electronically. Also, in cases where a federal conviction has been secured, victims should be provided instructions by the Crown’s office on how to register with the Parole Board of Canada

and Correctional Service of Canada in order to receive information about the offender who harmed them or their loved one.”

2. Right to Protection

PROTECTION

Security	9. Every victim has the right to have their security considered by the appropriate authorities in the criminal justice system.
Protection from intimidation and retaliation	10. Every victim has the right to have reasonable and necessary measures taken by the appropriate authorities in the criminal justice system to protect the victim from intimidation and retaliation.
Privacy	11. Every victim has the right to have their privacy considered by the appropriate authorities in the criminal justice system.
Identity protection	12. Every victim has the right to request that their identity be protected if they are a complainant to the offence or a witness in proceedings relating to the offence.
Testimonial aids	13. Every victim has the right to request testimonial aids when appearing as a witness in proceedings relating to the offence.

The “Right to Protection” clause states victims have the right to have their security considered by appropriate criminal justice system authorities, to have reasonable and necessary measures to protect them from intimidation and retaliation, to have their privacy considered, to request their identity be protected from public disclosure, and to be able to access testimonial aids. The CVBR is worded vaguely in that it does not state who the appropriate criminal justice authorities are, how victims’ security will be considered in reality or what reasonable and necessary measures are taken in each case. Without specifically requiring police and Crowns to address these issues in writing in each case where a victim raises concerns, victims’ safety and privacy concerns will continue to be overlooked.

Amendment #2: The Canadian Victims Bill of Rights be amended to state that “Police and Crown officials are the criminal justice authorities responsible for consideration of the victim’s security and privacy; and upon request of the victim, shall take reasonable and necessary measures to protect them from intimidation/retaliation, to protect their identity and privacy, and to provide access to testimonial aids. Where a victim raises a concern, each authority shall respond to the victim directly stating how the concern has been addressed.”

3. Right to Participation

PARTICIPATION

Views to be considered	14. Every victim has the right to convey their views about decisions to be made by appropriate authorities in the criminal justice system that affect the victim's rights under this Act and to have those views considered.
Victim impact statement	15. Every victim has the right to present a victim impact statement to the appropriate authorities in the criminal justice system and to have it considered.

The "Right to Participation" states that victims would have a right to convey their views about decisions to be made by criminal justice professionals and have them considered at various stages of the criminal justice process and to present a victim impact statement. Again, the CVBR is vague and does not specify to whom victims can convey their views or how their concerns will be formally acknowledged or addressed. The absence of any role for victims within the criminal justice system, other than that of witness, is often seen as the root of victims' frustration with criminal justice and is also considered a source of re-victimization (Wemmers 2012:72). The right to participate must include the right to be heard and the right to receive a response. While victim impact statements are an important opportunity for some victims to be heard, it is a painful experience that not all victims want to exercise in a public courtroom. The Victims Bill of Rights is an opportunity to ensure that judges are required to ensure those victims who wish to be heard can do so at sentencing, something that does not happen with consistency across Canada currently.

Amendment #3: The Canadian Victims Bill of Rights be amended to state that "victims have a right to directly convey their views to police and Crown prosecutors about decisions to be made and that each entity must respond in a timely manner to indicate that the victim's concerns have been considered. Judges shall ensure that victims are provided an opportunity to address the court when the sentencing phase or sentencing hearings occur.

4. Right to Restitution

RESTITUTION

Restitution order	16. Every victim has the right to have the court consider making a restitution order against the offender.
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Enforcement

17. Every victim in whose favour a restitution order is made has the right, if they are not paid, to have the order entered as a civil court judgment that is enforceable against the offender.

The "Right to Restitution" states that every victim would have the right to have the court consider making a restitution order against the offender and that if it is not paid, to have it entered as a civil judgment that is enforceable against the offender. In Canada, the reality is that both criminal and civil court restitution orders are very difficult for victims to enforce without incurring additional financial costs. Victims need practical help to enforce criminal and civil restitution orders otherwise restitution orders are useless. It is especially difficult for victims to enforce such orders once the offender completes their sentence and parole period because there is no longer an incentive for the offender to pay the balance of the order against them. Victims also commonly have difficulty accessing information to help them gain access to funds they are owed because privacy laws protect the offender.

Amendment #4: The Canadian Victims Bill of Rights be amended to state that "each province/territory shall develop a restitution collection assistance program for victims; ensuring they do not have to pay additional money out of their pockets to enforce and collect criminal and civil court restitution orders based on the successful program currently offered to victims in the province of Saskatchewan."

Remedies

Victims want simple redress when their rights have been violated. The Canadian Victims Bill of Rights provides remedies through what is known as a "complaints mechanism", internal to specific federal agencies or departments, or the laws of each province, which we already know are weak. Sections 27, 28, and 29 of the Bill are especially troublesome because victims still go without legal status, a cause of action or an appeal should they not be satisfied. Section 28 states, "No cause of action or right to damages arises from an infringement or denial of a right under this Act." We cannot just proclaim that victims of crime have these important rights to Information, Protection, Participation & Restitution, without devoting adequate financial and human resources to ensure effective recourse and remedy.

For rights to be meaningful in the Canadian Victims Bill of Rights, there must be appropriate recourse available in the event that a victim(s) rights are infringed. In Bill C-32, the avenue for recourse is simply a requirement in which federal departments and agencies establish internal mechanisms to receive and review complaints and recommend remedial action. It is not clear if there are additional resources available and allocated to guarantee that complaint mechanisms would be an effective path to go forward with. It is not obviously stated what recourse, if any, victims would have if given internal complaint mechanisms did not resolve a situation to their satisfaction. The possible lack of recourse risks aggravating, rather than alleviating, the frustration and suffering of victims. In debates in the House, the Minister stated that: “The Office of the Federal Ombudsman for Victims of Crime will provide some of the recourse and the redress to victims, if there are failings within the provincial and territorial system, to assist victims in trying to alleviate their concerns.” It is important to note that nowhere in the Victims Bill of Rights is this office specifically mentioned and it is questionable what it can provide to victims when they have no investigative powers or jurisdiction to look at failings of the provinces.

In our view, the complaints mechanism provided will offer little redress. In the Victims Bill of Rights, it states “(a) a review of complaints involving alleged infringements or denials of rights under this Act; (b) the power to make recommendations to remedy such infringements and denials; and (c) the obligation to notify victims of the result of those reviews and of the recommendations, if any were made.” There is little to no accountability provided to victims in that departments are investigating themselves and are not even required to provide an official recommendation to address the complaint. Also, we know that since provinces are responsible for the administration of justice, most of the complaints are going to be related to provincial matters involving the investigation and prosecution of cases and not federal departments.

Amendment #5: The Canadian Victims Bill of Rights be amended to require that “federal and provincial/territorial departments who receive complaints from victims must respond in writing to all complaints, including an explanation of policy change or other outcomes even where department officials deem them minimal. Offices that investigate complaints shall also have the authority to require a curative or restorative remedy from federal/provincial/territorial departments where it is found that a victim’s rights were infringed including requiring Crowns

and police officers to receive education about the CVBR or to write letters of apology, where it is deemed a victim’s rights are infringed.”

Right to Support Services

The Canadian Victims Bill of Rights does not specifically provide victims with the right to support services in the aftermath of what has happened to them. The CVBR states that victims shall be provided information about the services and programs available to them as a victim, including restorative justice programs; upon request. The EU Directive establishing minimum standards for victims guarantees that support services are offered to victims whether or not a police complaint has been made across 28 member countries.

Amendment #6: The Canadian Victims Bill of Rights be amended to state that “In the interest of promoting community resilience, the Canadian Victims Bill of Rights guarantees support services to help victims recover in the aftermath of crime and trauma. All victims of crime have a right to access support services, even those who do not report crime to the police. As part of the implementation of the Bill, the Policy Centre for Victim Issues will assess the capacity of rural and remote communities to provide supports and provide financial assistance programs to communities to allow all victims to be served. PCVI will also undertake significant public awareness campaigns for a decade following the passage of the Bill to provide the public with general information about services and programs available to them as a victim, including restorative justice programs.”

Victims in the Military

A major concern for the CRCVC is that the Victims Bill of Rights does not apply to victims in the military justice system. Under the general provisions of the CVBR,

<i>National Defence Act</i>	(3) This Act does not apply in respect of offences that are service offences, as defined in subsection 2(1) of the <i>National Defence Act</i> , that are investigated or proceeded with under that Act.
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The Minister of Justice has said that there are particular challenges to extending this bill of rights into the military culture and into their system, specifically for summary trials, in that there are disciplinary tribunals that are administered by the chain of command. This is the system that carries out the vast majority of proceedings within the Canadian military justice system, and the Victims Bill of Rights would not be immediately applicable to it upon final adoption by the House. We know that victims of sexual assault and harassment in the military have had a particularly difficult experience, with recent research highlighting that those who filed complaints faced mockery, ostracism and even threats. We believe more women and men would feel safe to come forward and report these crimes in the military if they knew their superior officers had to respect the protections provided under the Victims Bill of Rights.

Amendment #7: The Canadian Victims Bill of Rights should be amended “to apply to personal serious injury offences, in particular with respect to sexual assault, domestic violence and harassment cases, under the National Defence Act.”

Monitoring, Implementation & Enforceability

At committee, Ms. Boivin asked the Minister how the Bill would be enforced. She asked how the government will make sure it is enforced uniformly in Ontario, Quebec, Newfoundland and so on and so forth, when the government is not in charge of the administration of justice, when the courts already have problems with access to justice and so on? Minister Peter MacKay stated, “the immediate enforcement and the mechanisms by which that we will be achieved will happen over time. This won’t be like flicking a switch; it will require some adaptation.” He also made reference to the Office of Federal Ombudsman for Victims of Crime yet again, even though this office is not mentioned in the Bill and do not have the authority to intervene in oversight of provincial matters or complaints processes. The CRCVC believes one of the biggest challenges of the CVBR is going to be ensuring compliance with the law and monitoring it. We believe it is important to monitor and assess how the legislation is implemented and enforced so that in practice victims are not denied their rights.

Amendment #8: The Canadian Victims Bill of Rights be amended to state that “Each province and territory shall establish an agency with an oversight function to help monitor the

rights of victims and their fair treatment by criminal justice practitioners. Such offices' officials may investigate both statutory violations of victims' rights laws and alleged mistreatment by criminal justice practitioners in a neutral and objective manner. This office will have the power to make recommendations to provincial/territorial criminal justice authorities for change and be required to report to the Policy Centre for Victim Issues annually about the number and circumstances of crime victims whose rights have been infringed. The Policy Centre for Victim Issues shall provide a bi-annual monitoring report to Parliament so that criminal justice stakeholders and members of the public are aware of how victims' rights are being implemented/enforced, how many complaints are received and how many are resolved to the victims' satisfaction, while enhancing federal/provincial/territorial co-operation in this regard."

Conclusion

We view the Canadian Victims Bill of Rights as a valuable piece of quasi-constitutional legislation that for the first time recognizes some of the needs of people who are harmed by crime. We are hopeful it will bring some consistency to existing practices across Canada (for example, the introduction of victim impact statement forms at sentencing). Although victim impact statements are incredibly important and beneficial, we also strongly believe that victims of crime should have the right to be heard in other forums related to their case. We believe victims should have the ability to speak freely at parole hearings and not be restricted to statements prepared ahead of time.

Overall, we are pleased that the federal government has promised it will provide dedicated funding to support the implementation of the Canadian Victims Bill of Rights through existing resources as well as the allocation of new federal resources. We are delighted that victims will be provided the opportunity to receive a picture of an offender upon his/her release from prison, information about an offender's deportation from Canada and an audiotape from parole hearings: issues our agency has long advocated for.

However, it is evident that victims of crime must seek out many of the rights provided to them in the CVBR rather than being offered rights automatically which they can execute if and when need be. It is also difficult to see how we are making their position any easier by not providing real recourse when

their rights are violated. If we do not provide victims with the ability to enforce their rights, the Bill will not have the desired effect of changing the existing legal culture that often excludes victims from criminal processes, nor will it hold various criminal justice authorities to account in terms of respecting the rights it enshrines. We must do better than this for persons harmed by crime in Canada.