The Federal Victim Surcharge in Saskatchewan

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Highlights

- Between 2002/03-2006/07, the average waiver rate for the Federal Victim Surcharge (FVS) in Saskatchewan was 73%.

- During that same time period, property offences had the highest waiver rate (85%), followed by Offences against the Person and Offences against the Administration of Justice (79%). *Criminal Code* Traffic Offences had the lowest FVS waiver rate (50%).

- There is a high waiver rate for dispositions resulting in custody (93%) compared with a lower waiver rate of 53% for fines.

- Data provided by the Saskatchewan provincial court database revealed that the average collection rate over the five-year period was 82%.

- The anticipated increased revenue from the 1999 amendments to the *Criminal Code* provisions has not been realized due to high FVS waiver rates, rather than a low collection rate.

- An auditory review of 143 sentencing hearings in Regina held from December 2007 to January 2008 revealed that the FVS was waived in approximately three quarters of cases. Judges never refused, nor questioned a request to waive the FVS by defence; evidence for "undue hardship" was representation by legal aid or being unemployed.

- The sentencing hearings indicated that the surcharge was more likely to be imposed when the offender was employed, when the offender was charged with drinking and driving and possession or distribution of narcotics offences, and when fines were imposed.

- The criminal justice stakeholders interviewed were aware of the FVS and agreed with its purpose; however, there was little awareness of what the FVS revenue was used for.

- The stakeholders interviewed agreed that offenders do not have a good understanding of the surcharge and very few saw it as a meaningful consequence for the offender because offenders do not understand what it is for and there are no serious repercussions for non-payment.

Executive Summary

The Federal Victim Surcharge (FVS), implemented in 1989, is an imposed payment on an offender who is convicted of any *Criminal Code* offence, or a *Controlled Drugs and Substances Act* offence, as well as on individuals who receive an absolute or conditional discharge. The goals of the FVS are to make offenders accountable to victims and to generate revenue for victim services. In many jurisdictions, funds collected from the imposition of the FVS are the primary source of revenue for victim services.

In order to address concerns regarding the implementation of the FVS and the lower than anticipated revenue collected from the 1989 provisions, the surcharge provisions in s. 737 of the *Criminal Code* were revised in 1999 based on recommendations made by the Federal Provincial Territorial Working Group (FPTWG) on Victims of Crime. The amended provisions require that a mandatory minimum amount be automatically imposed on all cases unless the offender can prove that paying the surcharge would result in undue hardship to either her/himself or her/his dependents (s.737(5)). The court must provide reasons for waiving the surcharge and state them in the record of proceedings (s.737 (6)).

The anticipated revenue to be generated from the 1999 amendments has not been realized, however. In 2005, the Attorney General of Manitoba proposed an increase in the FVS to increase revenue. Federal, provincial and territorial officials agreed that research was needed to better understand how the current provision is working. Research has already been conducted in New Brunswick and the Northwest Territories. As such, this study aims to build on what has already been learned and to gain a greater understanding of how the FVS is working in Saskatchewan.

The seven main research questions included were:

1. What are the waiver rates?
2. What reasons are provided for the waiver(s)?
3. How is the FVS documented in court files?
4. What are the collection rates?
5. What are the enforcement strategies in Saskatchewan and what, if any, are the consequences of non-compliance?
6. What other options could be considered for collection?
7. Why has the anticipated revenue to be generated from the 1999 amendments to the *Criminal Code* provisions related to the FVS not been realized?

Methodology

This study used a mixed-methods approach with quantitative data from Saskatchewan's provincial court database for fiscal years 2002/03-2006/07 to determine aggregate collection rates. Waiver rates and factors influencing the waiver were analyzed based on data provided by the Canadian Centre for Justice Statistics (n=72,915, 2002/03-2006/07). A file review of 50 court files from the Regina courthouse was also conducted in order to determine if and how the imposition/waiver and reasons for the waiver were recorded. Qualitative data analysis involved

an auditory review of 143 sentencing hearings carried out in Regina from December 2007 to January 2008. Further, interviews with 38 criminal justice stakeholders, including Crown prosecutors, defence attorneys, court staff, programs/policy staff and probation officers, were also conducted between August and October 2008. The respondents were interviewed from four court locations: Regina, Saskatoon, Yorkton and Meadow Lake.

Study Findings

Waiver and Collection Rates

Data provided by the Canadian Centre for Justice Statistics revealed that the average FVS waiver rate was 73% across the province. The highest waiver rate was in La Ronge, at 87%, and the lowest waiver rate was in Estevan, at 46%. Offences against Property had the highest waiver rate at 85% and *Criminal Code* traffic offences had the lowest waiver rate, at approximately 50%. Dispositions resulting in the custody of the accused had the highest waiver rates at 93% and fines had the lowest waiver rates, at 53%. Data provided by the provincial court database revealed that the average collection rate for the five years was approximately 82%. In 2003/04 however, there was a surplus in monies collected and when this year is excluded from the calculation, the average collection rate dropped to 69%.

Reasons for Waiver and Imposition

A file review of 50 provincial court files indicated that the FVS was not addressed in the majority (92%) of the cases. The FVS was waived in 65% of the cases. Hardship was provided as the reason for the waiver and the waiver was documented in the Endorsement in all these cases. The imposition of the FVS was documented in several places, including on the Notice of Fine and Surcharge and on the Endorsement.

The auditory review of 143 sentencing hearings revealed that approximately three out of four sentencing cases resulted in a waiver. Judges in Regina never refused nor questioned a request to waive the FVS by defence and the evidence for "undue hardship" was representation by legal aid or being unemployed. The surcharge was more likely to be imposed when the offender was employed, when the offender was charged with drinking and driving and possession or distribution of narcotics, and when fines were imposed as penalty.

Perspectives of Criminal Justice Stakeholders

Interviews with criminal justice stakeholders indicated they were all aware of the FVS and agreed with its purpose, however there was little awareness of where the revenue actually went. The stakeholders agreed that offenders do not have a good understanding of the surcharge and very few saw it as a meaningful consequence for the offender because there were no repercussions for non-payment. The interviews also revealed that the process of imposition differed between court locations and reflected the different approaches taken by the judges in these locations. Many probation officers also noted that they do not consider the FVS in their Pre-Sentence Reports. The respondents provided several recommendations with regard to ensuring payment of the surcharge, including having the offender work off the FVS, withholding parole until the FVS is paid, using a collection agency and the Refund Set-Off Program with the Canada Revenue Agency. All of the respondents agreed that where there is a true inability to pay, that the FVS should be waived.

Conclusions

This study found that waiver rates in Saskatchewan are high on average, although they vary considerably depending on court location. FVS waiver rates are also higher for custodial dispositions than for fine dispositions. It is clear from the findings that the primary reason that potential revenue from the 1999 amendments has not been realized is the high waiver rates, rather than low collection rates. Interviews with criminal justice stakeholders also revealed that greater awareness about the surcharge is warranted and that few view the FVS as a meaningful consequence for offenders.

The results of this study suggest that current efforts to reduce waiver rates should be continued by challenging offenders' uncontested inability to pay; by ensuring full financial information is presented to the court in Pre-Sentence Reports by probation officers; and by appealing trial decisions where appropriate. Judges, Crown prosecutors, defence counsel and probation officers all have a significant role to play in ensuring the imposition of the FVS.

Key Learnings

1. The data showed that it will be important to increase awareness, for all players in the criminal justice system, but especially judiciary, defence and probation officers, of the importance of FVS in terms of funding specific programs. A better understanding of the role of the programs and the use of the money generated from the funds could make a difference in terms of the FVS being a meaningful consequence.

2. In addition, increased involvement of criminal justice professionals at imposition and enforcement of the FVS would likely result in lower waiver rates. Probation officers, defence counsel and Crown prosecutors could all consider the importance of the FVS and ensure that the FVS is addressed.

3. It will be important to establish a consequence for non-payment of the FVS and to examine enforcement of all monetary penalties, including restitution, provincial and federal surcharge and fines to determine whether there are consistent approaches to enforcement and if there are best practices in terms of enforcement of monetary penalties.

4. An improvement in the data management system to track individual payments of FVS would increase understanding of what is occurring in terms of FVS collection.

5. When the opportunity arises, it will be important to appeal appropriate cases wherein the offender may have the ability to pay the FVS.

6. Finally, it will also be important to monitor the recently implemented Canada Revenue Agency Refund Set-Off Program to understand its effectiveness and to determine if this program could be a best practice for collection.

1. Introduction

This report presents the findings of a research study on the Federal Victim Surcharge (FVS) in Saskatchewan. The main research questions included:

1) What are the waiver rates?
2) What reasons are provided for the waiver(s)?
3) How is the FVS documented in court files?
4) What are the collection rates?
5) What are the enforcement strategies in Saskatchewan and what, if any, are the consequences of non-compliance?
6) What other options could be considered for collection?
7) Why has the anticipated revenue to be generated from the 1999 amendments to the *Criminal Code* provisions related to the FVS not been realized?

In this first section, we explain the history of the Federal Victim Surcharge and provide an overview of the *Criminal Code* provisions, as well as describing victim services in Saskatchewan. In Section 2, the study methodology is described and in Section 3, the findings are presented. The final section presents the key learnings.

1.1 The Federal Victim Surcharge[1]

The Federal Victim Surcharge provisions of the *Criminal Code* were first enacted in 1988, proclaimed in July 1989, with amendments in 1999. The FVS is a payment imposed on an offender who is convicted of any *Criminal Code* offence, or a *Controlled Drugs and Substances Act* offence involving controlled or restricted drugs, as well as individuals who received an absolute or conditional discharge. The original *Criminal Code* provision set an upper limit on the amount of the surcharge, but the real limits were set in regulations. This approach was intended to permit the maximum amount to be raised over time. Importantly, the original intent of the surcharge was its inclusion as a part of the sentence and was not to be characterized as a "tax" or levy to simply raise revenue.

The original legislation required an offender to pay a surcharge of an amount not exceeding:

- fifteen percent of any fine imposed or where no fine is imposed, ten thousand dollars, or
- such lesser amount as prescribed in regulations made by the Governor in Council.

The regulations prescribed $35 as the "lesser amount" for non-fine offences. As a result of the combined effect of the regulations and the *Code* provisions, the surcharge was an amount up to 15% for fines and up to $35 for other dispositions, with judges maintaining discretion on whether or not to impose any surcharge. These regulations, which were not set out in the *Code*, led to a

[1] This background is largely drawn from M. Law and M. Sullivan. 2008. *The Federal Victim Surcharge in New Brunswick: An Operational Review.* Department of Justice Canada: Ottawa.

great deal of confusion and inconsistent practices surrounding the applicable amounts. In addition, the prescription of a maximum amount permitted judges to impose a lower surcharge and still comply with the legislation. In doing so, however, the goals of the surcharge, which included making offenders accountable to victims in a small way and to generate revenue for victim services, were not being met.

At the same time that the Federal Victim Surcharge was implemented in 1989, federal/provincial cost sharing programs for provincial victim crime compensation programs were eliminated. This was because the federal government anticipated that the FVS would provide additional funding per capita not only for crime compensation, but for other criminal justice victim services. These revenues were not realized as anticipated; a number of provinces eliminated or significantly revised crime compensation programs.

The provinces' experience with the 1989 surcharge provisions quickly led to calls for reform. Within a few years after enactment, provinces and territories noted the need to revise the *Criminal Code* victim surcharge provision to address concerns regarding its implementation and revenue raising capacity.

Research conducted by Justice Canada consultants in the early 1990's[2] revealed that in many cases the imposition of the surcharge was ignored or forgotten, particularly where the disposition was other than a fine. In situations where a jail term was imposed, judges often relied on the undue hardship provision to waive imposition. In addition, the imposition of the $35 surcharge where a term of imprisonment (or other non-fine disposition) was imposed was criticized as disproportionate to the gravity of the offence. Other reasons cited explaining the lack of acceptance of the surcharge included the perception that surcharge revenue would be deposited into general revenues with no guarantee that existing services for victims would be expanded or new services developed. At that time, the low revenue from the FVS was attributed to several factors including lack of awareness, concerns regarding the use of surcharge revenue and the restrictions on the maximum limits.

Despite the lower than anticipated revenues, provinces did not initially recommend increased amounts due to the fact that awareness and acceptance of the surcharge was improving and changes to the amounts could have impeded progress. No consensus on this issue was reached until December 1997, when Provincial and Territorial Ministers of Justice urged the federal Minister of Justice to proceed with revisions to the FVS scheme.

The Federal Provincial Territorial Working Group (FPTWG) on Victims of Crime proposed that s. 737 of the *Code* be amended to provide that:

- A mandatory minimum amount shall be imposed; a minimum surcharge of 15% of a fine and for non-fine dispositions, a minimum of $50 for summary conviction offences and a minimum of $100 for indictable offences (or other amounts)

[2] See Section 1.3 for more detail on these studies.

- These minimum amounts shall be automatically (presumed to be or deemed to be) imposed in addition to any other sentence with some exceptions, including:
    - The judge determines that a greater amount of surcharge should be imposed, or
    - The judge determines that undue hardship would result from the imposition of the surcharge.

In 1998, the Standing Committee on Justice and Human Rights tabled its report following its review of the victim's role in the criminal justice system; *Victims' Rights - a Voice Not a Veto*. The Committee noted the problems with the original surcharge provisions, including judges' inadvertent failure to impose the surcharge and non-aggressive enforcement and collection initiatives by pertinent departments.

The report affirmed that additional resources were needed to provide adequate victim services across the country and that increasing the FVS would be a reasonable way to generate more revenue, particularly given that the maximum surcharge amounts had not increased since 1989.

The Government's Response (December 1998) noted that the recommendations of the FPTWG and those of the FPT Attorneys General were consistent with those of the Committee. The Response included a commitment by the Minister of Justice to pursue *Criminal Code* amendments to revise the amount of the minimum surcharge and to provide for automatic imposition while preserving the undue hardship exemption and providing adequate notice to the accused. The Government's Response also encouraged that a federal victim's office be established that could work in collaboration with the provinces and territories, to among other things, explore effective enforcement mechanisms to ensure that funding would be available to the provinces and territories for their victims' services. The Policy Centre for Victim Issues (PCVI) was established in 2000 as a response to this recommendation. *Criminal Code* amendments to address the needs of victims of crime were proclaimed into force in 1999, including new surcharge provisions designed to address the concerns noted. These concerns and subsequent amendments focused on the amount of the minimum surcharge and the possibility to provide for automatic imposition while preserving the undue hardship exemption. Saskatchewan has not seen an increase in FVS revenues since the 1999 amendments.

The only exception to the mandatory imposition of the FVS occurs when the offender can prove "undue hardship" (*Criminal Code* s.737(5)). The surcharge may be waived if the offender establishes undue hardship to either her/himself or her/his dependants as a result of the imposition of the FVS. When the court waives a Federal Victim Surcharge, it is required to provide reasons and state them in the record of proceedings (s.737(6)).

There is a Fine Option Program, which is an opportunity for the offender to satisfy fines by means of community work through a formula calculating the number of hours the offender works; the *Criminal Code,* however, explicitly states that the Fines Option Program *cannot* be used to satisfy a surcharge (s.736 and s.737(10)). Furthermore, section 734.8(5) of the *Criminal Code* clarifies that where a part payment is made for a fine, the money is applied first to the costs (s.734(5)(a)(i)) second to the surcharge and then to the fine (Section 737).

The court may order an offender to pay a FVS in an amount exceeding that set out in subsection (2) if the court considers it appropriate in the circumstances and is satisfied that the offender is able to pay the higher amount. The court may also may order the offender to pay a surcharge an amount less than that set out in section (2) if the court is satisfied that paying the full amount would cause the offender undue hardship but the offender has the means to pay a lesser amount.

1.2 The Provincial Victim Surcharge and Victim Services in Saskatchewan

In Saskatchewan, the *Victims of Crime Act, 1995,* forms the legislative basis for the Victims Services Program and was proclaimed on August 1, 1999. A **victim** is defined in the *Act* as a person who, by reason of an act that is in violation of criminal laws, has suffered harm, including physical or mental injury, emotional suffering or economic loss.

The *Act* provides for the collection of a surcharge (s.10) on provincial offences and creates a dedicated fund to support programs and services for victims. Offenders must pay the surcharge over and above any other punishment imposed on them for all provincial offences and municipal by-laws, other than those prosecuted by by-law tickets and parking offences. The imposition of the provincial surcharge is automatic and payment is mandatory. Surcharges are collected by the courts in the same manner as fines. Any payment made by the person convicted of the offence is first applied to payment of the surcharge and then to payment of the fine. Revenue collected from the provincial surcharge and the FVS flows to the "Victims' Fund". Surcharges are the primary source of income for the Victims Services Program, which includes compensation for victims of crime.

On July 1, 2008, amendments to the provincial surcharge provisions in the *Act* came into effect. Where the fine imposed is $500 or less, the provincial surcharge has been increased by $10. Where the fine imposed is greater than $500, the surcharge has been increased by 10 per cent. For example, the provincial surcharge would be:

- $40 where fine imposed is $99 or less;
- $50 where fine imposed is greater than $99 but less than or equal to $200;
- $60 where fine imposed is greater than $200 but less than or equal to $350;
- $80 where fine imposed is greater than $350 but less than or equal to $500;
- 40 per cent of the fine imposed (rounded off to the nearest dollar) where the fine imposed is greater than $500;
- $50 where no fine is imposed.

This change reflects an increase of $10 per category. In the case of fines greater than $500, it is an increase from 30% to 40%.

Canada Revenue Agency Refund Set-Off Program

The Saskatchewan Ministry of Justice and Attorney General has partnered with the Canada Revenue Agency in the Refund Set-Off Program which allows the Province to report information to CRA regarding offenders with unpaid fines that are payable to the Province of Saskatchewan.

If that individual is entitled to an Income Tax Refund or a GST Credit, CRA may withhold payment and forward the funds to the Province to be applied to the unpaid fine(s).

Only particular cases would fall under the criteria established for the Refund Set-Off Program. Several of those criteria are not relevant to this particular study on the FVS and as such, listed below are the criteria that are relevant to this work:

1) Only individuals (no companies) are to be included.
2) The fine must be payable to the Attorney General and the associated surcharge will be included.
3) If the fine is not payable to the Attorney General, any associated surcharge will not be included.
4) If a stand alone Federal Victim Surcharge exists, then the Federal Victim Surcharge will be sent to CRA if it is greater than $19.99.
5) No active Warrant for Committal for Non-Payment of Fines (WOC) can exist. Status must be cancelled or recalled.
6) The outstanding debt must be greater than $19.99

This program only began in 2008 and as such, there was no data available for analysis in this particular study. This description is included, however, as it is currently part of the Saskatchewan Ministry and Attorney General's efforts to improve collection of the Federal Victim Surcharge and other monetary penalties.

***Criminal Code* provisions**

737. (1) Subject to subsection (5), an offender who is convicted or discharged under section 730 of an offence under this Act or the Controlled Drugs and Substances Act shall pay a victim surcharge, in addition to any other punishment imposed on the offender.

(2) Subject to subsection (3), the amount of the victim surcharge in respect of an offence is (a) 15 per cent of any fine that is imposed on the offender for the offence; or (b) if no fine is imposed on the offender for the offence,

(i) $50 in the case of an offence punishable by summary conviction, and
(ii) $100 in the case of an offence punishable by indictment.

(3) The court may order an offender to pay a victim surcharge in an amount exceeding that set out in subsection (2) if the court considers it appropriate in the circumstances and is satisfied that the offender is able to pay the higher amount.

(4) The victim surcharge imposed in respect of an offence is payable at the time at which the fine imposed for the offence is payable and, when no fine is imposed, within the time established by the lieutenant governor in council of the province in which the surcharge is imposed for payment of any such surcharge.

(5) When the offender establishes to the satisfaction of the court that undue hardship to the offender or the dependants of the offender would result from payment of the victim surcharge, the court may, on application of the offender,

make an order exempting the offender from the application of subsection (1).

(6) When the court makes an order under subsection (5), the court shall state its reasons in the record of the proceedings.

(7) A victim surcharge imposed under subsection (1) shall be applied for the purposes of providing such assistance to victims of offences as the lieutenant governor in council of the province in which the surcharge is imposed may direct from time to time.

(8) The court shall cause to be given to the offender a written notice setting out

(a) the amount of the victim surcharge;
(b) the manner in which the victim surcharge is to be paid;
(c) the time by which the victim surcharge must be paid; and
(d) the procedure for applying for a change in any terms referred to in paragraphs (b) and (c) in accordance with section 734.

(9) Subsections 734(3) to (7) and sections 734.3, 734.5, 734.7 and 734.8 apply, with any modifications that the circumstances require, in respect of a victim surcharge imposed under subsection (1) and, in particular,

(a) a reference in any of those provisions to "fine", other than in subsection 734.8(5), must be read as if it were a reference to "victim surcharge"; and

(b) the notice provided under subsection (8) is deemed to be an order made under section 734.1.

(10) For greater certainty, the program referred to in section 736 for the discharge of a fine may not be used in respect of a victim surcharge.

R.S., 1985, c. C-46, s. 737; 1995, c. 22, ss. 6, 18; 1996, c. 19, s. 75; 1999, c. 5, s. 38, c. 25, s. 20(Preamble).

1.3 Other Research

The Department of Justice has carried out several studies on the Federal Victim Surcharge since it was first introduced in the late 1980s. Two studies were undertaken to review the impact of the new provisions, one in British Columbia and one in Ontario. The first was entitled, *An Assessment of Victim Fine Surcharge in British Columbia,* by Tim Roberts (1992). There were two types of analysis conducted in this study: i) an implementation analysis, which examined the degree to which and the geographical consistency with which the victim surcharge provisions were implemented in BC and the procedures involved in the process; and ii), an analysis of issues which have arisen in regard to particular types of cases and in regard to the implementation of victim surcharges.

Two primary methods were used: a survey of key justice system informants in 4 major locations, and to a lesser degree in 21 other sites; and, a file review of the use of victim surcharges in 1,195 completed cases with convictions.

Three themes emerged from the study findings:

1. There is considerable variability in the frequency of the imposition of the surcharge in BC.
2. There is resistance by judges to the imposition of the victim surcharge.
3. There is a lack of implementation of surcharges on non-fine dispositions.

The second study was entitled, *Helping Victims through Fine Surcharges,* by Lee Axon and Bob Hann (1994). This study examined Ontario's experience with the surcharge and also reviewed practices in other jurisdictions. Findings from this study included:

1. In Ontario, the revenue generated by the surcharge declined dramatically since the initial introduction in 1989 because it was being applied with less frequency.
2. Only about 15% of the potential surcharge was imposed in 1992 and only 2.7% was actually collected.
3. More than 80% of all surcharges were imposed on "victimless" crimes (impaired driving, morals offences, and willful damage).
4. The major reason for the low rates of imposition of the surcharge in Ontario was judicial concern that the revenue would not be used to provide services for crime victims. Revenue was being deposited in the province's Consolidated Revenue Fund. Three quarters of the judges responded that if the revenue were directed towards victim services, they would be more likely to impose the surcharge. Crown expressed similar views. Defence were almost unanimously opposed to the surcharge.
5. The study found that, in other jurisdictions: there is widespread dissatisfaction with the regulated $35 maximum for non-fine dispositions; little attention has been given to informing offenders about the purpose of the surcharge; judges are more likely to impose the surcharge on fines than on non-fine dispositions; the surcharge has been most successful in those jurisdictions that have kept judges informed about how the revenue is being used; and most jurisdictions have developed a designated fund for the revenue.

No research was conducted in the years immediately following the 1999 amendments; in 2004, however, the Department completed a large multi-site study on the victim-related *Criminal Code* provisions (Prairie Research Associates 2004). A wide range of stakeholders were interviewed across the country and questions on the FVS were included. When judges were asked whether they generally apply the FVS, 58% of judges reported that they generally apply the surcharge, 37% do not. Reasons given by the judges for not applying the surcharge included:

- Offender does not have the ability to pay (62%);
- FVS seen as inappropriate (6%);
- Questioned whether funds are used to assist victims (5%).

There was no additional probing to discover as to why a small percentage of judges believe that the FVS is inappropriate. It appears, however, that in the majority of cases, the offender is said to not have the ability to pay. More than half (54%) of Crown Attorneys interviewed noted that there was frequently no application to challenge because the judge had waived the surcharge on his/her own.

The study also asked a number of stakeholder groups for their views whether the FVS is waived more often than it should be. As can be seen in Table 1, the majority of victim services workers and Crown Attorneys believe that the FVS is waived more often than it should be, while most defence counsel do not.

Table 1: Responses by stakeholder group as to whether the FVS is waived more often than it should be

	Victim Services (n=62)	Crown Attorneys (n=161)	Defence Counsel (n=170)	Advocacy Groups (n=15)
Yes	66%	70%	11%	47%
No	34%	30%	89%	53%

Source: Multi-site Study, PRA 2004

More recently, Law and Sullivan (2008) undertook a review of the FVS in New Brunswick. Examining 61,174 cases from the province's justice data management system, the authors found an average provincial waiver rate of 66%. In cases of fine dispositions, the waiver rate was 25% and for non-fine dispositions the waiver rates were 84% for summary convictions and 91% for indictable convictions. In cases of custodial dispositions, the waiver rate was 96%.

The waiver rates (both highest and lowest) were as follows:

1) non-violent property offences (73%)
2) drug convictions (62%)
3) driving under influence (DUI) (26%).

The average provincial collection rate was 83%. For custodial dispositions, that rate was 53% and for fines, the rate was 85%.

In addition, the study found that all court locations had a system to ensure the FVS was being automatically applied, unless actively waived by the judge. There were consistent documentation practices within court locations. There was considerable variation, however, in the documentation practices between different Provincial Court locations.
There was no documentation to indicate that evidence had been produced to prove "undue hardship" to the courts' satisfaction, nor were reasons for the waiver documented in court files (in 99% of cases).

Similar research was conducted in the Northwest Territories (Ha 2009). On average, the territorial waiver rate was 70%. In cases of custodial dispositions, the waiver rate was 94% and for fine dispositions, the rate was 30%. For offences against the person, the waiver rate was 77% and in cases of driving under influence, the waiver rate was 40%.

The territorial average collection rate was 84%. In cases of custodial dispositions, the collection rate was 73% and in cases of fines, the rate was 84%. Interviews with stakeholders in the criminal justice system were also conducted and overall, there was a positive view of the concept of the surcharge. There was a perception that there is little information about the surcharge and how money is used. There was also a perception that the focus for policy makers and court staff should be on enforcing existing surcharge provisions, not increasing surcharge amount. A

majority of informants believed the surcharge is not being imposed automatically. Overall, the informants noted that expected revenues have not materialized due to:

- High waiver, low enforcement rates
- Failure to adhere to automatic imposition provision
- Lack of staff and other resources for collection
- Judicial independence

The research that has been undertaken to date shows similar results in that average waiver rates are high in the jurisdictions and higher for custodial dispositions than for fines. Collection rates are relatively good (83% in New Brunswick and 84% in the Northwest Territories), demonstrating that the low revenues are not due to low collection rates, rather high waiver rates.

1.4 Caselaw

An exploration of the reported caselaw across the country suggests that revenue from the Federal Victim Surcharge is lower than expected because surcharges are being waived at sentencing. As noted earlier, s. 737(5) of the *Criminal Code* provides that the offender may apply to have the FVS waived if he establishes that its imposition would result in "undue hardship" to himself or his dependants. Furthermore, s. 737(6) requires the court to provide reasons if a waiver is granted. Using QuickLaw,[3] the terms "victim surcharge" and "waiv*" were entered. This search yielded 56 cases that were subsequently reviewed to canvas the reasons provided when the FVS was waived.

Despite the requirement that reasons be provided when the surcharge is waived, the search returned roughly equal numbers of cases where reasons were and were not provided for a waiver. The cases where the FVS was waived without explanation do provide some insight on this issue. Notably, the cases where reasons were not provided included two judgments by the same judge where the offenders were sentenced to pay a fine, yet the victim surcharge was waived.[4] Both cases involve offenders sentenced to a term of imprisonment and a fine for drug-related crimes, and neither included any discussion of the offender's financial circumstances or ability to pay a victim surcharge. While it is possible that this information was provided to the court by the offenders' lawyers but not included in the judgment, it is curious that an offender who would be capable of paying a fine would not also be capable of paying the victim surcharge. These cases could be examples of the FVS being waived because of judicial oversight.

Also noteworthy is an Ontario case where, upon being asked by the defendant's counsel to waive the FVS for financial reasons, the judge replied that he had not imposed a surcharge. When defendant's counsel explained that the surcharge was imposed automatically, the judge expressly waived it without making any inquiries about the defendant's financial circumstances and not stating any reasons to support the waiver.[5] In this case, the judge was both unaware of the FVS

[3] Only cases up to the end of 2004 were examined through QuickLaw.
[4] *R.* v. *Garceau*, [1994] Y.J. No. 102 (Y.S.C.) and *R.* v. *Tyacke* [1994] Y.J. No. 55 (Y.S.C.)
[5] *R.* v. *C.D.*, [2001] O.J. No. 3309 (Ont. Sup. Ct. J.)

and willing to waive it without evidence of the defendant's inability to pay, as required in order for the waiver to be granted.

In many cases it was not possible to determine whether the FVS was waived upon application by defence counsel, as required, or whether it was the court's own decision. In a number of cases including both those where reasons were and were not provided for the waiver, the judge only ruled on this matter after being reminded by the court clerk.

By contrast, the judgment in *R.* v. *Cornohus*[6] included an exchange between the judge and defence counsel in which defence counsel neither applied for a waiver of the victim surcharge, nor presented any information concerning his client's financial circumstances. However, the judge waived the surcharge without explanation. In *R.* v. *C.J.L,*[7] the victim surcharge was waived for the offender, who, despite a prior record and drug problem, was gainfully employed. The sentencing decision contained no application for a waiver by the offender's counsel or any inquiry by the judge as to the offender's ability to pay. The waiver was granted without reason by the judge after the court clerk specifically asked the judge whether a victim surcharge was to be imposed.

The cases where reasons were provided for the waiver of the surcharge included many where it was assumed that the offender would not be capable of making payments because the offender was sentenced to a period of incarceration. In *R.* v. *Barembruch*[8] where the offender was sentenced to five years and four months imprisonment, the judge stated, "I will waive the victim surcharge because it is apparent that the accused will not be in possession of money since he will be incarcerated." In *R*. v. *Noiles*[9], where the offender was sentenced to eight years for break and enter with intent and sexual assault, the judge stated, "I am also prepared to waive the victim surcharge of $100 in view of the length of the sentence imposed." Neither judgment contains any details on the "undue hardship" that would be caused to the offenders or their families by the imposition of the surcharge. In *R.* v. *Matthiesson,*[10] defence sought a waiver of the victim surcharge "in view of the circumstances" when his client received a sentence of seven and a half years for drug offences. The waiver was granted by the judge "having regard to the sentence imposed" despite the fact that the offender had been successfully employed as a realtor since his arrest four months earlier. No evidence of the "undue hardship" which would be caused to the offender or his family was provided by the offender's counsel nor was any requested by the judge.

In contrast to these judgments is that of *R.* v. *S.M.*[11] where the judge declined the offender's application to waive the FVS in sentencing the offender to 18 months imprisonment to be served consecutively to the time he was serving for break and enter and theft. In refusing to waive the surcharge the judge stated:

[6] [1995] Y.J. No. 182 (Y.S.C.)
[7] [2003] B.C.J. No. 3019 (B.C. Prov. Ct.)
[8] [2002] B.C.J. No. 3182
[9] [2002] N.S.J. No. 212 (N.S.S.C.)
[10] [1996] A.J. No. 1419 (Alta. Q.B.)
[11] [2000] O.J. No. 5683 (Ont. C.J.)

> *...most of the circumstances as related by [offender's counsel] are common, I think to at least fifty, if not seventy-five percent of the people who appear before me and if I make an Order that waives the surcharge on these conditions, I am essentially saying that it should be waived more often than not, and I am certain that that's not what was intended by the statute…That is to say, I am certain that the test was intended to be a little higher than would have resulted in average automatic waiver.*

The case law reviewed shows that many sentencing judges do not share this view of the FVS, and are prepared to waive the surcharge for reasons which appear to fall below the standard set out in s. 737(5) of the *Criminal Code*.

In the case law reviewed, it would appear that the FVS was waived because:

- The judge was unaware or uninformed about the surcharge;
- The judge considered FVS to be an unimportant element of sentencing; and
- The judge failed to make the appropriate inquiry regarding the offender's financial circumstances and ability to pay a surcharge.

The authors also examined a few recent cases from Saskatchewan on the Federal Victim Surcharge in order to determine outcomes at the appellate level[12].

In *R.* v. *Rusanov,*[13] a 2006 Saskatchewan Court of Queen's Bench decision, the accused was found guilty of drug offences. The Crown requested a restitution order of $13,392 (the value of the electricity stolen) payable to SaskPower. Because the accused was not solely responsible for the theft, the judge made an order pursuant to s. 738 for $6,700. Of note in this case, at para. 40, Chicoine, J. states that, "The victim surcharge provided for under s.737 of the *Criminal Code* is waived for reason of undue hardship on Mr. Rusanov's dependants." Yet inability to pay was not raised as an issue for the order.

There were three cases where Crown prosecutors sought an appeal of the trial judge's decision regarding waiver of the Federal Victim Surcharge. In a 2008 Court of Queen's Bench oral decision, Allbright, J. noted,[14]

> *I direct that the sentence is to be varied to have the additional portion of it, pursuant to s.737 CC, Ms. Parsons shall pay a victim surcharge in respect of the offence in question, in the amount of $50.00. Ms. Parsons has until August 31, 2008 to pay the victim impact surcharge.*

In another Court of Queen's Bench decision in 2008, *R.* v. *Poitras*,[15] the accused consented to the appeal that the trial judge erred in law by failing to impose the FVS and a FVS in the amount of $50 was imposed with three months to pay.

[12] The review of the Saskatchewan cases is not comprehensive.
[13] (2006), 287 Sask. R. 311 (Sask. Q.B.)
[14] QBCA 10/08 *R.* v. *Parsons*
[15] QBCA 7/08 Information No. 33382309

In the third case, *R.*v. *Yaremko*,[16] Pritchard J. noted in paragraphs 1-4 of the decision:

> *As he concluded the sentencing, and without any discussion or explanation, the sentencing judge waived the victim surcharge. The surcharge was waived notwithstanding that the Respondent had not requested an exemption pursuant to s. 737(5) of the Criminal Code (the "Code").*
>
> *... The appeal is made on the basis that the trial judge did not comply with the mandatory provisions of s.737 of the Code.*
>
> *The imposition of a victim fine surcharge under s.737 of the Code is mandatory subject only to an application under s.737(5) relating to undue hardship. (See R. v. Jimmy (B.C.S.C.), [1994] B.C.J. No.727 and R.v. Tellier, 2000 ABCA 219, [2000] A.J. No.903). If an offender is exempted from payment of the victim surcharge, it is also mandatory that the court give reasons.*
>
> *The sentencing judge failed to comply with the explicit provisions of s.737(1) of the Code or, alternatively the explicit provisions of ss.737(5) and (6) of the Code. . . . The record establishes that the Respondent was employed at the time of sentencing and has been consistently employed his entire adult life. Although the Respondent has financial challenges, there is no evidence that they amount to undue hardship particularly given that the maximum victim surcharge payable in these circumstances is only $30.00. This represents 15 per cent of the fine assessed by the sentencing judge. As stated by the Crown, the funds raised through victim surcharges play an important and vital part in the criminal justice system and it is important that sentencing judges pay serious attention to their obligations under s.737 of the Code. All amounts paid by way of victim surcharges are used in accordance with s.* 21 of the *Victims of Crime Act,* 1995, S.S. 1995, c.V-6.011.

This case and the two preceding are examples of where, in the past year or so, Crown prosecutors have been diligent in following up on cases where waivers may not have been justified or no reasons were given. It is important to note that in this decision, the Court stressed the role of the FVS in the provision of services for victims of crime.

[16] 2007 SKQB 225.

2. Methodology

The purpose of this research project was to better understand how the Federal Victim Surcharge is working in the province of Saskatchewan. Specific research questions included:

1) What are the waiver rates?
2) What reasons are provided for the waiver?
3) How is the FVS documented in court files?
4) What are the collection rates?
5) What are the enforcement strategies in Saskatchewan and what, if any, are the consequences of non-compliance?
6) What other options could be considered for collection?
7) Why has the anticipated revenue to be generated from the 1999 amendments to the *Criminal Code* provisions related to the FVS not been realized?

In order to answer these questions, the project used a mixed methods approach incorporating both quantitative and qualitative data from several different sources, which are described below.

2.1 Data Sources

The data sources for this study included statistical provincial court data from the province's Justice Automated Information Network. Data were also gathered from Canadian Centre for Justice Statistics, a file review of provincial court files, an auditory review of sentencing hearings, and interviews with criminal justice stakeholders.

Provincial court data

A data request was made to the Canadian Centre for Justice Statistics for relevant data on the federal victim surcharge in Saskatchean. Data on collection of the surcharge was also retrieved directly from the Justice Automated Information Network (JAIN), the Saskatchewan provincial court database. As well, 50 court files from the Regina courthouse were randomly selected and reviewed to determine if and how the imposition/waiver and reasons for the FVS were recorded.

Sentencing audio recordings

Recordings of criminal court proceedings were obtained from the Provincial Court of Saskatchewan. These hearings took place in Regina from December 12, 2007 to January 9, 2008. Out of a total of 31 compact discs and approximately 63.5 hours of court proceedings, 143 sentencing hearings were identified. The objective of reviewing sentencing hearings was to examine the application practise of the Federal Victim Surcharge at the time of sentencing. We sought to better understand what occurred when the surcharge was waived. In doing so, the following questions were asked:

1) Was the surcharge regularly addressed at sentencing?
2) Was evidence of undue hardship presented and if so, by which party?
3) Did the sentencing judge give reasons for the waiver?

4) Were there particular circumstances for which the surcharge was generally waived?

Interviews with criminal justice stakeholders

Four court locations were selected to reflect the geographic and demographic diversities of Saskatchewan: Regina, Saskatoon, Meadow Lake and Yorkton. Interviews were undertaken with criminal justice stakeholders (*n*=38) from each of these sites including Crown prosecutors (4), defence (both private bar and legal aid, 8), court staff (8), programs/policy staff (2) and probation officers (16). A request to participate in the study was sent to the Chief Judge of the Provincial Court. Unfortunately, no judges volunteered to participate in the study.[17] Most interviews were completed by a contractor in person and between August and October 2008 at a location convenient to that individual. When scheduling did not permit face-to-face interviews, a few were completed over the telephone. A few interviews were conducted with two or more respondents at the same time. The interviews were taped and transcribed and the data sent to Justice Canada for analysis.

The majority of the interviewees were contacted with the assistance of Saskatchewan Ministry of Justice and Attorney General officials. The semi-structured interview guide, which also included questions on restitution for another project, was developed by the Department of Justice Canada, in consultation with Saskatchewan officials, and was based on previous FVS research (Prairie Research Associates 2004; Law and Sullivan 2006; Ha 2009). Different questions were asked of the various stakeholders. The different questionnaires can be found in the Appendices.

2.2 Limitations of the Study

There are several limitations to this study. The first is the lack of comprehensive data on the collection of the FVS. As well, the auditory review of sentencing hearings and the review of court files took place only in Regina, and as such, cannot be generalized to the other court locations or to the province as a whole. The interview data are limited in that those interviewed may not necessarily reflect the entire range of situations or experiences. Furthermore, judges did not participate in the study.

2.3 Ethics

The study was reviewed by the Research Review Committee of the Research and Statistics Division (RSD), Department of Justice Canada. The Research and Statistics (RRC) Division has developed an internal ethics review process that is based on the principles found in the *Tri-Council Policy Statement: Ethical Conduct for Research Involving Humans.*[18] An Ethics Template was completed and presented to the RRC, along with copies of the letter of information and letter of consent.

[17] We received a written response from one judge, but felt we could not to include it as it would reflect only the perspectives of that one individual and potentially identify that individual.

[18] In Canada, all research involving human participants that receives funding from the three federal research agencies must undergo an ethics review. Canadian universities adhere to a model of ethics review that has emerged in the international community. The model involves the application of national norms by multidisciplinary, independent local Research Ethics Boards (REBs). (Canadian Institutes of Health Research et al. 1998) At the time of writing this report, a new Tri-Council Policy had been drafted and consultations on this draft are on-going.

3. Findings

The findings are presented by theme in order to answer the key research questions. As such, data from different sources were used to answer questions as fully as possible.

3.1 Imposition and Waiver Rates

In order to answer the question, *How often is the FVS waived?* we examined data obtained through a special request to the Canadian Centre for Justice Statistics.

Of the total 72,915 convictions for which data were available for the fiscal years 2002/03 - 2006/07,[19] almost three quarters (73% or 53,318) of the convictions had the FVS waived. The waiver rate differed by court location, with the highest waiver rate of 87% found in La Ronge, followed by 82% in Meadow Lake and Saskatoon. Estevan had the lowest waiver rate, at 46%, followed by Yorkton and Swift Current, where rates were at 52% and 59%, respectively. Waiver rates for each location are presented in the Appendix A.[20]

In the following tables, the waiver rates are presented by disposition type, offence type and gender of the accused. Table 2 highlights the waiver rates by disposition type. Across the province, dispositions resulting in custody had the highest waiver rates at 93%, while conditional sentences had waiver rates of around 83%. Fines had the lowest waiver rates, at 53% across the province.

Table 2: Federal Victim Surcharge waiver rates by disposition, 2002/03-2006/07

	Total # Sentenced	% of Total	Total FVS Waived	FVS Waiver Rate
Custody	17961	25%	16787	93%
Conditional Sentence	5536	8%	4590	83%
Probation	16354	22%	12515	77%
Fine	27292	37%	14124	53%
Other[21]	5772	8%	5302	92%
Total	**72,915**	**100%**	**53,318**	**73%**

Source: Canadian Centre for Justice Statistics

Waiver rates were also examined with regard to the type of offence (Table 3). The waiver rate for most offences ranges from 76% to 85%, the highest rate being for offences against property. Offences for which a victim is involved (i.e., offences against the person) also had a high waiver rate (79%). *Criminal Code* traffic offences had the lowest waiver rate, at 50%.

[19] Note that 72,931 cases of data were provided by CCJS; however, data were missing in 16 of these cases.
[20] Waiver rates by disposition, most serious offence and specific offence for each location are also presented in Appendix A.
[21] 'Other' dispositions include restitution, absolute and conditional discharge, suspended sentence, payment of legal costs and suspension of driver's licence.

Table 3: Federal Victim Surcharge waiver rates by most serious offence, 2002/03-2006/07

	Total # Sentenced	% of Total	Total FVS Waived	FVS Waiver Rate
Offences Against Property[22]	15634	21%	13356	85%
Offences Against Person[23]	12974	18%	10229	79%
Offences Against the Administration of Justice[24]	16081	22%	12718	79%
Other Criminal Code Offences[25]	4531	6%	3555	78%
Other Federal Statute Offences[26]	6170	9%	4718	76%
Criminal Code Traffic Offences[27]	17525	24%	8742	50%
Total	72,915	100%	53,318	73%

Source: Canadian Centre for Justice Statistics

Waiver rates were also examined by specific offence (Table 4). Waiver rates were highest for homicide and attempted murder, at 100%. Waiver rates were also high for robbery (94%), being unlawfully at large (92%) and breaking and entering (91%). The lowest waiver rates were seen in drug possession (59%) and impaired driving cases (43%).

Table 4: Federal Victim Surcharge waiver rates by specific offence, 2002/03-2006/07

	Total # Sentenced	**% of Total**	**Total FVS Waived**	**FVS Waiver Rate**
Homicide	25	.03%	25	100%
Attempted Murder	6	.01%	6	100%
Robbery	575	.8%	542	94%
Sexual Assault	475	.7%	392	83%
Other Sexual Offences	100	.1%	81	81%
Major Assault	3920	5%	3267	83%
Common Assault	6046	8%	4444	74%
Uttering Threats	1573	2%	1263	80%
Criminal Harassment	82	.1%	64	78%
Other Crimes Against the Person	173	.2%	145	84%
Theft	5839	8%	4981	85%
Break and Enter	2649	3%	2412	91%
Fraud	2370	3%	2048	86%

[22] Offences against Property include: theft, break and enter, fraud, mischief, possession of stolen property and other property offences.
[23] Offences against the person include: Homicide, attempted murder, robbery, sexual assault, other sexual offences, major assault, common assault, uttering threats, criminal harassment and other crimes against persons.
[24] Offences against the Administration of Justice include: failure to appear, breach of probation, unlawfully at large, failure to comply with an order and other administration of justice offences.
[25] Other *Criminal Code* Offences include: weapons offences, prostitution, disturbing the peace and residual Criminal Code offences.
[26] Other Federal Statutes include: drug possession, drug trafficking, offences under the *Youth Criminal Justice Act* and residual Federal Statutes.
[27] Traffic Offences include: impaired driving and other *Criminal Code* traffic offences.

Table 4: Federal Victim Surcharge waiver rates by specific offence, 2002/03-2006/07				
Mischief	2479	3%	1918	77%
Possession of Stolen Property	2178	3%	1891	87%
Other Property Crimes	119	.2%	106	89%
Failure to Appear	1673	2%	1227	73%
Breach of Probation	7591	10%	6060	80%
Unlawfully at Large	808	1%	742	92%
Failure to Comply with Order	5534	8%	4327	78%
Other Administration of Justice Offences	475	.7%	362	76%
Weapons	1329	2%	1106	83%
Prostitution	125	.2%	86	69%
Disturbing the Peace	336	.5%	239	71%
Residual *Criminal Code*	2741	4%	2124	78%
Impaired Driving	12942	18%	5626	43%
Other *Criminal Code* Traffic	4583	6%	3116	68%
Drug Possession	2404	3%	1424	59%
Drug Trafficking	1238	2%	980	79%
Youth Criminal Justice Act	193	.3%	178	92%
Residual Federal Offences	2335	3%	2136	92%
Total	**72,915**	**100%**	**53,318**	**73%**

Source: Canadian Centre for Justice Statistics

Table 5 highlights the Federal Victim Surcharge waiver by gender. The majority of accused were male (80%), while 19% were female and 1% were companies. Waiver rates were the highest when the accused was a private business, with a waiver rate of 90%. The waiver rate was the lowest when the accused was male (71%).

Table 5: Federal Victim Surcharge waiver rates by gender and type of accused[28], 2002/03-2006/07

		Total # Sentenced	**% of Total**	**Total FVS Waived**	**FVS Waiver Rate**
Individual	Male	58464	80%	41315	71%
	Female	13942	19%	11602	83%
Private Business		117	1%	105	90%
	Total	**72,523**	**100%**	**53,022**	**73%**

Source: Canadian Centre for Justice Statistics

Waiver rates were also examined for summary and indictable offences. As shown in Table 6, the majority of cases proceeded by way of summary offences (82%). However, higher waiver rates were seen for indictable offence cases (88%).

[28] Note the gender of the accused was unknown in 392 cases. Waiver rates by gender were similar for each location. As such, only the aggregate data is presented.

Table 6: Federal Victim Surcharge waiver rates by summary and indictable offence, 2002/03-2006/07

	Total # Sentenced	% of Total	Total FVS Waived	FVS Waiver Rate
Summary	59,514	82%	41,515	70%
Indictable	13,401	18%	11,803	88%
Total	**72,915**	**100%**	**53,318**	**73%**

Source: Canadian Centre for Justice Statistics

Logistic Regression is a statistical method that investigates the relationship between a particular outcome and a set of explanatory factors. This method can be used to determine factors that best predict a particular outcome. The outcome variable of interest is categorical (e.g., win/lose; fail/pass), while the explanatory variables can be categorical or continuous (e.g., height). We chose this method to determine which factors associated with the offender and the offence (including disposition and offence type) best predict FVS waiver.

Logistic regression generates an odds ratio (OR) which can be used to assess whether, in this study, all other things being equal, offenders of a particular gender or who receive a custodial disposition or whichever variable, are more or less likely have the FVS waived by a judge. An odds ratio near 1.0 indicates that the sub-group's odds of having the FVS waived are no more or no less than those of the overall group; an odds ratio greater than 1.0 indicates that the sub-group's odds of waiver are greater than those of the overall group; and an odds ratio less than 1.0 indicates that the sub-group's odds of waiver are lower than those of the overall group.

Multivariate Analysis-Factors Influencing FVS Waiver

Table 7 presents the logistic regression coefficients[29] for variables influencing the FVS waiver as well as odds-ratio results. The model predicted FVS waiver better than the null model, χ^2 (N=72,523, df=9) =15,531.18, p<.001.[30]

The results of the logistic regression show that the strongest predictor of waiver was a female offender, meaning that female offenders were more likely to have the FVS waived than male offenders. Property offences and a custody sentence were also significant predictors of FVS waiver. Imposition of a fine and a sentence of probation were weak predictors of FVS waiver, meaning that offenders with these sentences were much less likely to have the FVS waived.

[29] β reflects the number of standard deviation units a waiver would change with a change in one standard deviation unit in a variable. Negative values reflect a negative relationship (as one variable increases, waiver decreases) and positive values reflect a positive relationship (as one variable increases, waiver increases). χ^2 reflects the value of the chi-square; the statistical test used to determine the overall fit of the model.

[30] The null model hypothesizes that these variables do not predict FVS waiver, while the proposed model hypothesizes that that these variables do predict FVS waiver. The results of the logistic regression show that these variables do in fact predict FVS waiver.

Table 7: Logistic Regression for factors influencing FVS waiver in Saskatchewan Provincial Courts, 2002/03-2006/07

	β	X^2	Odds Ratio
Custody	0.34	34.41	1.40**
Conditional Sentence	-0.82	178.69	0.44**
Probation	-1.31	616.32	0.27**
Fine	-2.10	1675.40	0.12**
Offences against the Person	-0.41	131.54	0.67**
Offences against Property	0.10	7.69	1.10*
Offences against the Administration of Justice	-0.10	9.28	0.91*
Traffic Offences	-0.97	1039.80	0.38**
Gender (Female)	0.95	1284.20	2.59**

Source: Canadian Centre for Justice Statistics
Note: *p =<.001, **p<.0001

3.2 Waiver Process

Given the overall high waiver rate of 73% in the provincial courts, the study sought to understand how the FVS is waived given the specific provisions in the *Criminal Code.* As noted in the introduction, s.737(5) provides that where the court is satisfied that there is evidence of "undue hardship," the FVS may be waived. Reasons for the waiver are to be provided and "the Court shall state its reasons in the record of proceedings" (s. 737(6)).

In order to answer the questions, *What reasons are provided for waiver?*, and *How is the FVS documented in court files?,* we examined court files and listened to approximately 63.5 hours of sentencing hearings from the Regina court. As well, we interviewed criminal justice professionals including court staff, Crown, and defence counsel, as well as probation officers.

Provincial Court Files

A manual file review was completed for 50 cases. The Federal Victim Surcharge was addressed in 92% of the cases (n=46). Among the 4 cases in which the FVS was not addressed, the FVS was imposed by default in 2 of these cases; it was unknown how the cases were dealt with in the 2 remaining instances. Approximately one quarter of the case heard in this sample were for assault charges, approximately one fifth were for driving under the influence charges and approximately one-tenth were for failure to appear charges. Other charges included theft, uttering threats and breaking and entering. Approximately one half of the offenders were charged with more than one offence.

The FVS was waived in 30 of the cases (65%). The waiver was documented on the Endorsement in all 30 of these cases. In all of the cases in which the FVS was waived, hardship was provided as the reason for the waiver.

Where the FVS was imposed[31] (*n*=16), the imposition was documented in several places[32], including on the Notice of Fine and Surcharge (n=14), on the Endorsement (*n*=13), on the probation order (*n*=6) and in the report of conviction or discharge (n=4).

This file review showed that in almost all cases, there is documentation of the FVS. Where it was waived, a reason of "hardship" was provided.

Review of Sentencing Hearings

We approached the auditory review of the sentencing hearings qualitatively and as such, the review is not intended to provide exact numbers of cases, rather the trends and patterns of sentencing cases. In part, this was due to the limited nature of the sample – all cases are from Regina and were heard by a small number of judges. Approximately one-third of the cases heard were for driving under the influences charges, while approximately just over one tenth were for breach of probation charges and approximately one-tenth were for assault charges. Other charges included breaking and entering, drug trafficking, theft and failure to appear. Approximately one half of the offenders were charged with more than one offence.

According to data from CCJS, the waiver rate for Regina from 2002/03-2006/07 was 73%, the same as the average for the province as a whole. This was confirmed through listening to the 143 sentencing hearings which suggest that approximately three out of four sentencing cases at this court resulted in the surcharge being waived in the 2007/08 time period.

Judges never questioned, nor refused defence counsel's request to waive the surcharge. Similarly, the Crown prosecutors never objected when defence requested a waiver. The presence or absence of legal representation for the offender did not appear to have any impact on whether the surcharge was waived or not. When the offender was represented by legal aid (and this was in approximately one third of the cases), the judge automatically waived the surcharge without stating a reason and without defence requesting it. Representation by legal aid seemed to serve as prima facie evidence of undue hardship.

Yet there were also cases where judges waived the FVS even when defence counsel stated that the accused was willing to pay.

When the surcharge was waived, the judges sometimes provided reasons, but at other times did not. The common reasons for waiving the surcharge were financial hardship and financial obligation towards family dependents. The surcharge was also waived when the offender was sentenced to a term in custody and when the sentence required the offender to pay a fine and/or restitution.

During this particular time period, the ratio of female offender to male offenders who received a disposition at this court was 1:7, which is somewhat less than the ratio of 1:5 in the average offender population.[33]

[31] Note that the outcome of the FVS waiver was unknown in four cases.
[32] Note that impositions were documented in more than one document for every case.
[33] According to data for 2007/08 from the Corrections Management Information System (n=30,000), 82% of offenders in the provincial corrections system were male and 18% were female; a ratio of 1:5.

As mentioned above, judges never denied the defence counsel's request to waive the surcharge. However, it was the judges who raised the matter of the surcharge at the end of the sentencing hearing. If the offender was not represented by legal counsel, the judge used his/her judgement to determine the financial hardship of the offender. Judges sometimes would ask the offender if he/she was employed and whether he/she could pay a victim surcharge. In these cases, the judge almost all the time waived the surcharge after this brief exchange of information.

Sometimes, the Crown prosecutor notified the judge that they were not requesting that the surcharge be imposed, in which case the judge waived it.

The language of s.737 ("shall order") requires that judges impose the Federal Victim Surcharge. What was evident after listening to the 143 sentencing hearings was that there were common trends to the practice of imposing the surcharge. First, the offender was always employed; second, drinking and driving and possession or distribution of narcotics cases had a higher rate of FVS imposition; and finally the court often imposed the mandatory victim surcharge of 15% when fines were imposed as penalty.

There were few instances in which there was no mention of the surcharge in the 143 sentencing cases; in these instances, one could then assume that the surcharge was imposed automatically by the court clerk as per the *Criminal Code.*

To summarize, this auditory review of sentencing hearings showed that in these 143 cases, the surcharge was waived more often than not, without stating the reasons for the exemption. When the court provided reasons, these reasons were limited to "undue hardship" for offender and/or dependents of offender. Evidence of undue hardship appeared to be representation by legal aid and an occasional question as to ability to pay the surcharge.

3.3 Collection Rates

The data presented in Table 8 present the FVS amounts ordered and collected for the fiscal years 2002/03 to 2006/07. The average collection rate for the five fiscal years was approximately 82%. It should be noted, however, that in 2003/04 there was a surplus in monies collected. When this year is excluded from the calculation, the average collection rate drops to 69%, which represents a more accurate portrayal.

Table 8: Collection data by fiscal year, 2002/03-2006/07

Fiscal years	Amount Ordered	Amount Collected	Difference	Collection Rate
2002/03	$454,742	$312,228	-$142,514	69%
2003/04	$405,595	$555,839	+$150,224	137%
2004/05	$396,938	$266,554	-$130,384	67%
2005/06	$384,944	$266,213	-$118,731	69%
2006/07	$387,162	$266,944	-$120,218	69%
Total	**$2,029,381**	**$1,667,778**	**-$361,603**	**82%**

Source: Saskatchewan Court Services, 2002/03-2006/07

3.3.1 Amounts Owing

As shown in Table 9, across the 13 court locations, there were approximately 33,281 cases in which the Federal Victim Surcharge had not been paid accumulated over a period of six or more years. The average amount of monies owed per charge during this period was $50.55. When considering the different court locations separately, the court location with the highest average amount of monies owed was Lloydminster, with an average of $56.22, and the lowest amount of monies owed was seen in Swift Current, with an average amount of $44.29.

It is also of interest to note that the number of provincial surcharges for which money was owed and the amount of money owing on provincial surcharges across the court locations was much higher than those of the Federal Victim Surcharge. This is likely due to the fact that the provincial surcharge is mandatory and automatic, resulting in a larger number of imposed surcharges. The average amount owed per case was much smaller than the average amount owed on the Federal Victim Surcharge, at approximately $24.90. This average was consistent across the 13 court locations.

Table 9: Provincial and Federal Surcharges owing over 6+ years

	Number of Provincial Surcharges Owing	Amount of Provincial Surcharges Owing	Average Amount of Provincial Surcharges Owing	Number of Federal Surcharges Owing	Amount of Federal Surcharges Owing	Average Amount of Federal Surcharges Owing
Estevan	5,178	$130,624.05	$25.23	1,013	$53,819.64	$53.13
La Ronge	3,437	$94,075.89	$27.37	8,25	$41,580.52	$50.40
Lloydminster	6,567	$173,485.84	$26.42	1,465	$82,365.25	$56.22
Meadow Lake	10,411	$360,270.92	$33.64	3,250	$181,012.54	$55.70
Melfort	6,016	$151,357.79	$25.16	1,372	$61,916.59	$45.13
Moose Jaw	9,126	$233,448.80	$25.58	7,29	$39,451.99	$54.12
North Battleford	10,640	$277,606.72	$26.10	1,978	$106,816.70	$54.00
Prince Albert	18,648	$474,726.08	$25.46	6,573	$313,742.85	$47.73
Regina	36,856	$794,612.19	$21.56	6,452	$334,705.80	$51.88
Saskatoon	47,578	$1,189,209.37	$24.99	254	$254,322.03	$48.41
Swift Current	6,758	$138,591.89	$20.51	699	$30,956.52	$44.29
Wynyard	5,206	$138,506.78	$26.61	937	$45,922.30	$49.01
Yorkton	11,669	$288,424.58	$24.72	2,734	$135,858.86	$49.69
Total	178,090	$4,434,940.90	$24.90	33,281	$1,682,471.59	$50.55

Source: Saskatchewan Court Services, 2009

3.4 Perspectives of Criminal Justice Professionals

A total of 38 respondents were interviewed from four different court locations: Regina, Saskatoon, Yorkton and Meadow Lake. This section presents these perspectives according to the following dominant themes: awareness of the FVS; the FVS as a meaningful consequence; imposition; enforcement; and final thoughts.

Awareness of the Federal Victim Surcharge

Respondents were asked if they knew the purpose of the FVS. Given that all those interviewed work in the criminal justice system, it would be expected that they would all know about the FVS and they did. The probation officers, however, had very little to say about the FVS overall. This court staff noted that most outside of the criminal justice system likely do not know about the FVS,

> *I'm not sure that Joe public would know about the surcharge. Other than working here, I don't know if most people have ever heard about it.*

All those interviewed could provide a general statement about where the money collected goes, but no details. For example, another court staff noted,

> *The money goes into a victims' fund, but I'm not really sure where it goes after that.*

There was also a consensus that offenders do not likely have a good understanding of the surcharge and what it means. Several respondents from each of the different professional categories (i.e., Crown prosecutors, defence, and court staff) noted that the FVS being raised in court is as strong endorsement of its significance as one could hope for.

> *You can educate people until death with forms and posters, but they still don't know what the surcharge is until it is mentioned in court.*

> *I think generally speaking that offenders lump everything in as fines – including the surcharge. The court doesn't help in this either. A simple explanation at sentencing – you know one sentence – to say that the surcharge is there to support programs for victims would help.*

> *There is never any discussion on what it is essentially for. The offenders don't understand what the discussions are all about—to him it is just a lower fine because his income is lower.*

These comments highlight the importance of the judge's role at sentencing when the judge has a captive audience, so to speak.

The FVS as a Meaningful Consequence

While all those interviewed agreed with the FVS and its purpose, very few saw it as being a meaningful consequence for the offender. For example, this defence counsel noted,

> *I agree with it. But I don't think it is a meaningful consequence because offenders see it as just another penalty rather than money going to victims.*

One Crown prosecutor noted the irony in that drinking and driving offences have very low waiver rates, while the offences with clearly identifiable victims (i.e., crimes against the person) have high waiver rates. For this Crown, a meaningful consequence is related to the cost of the surcharge (i.e., the more meaningful, the higher the surcharge):

> *For some offences it is (meaningful), others I don't think it is. The offences that have specified victims should be higher than the offences that don't. For example, driving while disqualified; there is no victim to that offence—aside from the broad societal impact. Overall, I think that these types of offences should require a much smaller victim surcharge than someone who punches another person in the face—we have a defined victim who suffered some injuries.*

As will be in seen in the section on Enforcement which follows, a meaningful consequence is also about the consequences for non-payment.

Imposition

The following comment from court staff highlights the tension between imposition/waiver and collection/enforcement. Once imposed, a FVS must be collected.

> *You can't squeeze blood from a stone. You have community service or default time – but it all depends on the offender. Anything short of default time (i.e., Community service), there needs to be supervision and money spent, so when you look at a $50 order, I'm not sure. . .*

All those interviewed knew the provisions of the *Code* and that the FVS is automatically imposed. Court staff have a clear sense of what is occurring inn at least, their own court. It was clear that there is not one process that is consistent throughout court locations and ultimately, this process depends on the judge. One court clerk noted that,

> *All of our judges handle this differently. We have one judge who is careful of not saying anything. Another one will always say what it is—he doesn't leave it up to the clerk to figure out. And then we have a judge who will say "a surcharge will be issued according to law." So we basically have three different styles. But we are instructed that if the judge remains silent we are to impose it.*

A number of different patterns did emerge and this was supported by the auditory review of the sentencing hearings, as well as the variation in waiver rates from the quantitative data.

It appears that there are judges who always waive the FVS and do so regardless of the circumstances of the offender. Many more judges always raise the surcharge and ask the offender specific questions about his or her ability to pay; if there is some evidence of inability to pay or undue hardship, the surcharge will be waived. The surcharge will be waived automatically for an offender who is in receipt of social assistance and/or represented by legal aid.

Court staff in different locations noted that,

> *Judges in this area use the test that "if you qualify for legal aid you can't afford the surcharge."*
>
> *Now it is only ordered if the person has a job.*

A Crown prosecutor noted that,

> *We have one judge whose position is that if you get legal aid you don't have to pay the surcharge—that's his blanket view. We've appealed this, and he has been overturned on this because there has to be a proper analysis done. I find that the courts rarely do a proper analysis.*

This same Crown also noted,

> *We had a retired judge who used to say during drinking offences: "If they have enough money to buy booze then they have enough money to pay the victim surcharge." I always liked those thoughts because taking money from people's pockets is a real deterrent and punishment that is reasonable, and makes them do some thinking before they go out and commit another offence.*

Other Crown prosecutors had the following to say,

> *It really depends on the judge. Some almost always impose it even on social welfare clients. Others however almost never impose it. Those who don't, do not because they feel the accused doesn't have the ability to pay.*
>
> *Nine times out of ten, it is waived; usually the judge brings it up, but the defence asks for it to be waived.*
>
> *The defence usually explains that the offender doesn't have a job, or is going to jail. It's usually about a two second sentence from the defence that he can't pay. There's never been evidence called for someone to explain their hardship.*

This Crown prosecutor noted that in terms of evidence of undue hardship, there is,

> *. . . nothing beyond the defense counsel saying that his client cannot pay. They ask the judge and it is automatically waived. It seems that if it's a legal aid lawyer—it's like a built in means test. I've rarely seen private defense lawyers ask for it to be waived. To be honest, it's nothing more than what the defense counsel says.*

This comment is consistent with what was heard in the auditory review of sentencing hearings.

Program and policy staff discussed the various attempts that have been made to increase awareness and to lower the waiver rate.

> *Totally unsatisfactory. In my findings, there is an imposition rate of less than 20% on all cases that end in conviction. The rest are waived or not ordered by the court. What they've done lately is the Crown has appealed the waiving of the surcharge and we have been successful in all of these appeals. We are trying to set a precedent for judges that they cannot just routinely waive these surcharges. At one point this should have an impact on the number of surcharges ordered. Hopefully this will cause our imposition rate to go about to where it should be…at 80 or 90%.*

> *We have not done much with offenders. With the Crown, we have appealed cases where it appears easy to win. . . .I was made aware of the provisions through the Criminal Code…I get a new copy every year. We've made prosecutors aware that they should remind judges of the surcharge. We have also sent letters to the judiciary reminding them that the surcharge is mandatory. However because of judicial independence it's hard to force judges to apply the surcharge.*

There have been attempts to work with the different players in the criminal justice system and certainly there is now case law to support imposition and waiver only where it can be substantiated. Change (even a small one) in a system as complex as the criminal justice system can be slow and incremental. Just because change has not yet materialized in a clearly observable form, does not mean that it is not occurring or will never occur. The authors note that the data for this study are already a few years old. A final comment from this respondent, however, suggests a less optimistic outlook.

> *So yes, you can suggest stuff but it doesn't make too much of a difference.*

This Crown prosecutor's final thoughts are a succinct summary of the essence of the issue at sentencing:

> *It's more of an afterthought in court unfortunately from everybody's standpoint. The judge or his clerk are the usual ones who remind everybody that it needs to be imposed or that something needs to be done. So it's probably not spoken about as much as it should when it comes to sentencing of the accused.*

Enforcement

When asked about options such as default time, it was noted that in Saskatchewan, warrants of committal for non-payment of monetary penalties are no longer automatically given. The first step when there is non-payment would be to send the outstanding debts to a collection agency. If the matter returns to court for a default hearing, it could hypothetically cost the system more money to bring the offender back to court because he could already be serving time; the transportation alone would cost more than the $50 or so surcharge. In addition, unless the judge orders additional time, the time would be served concurrently. The following comments illustrate the cynicism associated with default time when additional time is ordered.

> *Default time is no good, they're already in jail – what's a few more days?*

> *It's ordered and they just ignore it. They only get an extra two days of default, so what's it to them if they don't pay.*

This defence counsel discussed the issues on a political level:

> *Well, restitution and victim surcharge are good, but I think the assumption that they work well because the court can impose these things and that they'll be paid is really incredibly naïve. It requires people to administer them and make it work. I don't think governments have the appetite to invest in people. Bigger victim surcharges and harsher penalties sound good, but you need to put people on the street – not much political bang out of that. It sounds better to send them to jail and give them a bigger fine.*

Included in the original research questions was *What other options could be considered for collection?* There were several options discussed. One, which was mentioned by Crown prosecutors, defence, and court staff was the ability to work off the FVS.

> *I think that a prisoner fund that you could force them to pay out of—when they work at the facilities—that may work.*

> *I think if people could work off the surcharge with community service instead of jail time—that would be better—because most offenders have low wages or no job anyway.*

> *I had a call from CTR (community training residence [halfway house]) once, about someone having restitution and they'd like to focus on taking*

> *care of their obligations while in CTR—and technically the whole point of corrections and public safety is integrated case management; and that would be a great initiative and everybody was aware of the offender's obligations and circumstances and could help make sure he did so.*
>
> *Besides incarceration we could make an option for them to work off the fine through fine option.*

As well, respondents suggested withholding parole until the FVS (and other monetary penalties) was paid, using a collection agency, and the Refund Set-off Program with Canada Revenue Agency which recently started.

> *I suppose the other option is if they get parole, prior to parole all of their fines and surcharges must be paid to get parole.*
>
> *Or just have the fine collection agency that went after restitution, fines and the surcharge. I think the success rate on collection of fines is about 28%.*
>
> *We're dealing with people who may not even file their income taxes. But if they get a GST cheque, we're working on that.*

This Crown prosecutor, among other ideas, suggested a Surcharge Enforcement Officer.

> *The government doesn't enforce default time in Saskatchewan. They could consider tying it to other collection things from the government like refunds, GST, government checks, driver's licenses, and stuff. There are lots of things you could do to make people pay. We could also hire a surcharge enforcement officer or something like that. There are probably a good many of people who would pay just to avoid the hassle. Unless there is an immediate consequence there is no way they'll pay.*

It would seem that any monetary penalty would carry similar enforcement issues. And these enforcement issues are also similar to payment of child or spousal support.

It was evident from the discussions that the situation at present is not satisfactory. As this court staff noted with some frustration,

> *Our filing cabinets have grown just huge with all the outstanding unpaid surcharges. It creates all these outstanding fines that can't be collected and we have to keep the file open and accessible until it is paid and cleared.*

Final thoughts

While there was a strong level of awareness of the FVS amongst Crown prosecutors, defence, and court staff, the issue was not something generally considered by probation officers, even

when a financial assessment is required for a Pre-Sentence Report or Restitution Assessment Report. None of the probation officers interviewed had ever considered FVS in these reports. As this probation officer commented at the end of her interview,

> *You know I've never thought about it but it is something that should be discussed among probation officers. In 15 years, I've never once talked about victim surcharge fees with anyone. I think we as probation officers should discuss that.*

The FVS is yet another monetary penalty and in assessing the offender's ability to pay such penalties, the more information before the court the better to determine whether a surcharge might be waived for undue hardship. This defence counsel noted that,

> *I think it is a good consequence and a useful tool as well. I've had cases where I make an agreement where the person can pay an elevated surcharge instead of jail. That has worked on occasion. It's really a useful tool.*

No one interviewed suggested that the surcharge should not be waived in cases where it truly would pose undue hardship. There did seem to be a general consensus that the surcharge is being waived with greater frequency than actual financial circumstances would deem necessary. As this Crown prosecutor noted in final thoughts,

> *Judges should find out more about the case before waiving it. We should expect offenders to pay it unless they show that they cannot pay it.*

This legal aid lawyer had an interesting idea:

> *It should actually be graded to the level of a person's income rather than a standard percentage across the board.*

One could imagine tables that would provide a simple approach to this assessment. As such, this approach would not further complicate the judge's inquiry, rather defence would come and in submissions provide the surcharge amount according to tables that would account for employment income, location, number of dependents, etc. This is the approach taken for the Child Support Guidelines. The amount involved for the FVS, however, is quite small and one would need to question whether the effort invested would be worthwhile.

With the exception of the probation officers, all respondents had strong opinions on the Federal Victim Surcharge. In the final section of this report, the findings of this report and the key learnings will be discussed.

4. Key Learnings

The goal of this research has been to better understand how the Federal Victim Surcharge provisions in the *Criminal Code* operate in practice in Saskatchewan.

Ultimately, officials are interested in answering the last research question, *Why has the anticipated revenue to be generated from the 1999 amendments to the Criminal Code provisions related to the FVS not been realized?* The simple answer to this question is that the FVS is waived in the majority of cases. Similar to the studies in New Brunswick and the Northwest Territories, the provincial average waiver rate in Saskatchewan is high (73%) for the time period 2002/03-2006/07. This rate varies considerably by court location.

There are definitely parts of the province where unemployment and socioeconomic conditions are worse than in others; unemployment data from the 2006 Census for the different court locations were examined. The lowest average waiver rate was in Esteven at 46%, which had an unemployment rate of 2.7%; the highest average waiver rate was in La Ronge at 87%, which had an unemployment rate of 8.2%.[34] Yet we also know that the unemployment rate of the provincial offender population for that time period is 46%. Further analyses of the provincial offender population would likely find higher unemployment rates in those locations where offenders resided.

No one interviewed suggested that where there is true inability to pay the FVS, that it should not be waived. It is clear, however, that there are situations where a decision to waive the FVS could not be based on factors such as an offender's employment or other income. For example, the average waiver rate for fine dispositions for the time period 2002/03-2006/07 is 53%. Yet if an offender is receiving a fine, it is more difficult to make the argument that the FVS (15% of any fine) would result in undue hardship because a financial penalty is being imposed where undue hardship is not considered.

It is hoped that the research findings and the six key learnings that follow will be used to engage those in the criminal justice system in constructive discussions as to how to realize potential revenue from the Federal Victim Surcharge.

4.1 Increase awareness, for all players in the criminal justice system- especially judiciary, defence and probation officers, of the importance of FVS in terms of funding specific programs

While interview data showed good general awareness overall about the FVS and the provisions of the *Criminal Code*, there was little specific awareness of exactly what the money is used for. This was also similar to the findings in New Brunswick and the Northwest Territories. This is quite important because one would suppose that a better understanding of the role of the

[34] Other low waiver rates include: Yorkton with 52% and unemployment in 2006 at 5.7% and Swift Current with 59% and unemployment in the same year at 4.6%. High waiver rates include: Meadow Lake and Saskatoon both at 82% and with unemployment rates of 7.1% and 5.5% respectively in 2006.

programs, and their funds, could make a difference in terms viewing the FVS as a meaningful consequence.

Without understanding the value of the services that can be offered to victims of crime, the Victims' Fund remains an abstract concept. The interview data demonstrated that few players in the criminal justice system know what the revenue generated through the collection of the FVS supports. United Way campaigns in recent years have taken the approach of demonstrating what a donation can do: $5 can buy five breakfasts for a child who might otherwise go to school without sustenance; $50 can pay for a session of counseling for a woman who has escaped an abusive relationship to help her move forward; or, $150 can send a child to camp for a week of wonderful activities.

One could imagine raising awareness about victim services in this manner, as well as highlighting the areas and victims (perhaps through mapping) that are underserved or not served at all. This might work particularly well if it were done by court location. The tools could be used with the judiciary, legal aid and the private defence bar to raise awareness at imposition, as well as with probation officers as they work with their clients on compliance. Furthermore, demonstrating the potential revenue that could be generated by decreasing waiver rates across the province by 10%, 25%, or more would be instructive to all those concerned particularly if those revenues were juxtaposed beside real services.

Increasing awareness for the judiciary that a custodial or other disposition does not necessarily mean that an offender cannot pay the FVS would also be beneficial. The average waiver rate over the time period of 2002/03-2006/07 for custodial dispositions was 93%, for other[35] dispositions 92%, for conditional sentences 83% and for probation 77%; this is in contrast to fine dispositions which had an average waiver rate of 53% over the same time period. Where no fine is imposed, the Federal Victim Surcharge is $50 in the case of an offence punishable by summary conviction and $100 in the case of an offence punishable by indictment. These amounts can be paid in scheduled payments and are small enough that they can be paid provided prudent case management, in most cases.

Finally, increasing awareness for the judiciary, legal aid and the private defence bar, as well as probation officers around the intent of the FVS might also assist in increasing offender accountability. The data demonstrate that the intent of the FVS provisions (i.e., to increase offender accountability to the victim), is not being realized in Saskatchewan. Offences for which a victim is directly involved (i.e., offences against the person) had one of the highest average waiver rates of 79%. Traffic offences, which generally do not have an easily identifiable victim, have the lowest waiver rate, at approximately 50%.

[35] 'Other' dispositions include restitution, absolute and conditional discharge, suspended sentence, payment of legal costs and suspension of driver's licence.

4.2 Increase involvement of criminal justice professionals at imposition and at enforcement

Data on collection of the FVS was only available in an aggregate form and as such, were limited in terms of helping to understand collection efforts in the province. The average collection rate from 2002/03 – 2006/07 was 82%.[36] This is similar to the other jurisdictions which have examined the operation of the Federal Victim Surcharge. In New Brunswick, while the waiver rate was 66% across the province, the collection rate was 85% (Law and Sullivan 2008). As such, the collection rate is fairly high and one might conclude that the surcharge is being applied in those cases where there is a fairly good chance of payment. In the Northwest Territories, the situation is similar.

When questioned, several probation officers indicated that it would be useful for them to be more aware of the FVS and the required payments for their clients. There are opportunities for probation officers to provide detailed information on an offender's financial situation at sentencing: when providing a Pre-Sentence Report (PSR) or a Restitution Assessment Report (RAR). In both these reports, mention of the ability to pay the FVS would certainly support not waiving it. One could also imagine that with more information about the financial circumstances of the offenders before them, defence would be less inclined to request a waiver and judges might be inclined to consider such information before automatically waiving the FVS. An explicit sentence in a PSR or RAR would be even stronger: "This individual has/does not have the financial means to pay the Federal Victim Surcharge."

It is the responsibility of defence counsel to satisfy the court that undue hardship would result through imposition of the FVS. Additional information before the court through these reports can only bolster the importance of the FVS.

In addition, while Crown prosecutors all were aware of the FVS, there was no evidence from the interview data, nor from the auditory review of sentencing hearings that Crown actively challenged a request for waiver at trial. Greater Crown involvement in appropriate cases (i.e., where there is the ability to pay, particularly in cases of fines) would be yet another group of criminal justice professionals working on the solution. The examples of the three cases discussed in section 1.4 provide precedents for further awareness. Two of the cases were from Saskatoon and one was from Yorkton. It will be important to have the Crown prosecutors on those cases share their successes with other Crown prosecutors in all court locations.

On the enforcement side of the FVS, as this court staff indicated, "Our filing cabinets have grown just huge with all the outstanding unpaid surcharges." Quantitative data indicate that there are challenges collecting the provincial surcharge as well. Raising awareness amongst probation officers as suggested above might assist in the enforcement of the FVS. This key learning is directly linked to the next one.

[36] Note that in 2003/04 there was a surplus in monies collected. When this year is excluded from the calculation, the average collection rate drops to 69%.

4.3 Examine enforcement of monetary penalties in general – same approach to FVS as to restitution and fines

Probation officers noted in their interviews that the Federal Victim Surcharge, as one of several monetary penalties, was not high on their list of priorities; however, there have been some recent changes in the Province of Saskatchewan regarding the enforcement of monetary penalties that will mean consistent enforcement approaches and consequences for those who do not pay.

In January 2008, the Fine Collection Branch (FCB) was set up in the Ministry of Justice and Attorney General. In May 2009, the provincial legislation *Summary Offences Procedure Act, 1990*, was amended to provide more powers to the FCB.[37] The FCB pursues unpaid restitution, surcharge (both provincial and federal) and fines equally and they are consistent across all court location. The FCB uses all tools available, including the new agreement with Canada Revenue Agency. The role of the FCB was not widely known amongst those interviewed for this study.

While the FCB and its procedures are relatively new for the Province, there is optimism that they will have a positive impact. For example, the revenue collected by the FCB from Canada Revenue Agency for Saskatchewan's Victims' Fund in 2008/09 was:

1) Provincial Victim Surcharge - $21,338.04
2) Federal Victim Surcharge - $16,864.91

In the interviews, criminal justice professionals were asked about default and it was noted that warrants of committal for non-payment of monetary penalties are no longer automatically given. Furthermore, several respondents noted that it is not possible to use the Fine Option Program to pay off the surcharge. While the costs of using a private collection agency might be greater than the benefits because the average FVS is a small amount, there is great potential for the role of the FCB in terms of assisting with the civil enforcement of restitution orders.

Greater awareness for probation officers would assist with enforcement of the FVS if an offender has a conditional sentence or probation order. Where there is default, the FCB has begun to play a critical role to ensure that there are meaningful consequences for those who do not pay the FVS.

Greater awareness for all criminal justice professionals about the FCB, its role and the powers it has would also benefit as this information could be passed on to offenders to provide the incentive to pay their surcharge orders in a timely fashion.

It would be beneficial for Victim Services to maintain a close dialogue with the FCB in order to understand how fine collection is working across the province.

[37] OC 537/2009 - *The Summary Offences Procedure Amendment Regulation, 2009 (No. 2)*

4.4 Improve data tracking mechanism

To truly understand what is occurring in terms of collection of the FVS, the data management system needs to be able to produce reports that can track individual payments of the FVS. The current aggregate reports only note amount ordered per year and amount collected per year. These limitations will undermine efforts to improve collection and cause frustrations to those involved in those improvements. Given the increasing role of the Fine Collection Branch, these data challenges may well be resolved in the coming months. Ultimately, however, those working to effect change must be able to see the positive results, or if efforts are not working, they must be able to know that as well.

4.5 Appeal appropriate cases

The quantitative data demonstrate that imposition is not the default as the 1999 amendments intended, but rather in some court locations, the exception. Again, this may be because the sentencing judge has an excellent understanding of the economic realities of the offender. Indeed, of the total provincial offender population in 2007/08 (*N*=30,000), 46% was unemployed.[38]

There is some evidence, through the auditory review, interviews, and caselaw that suggest that sentencing judges do not always have full information about an offender's financial situation and that the waiver of the FVS may occur for any number of other reasons. Using unemployment or legal aid representation as a test may not always provide a full picture. There may be disposable income that is used for alcohol or cigarettes that could be used toward payment of the FVS. As noted in the previous sections (4.1 and 4.2), greater awareness and greater involvement on the part of the judiciary and other criminal justice players would certainly help to getting full financial information before the court prior to waiving the FVS.

This full financial information would certainly assist at sentencing, as noted earlier in the report from the 2000 Ontario case of *R.* v. *S.M.:*

> *...most of the circumstances as related by [offender's counsel] are common, I think to at least fifty, if not seventy-five percent of the people who appear before me and if I make an Order that waives the surcharge on these conditions, am I essentially saying that it should be waived more often than not, and I am certain that that's not what was intended by the statute…That is to say, I am certain that the test was intended to be a little higher than would have resulted in average automatic waiver.*[39]

This case suggests that the test for waiver should be higher than unemployment or legal aid representation that was evident in three quarters of the cases reviewed through transcripts.

[38] Corrections Management Information System, 2007/08
[39] *Supra* note 11.

The Saskatchewan case of *R*. v. *Yaremko*[40] is an excellent precedent for Crown prosecutors to rely on and for judges to understand the mandatory language in the Federal Victim Surcharge provisions. The decision for this case came down in July 2008 and as data collection was on-going at that time, we were not able to ascertain whether the case has had any direct impact. Yorkton, where the case was heard, already has the second lowest waiver rate (52%) in the province. The decision could have a strong impact in other court locations where the waiver rates are particularly high such as La Ronge (87%) and Meadow Lake and Saskatoon (82% in both).

It would extremely beneficial for Crown prosecutors to be aware of the caselaw on the Federal Victim Surcharge with particular attention to the recent Saskatchewan case of *Yaremko.* This awareness would enable them to identify appropriate cases for appeal. The precedential value of appealing appropriate cases cannot be underestimated. Decisions that are in favour of imposition and particularly, decisions where reasons are given send a strong message to all those in the criminal justice system. While this change may take time and some resources are needed, the benefits in terms of additional resources for the Victims Fund and victims are clear.

4.6 Examine effectiveness of CRA program

The CRA Refund Set-off Program only began in April 2008. At the time this study was collecting data, only preliminary data were available on how the program was working. As noted in section 4.3, the revenue collected by the Fine Collection Branch from Canada Revenue Agency for Saskatchewan's Victims' Fund in 2008/09 was:

1) Provincial Victim Surcharge - $21,338.04
2) Federal Victim Surcharge - $16,864.91

This may represent a large amount because it is the first year and there is a backlog. This program sends a strong message about the importance of the Federal Victim Surcharge and that there are consequences for non-payment. It will be important to track this program to understand its effectiveness. This could definitely be a best practice for other jurisdictions.

4.7 In Conclusion

This study of the Federal Victim Surcharge in Saskatchewan found that, as in previous studies (Law and Sullivan 2008; Ha 2009), waiver rates are, on average, high in the province although they vary considerably depending on court location. They are also higher for custodial dispositions, than for fine dispositions. Because the FVS tends to be a relatively small amount, stakeholders noted that the cost of enforcement would be greater than the value of the Federal Victim Surcharge. It is clear from the data that the primary reason that potential revenue from the 1999 amendments has not been realized is the high waiver rates of the FVS.

The results of this research suggest that current efforts to reduce waiver rates should be continued, in particular by challenging the offenders' uncontested inability to pay; by ensuring full financial information is presented to the court in Pre-Sentence Reports or Restitution

[40] *Supra* note 13.

Assessment Reports by probation officers; and by appealing trial decisions where appropriate. Judges, Crown prosecutors, defence counsel and probation officers all have a significant role to play.

As noted above, findings indicate that more awareness about the surcharge is warranted; audiences will likely be more receptive to awareness campaigns if they are done in a targeted way with a focus on the importance of victim services. Probation officers could use this information to work with offenders about the purpose of the FVS and where the money goes. In addition, the partnership with Canada Revenue Agency should be monitored as it may prove to be a best practice for collection.

The Policy Centre for Victim Issues of the Department of Justice Canada will continue to have a role to play in raising awareness. This can be done by sharing research results and fostering constructive discussions on the issues through different avenues such as Federal Provincial Territorial Working Groups, the Canadian Bar Association and the Canadian Association of Provincial Court Judges. As well, the Policy Centre for Victim Issues will need to continue to work with educational organizations such as the National Judicial Institute to ensure recognition of the need for judicial awareness about the FVS.

It will be important to continue discussions on the Federal Victim Surcharge with as many different players as possible – first and foremost with judges, but also with the defence bar, with Crown prosecutors, with probation officers, and with court staff. In addition, the issues raised should be addressed with other jurisdictions to learn from best practices in terms of imposition and collection. Discussions are required on what is "undue hardship," the philosophy of the Federal Victim Surcharge in terms of offenders' accountability to victims, where the revenue generated goes and what the loss of revenue means in terms of the ability to provide much-needed services to victims of crime. It will be through such constructive discussions that ultimately, long term solutions to the high waiver rates will be achieved.

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Appendix A

The following tables highlight the total number of individuals sentenced, the total number of FVS waived and the FVS waiver rate for each court location. Tables 2 through 17 present this information by disposition type, most serious offence, specific offence, and proceeding (summary vs. indictable offence).

Table 1: Federal Victim Surcharge waiver rates by location, 2002/03-2006/07

	Total # Sentenced	% of Total	Total FVS Waived	FVS Waiver Rate
Estevan	1725	2%	799	46%
La Ronge	3787	5%	3284	87%
Lloydminster	2511	3%	1589	63%
Meadow Lake	5208	7%	4279	82%
Melfort	2955	4%	1979	67%
Moose Jaw	2602	4%	1619	62%
North Battleford	4578	6%	3318	72%
Prince Albert	9984	14%	7321	73%
Regina	13745	19%	10019	73%
Saskatoon	17457	24%	14326	82%
Swift Current	2114	3%	1241	59%
Wynyard	1864	3%	1262	68%
Yorkton	4385	6%	2282	52%
Total	72,915	100%	53,331	73%

Source: Canadian Centre for Justice Statistics, 2002/03-2006/07

Table 2: Federal Victim Surcharge waiver rates by location and disposition, 2002/03-2006/07

	Total # Sentenced	% of Location Total	Total FVS Waived	FVS Waiver Rate
Estevan				
Custody	193	11%	185	96%
Conditional Sentence	53	3%	43	81%
Probation	358	21%	250	70%
Fine	1078	62%	280	26%
Other	43	3%	41	95%
Total	1725	100%	799	46%
La Ronge				
Custody	554	15%	554	100%
Conditional Sentence	474	12%	418	88%
Probation	869	23%	743	86%
Fine	1443	38%	1132	78%
Other	447	12%	437	98%
Total	3787	100%	3284	87%
Lloydminster				
Custody	445	18%	440	99%
Conditional Sentence	84	3%	75	89%
Probation	266	11%	239	90%
Fine	1529	61%	649	42%
	Total # Sentenced	% of Location Total	Total FVS Waived	FVS Waiver Rate
Other	187	7%	186	99%
Total	2511	100%	1589	63%
Meadow Lake				
Custody	1420	27%	1384	97%
Conditional Sentence	469	9%	388	83%
Probation	1003	19%	831	83%
Fine	2065	40%	1453	70%
Other	251	5%	223	88%
Total	5208	100%	4279	82%
Melfort				
Custody	491	17%	464	95%
Conditional Sentence	256	8%	187	73%
Probation	761	26%	502	66%
Fine	1219	41%	624	51%
Other	228	8%	202	%89
Total	2955	100%	1979	67%
Moose Jaw				
Custody	345	14%	342	99%
Conditional Sentence	105	4%	102	97%
Probation	677	26%	609	90%
Fine	1313	50%	405	31%
Other	162	6%	161	99%
Total	2602	100%	1619	62%
North Battleford				
Custody	1372	30%	1262	92%
Conditional Sentence	359	8%	276	77%
Probation	974	21%	704	72%
Fine	1399	31%	664	47%
Other	474	10%	412	87%
Total	4578	100%	3318	72%

Table 2: Federal Victim Surcharge waiver rates by location and disposition, 2002/03-2006/07

Prince Albert				
Custody	3644	37%	3170	87%
Conditional Sentence	848	9%	653	77%
Probation	1731	17%	1166	67%
Fine	3235	32%	1880	58%
Other	526	5%	452	86%
Total	9984	100%	7321	73%
Regina				
Custody	3590	26%	3197	89%
Conditional Sentence	1109	8%	880	79%
Probation	4017	29%	2964	74%
Fine	4275	31%	2348	55%
Other	754	6%	630	84%
Total	13,745	100%	10,019	73%
Saskatoon				
Custody	4253	25%	4193	99%
Conditional Sentence	1293	7%	1167	90%
Probation	4215	24%	3458	82%
Fine	5300	30%	3234	61%
Other	2396	14%	2274	95%
Total	17,457	100%	14,326	82%
Swift Current				
	Total # Sentenced	% of Location Total	Total FVS Waived	FVS Waiver Rate
Custody	412	19%	400	97%
Conditional Sentence	110	5%	93	85%
Probation	463	22%	364	79%
Fine	1092	52%	348	32%
Other	37	2%	36	97%
Total	2114	100%	1241	59%
Wynyard				
Custody	310	17%	294	95%
Conditional Sentence	118	6%	83	70%
Probation	330	18%	212	64%
Fine	997	53%	568	57%
Other	109	6%	105	96%
Total	1864	100%	1262	68%
Yorkton				
Custody	938	21%	902	97%
Conditional Sentence	258	6%	225	87%
Probation	690	16%	473	69%
Fine	2347	54%	539	23%
Other	158	3%	143	91%
Total	4385	100%	2282	52%

Source: Canadian Centre for Justice Statistics, 2002/03-2006/07

Table 3: Federal Victim Surcharge waiver rates by location and most serious offence, 2002/03-2006/07

	Total # Sentenced	% of Location Total	Total FVS Waived	FVS Waiver Rate
Estevan				
Offence Against Person	215	12%	148	69%
Offences Against Property	200	12%	133	67%
Offences Against the Administration of Justice	275	16%	148	54%
Other Criminal Code Offences	108	6%	59	55%
Traffic Offences	776	45%	219	28%
Other Federal Statute Offences	151	9%	92	61%
Total	1725	100%	799	46%
La Ronge				
Offence Against Person	941	25%	826	88%
Offences Against Property	486	13%	449	92%
Offences Against the Administration of Justice	852	23%	761	89%
Other Criminal Code Offences	193	5%	163	84%
	Total # Sentenced	% of Location Total	Total FVS Waived	FVS Waiver Rate
Traffic Offences	654	17%	469	72%
Other Federal Statute Offences	661	17%	616	93%
Total	3787	100%	3284	87%
Lloydminster				
Offence Against Person	295	12%	261	88%
Offences Against Property	256	10%	214	84%
Offences Against the Administration of Justice	493	20%	282	57%
Other Criminal Code Offences	108	4%	65	60%
Traffic Offences	724	29%	222	31%
Other Federal Statute Offences	635	25%	545	86%
Total	2511	100%	1589	63%

Table 3: Federal Victim Surcharge waiver rates by location and most serious offence, 2002/03-2006/07

	Total # Sentenced	% of Location Total	Total FVS Waived	FVS Waiver Rate
Meadow Lake				
Offence Against Person	1191	23%	997	84%
Offences Against Property	902	17%	816	90%
Offences Against the Administration of Justice	1232	24%	1050	85%
Other Criminal Code Offences	430	8%	359	83%
Traffic Offences	1165	22%	831	71%
Other Federal Statute Offences	288	6%	226	78%
Total	5208	100%	4279	82%
Melfort				
Offence Against Person	692	23%	510	74%
Offences Against Property	500	17%	398	80%
Offences Against the Administration of Justice	579	20%	429	74%
Other Criminal Code Offences	181	6%	125	69%
Traffic Offences	826	28%	412	50%
Other Federal Statute Offences	177	6%	105	59%
Total	2955	100%	1979	67%
	Total # Sentenced	% of Location Total	Total FVS Waived	FVS Waiver Rate
Moose Jaw				
Offence Against Person	305	12%	273	90%
Offences Against Property	438	17%	400	91%
Offences Against the Administration of Justice	356	13%	256	72%
Other Criminal Code Offences	132	5%	99	75%
Traffic Offences	1013	39%	314	31%
Other Federal Statute Offences	358	14%	277	77%
Total	2602	100%	1619	62%

Table 3: Federal Victim Surcharge waiver rates by location and most serious offence, 2002/03-2006/07

	Total # Sentenced	% of Location Total	Total FVS Waived	FVS Waiver Rate
North Battleford				
Offence Against Person	811	18%	644	79%
Offences Against Property	835	18%	678	81%
Offences Against the Administration of Justice	1224	27%	976	80%
Other Criminal Code Offences	218	5%	157	72%
Traffic Offences	1279	28%	709	55%
Other Federal Statute Offences	211	4%	154	73%
Total	4578	100%	3318	72%
Prince Albert				
Offence Against Person	1653	17%	1246	75%
Offences Against Property	2341	23%	1857	79%
Offences Against the Administration of Justice	3046	31%	2286	75%
Other Criminal Code Offences	612	6%	474	77%
Traffic Offences	1701	17%	981	58%
Other Federal Statute Offences	631	6%	477	76%
Total	9984	100%	7321	73%
Regina				
Offence Against Person	2688	20%	1975	73%
Offences Against Property	3609	26%	3026	84%
Offences Against the Administration of Justice	2438	18%	1927	79%
Other Criminal Code Offences	717	5%	573	80%
Traffic Offences	3438	25%	1889	55%
Other Federal Statute Offences	855	6%	629	74%
Total	13,745	100%	10,019	73%

Table 3: Federal Victim Surcharge waiver rates by location and most serious offence, 2002/03-2006/07

	Total # Sentenced	% of Location Total	Total FVS Waived	FVS Waiver Rate
Saskatoon				
Offence Against Person	2893	17%	2406	83%
Offences Against Property	4548	26%	4205	92%
Offences Against the Administration of Justice	4242	24%	3771	89%
Other Criminal Code Offences	1374	8%	1209	88%
Traffic Offences	2955	17%	1584	54%
Other Federal Statute Offences	1445	8%	1151	80%
Total	17,457	100%	14,326	82%
Swift Current				
Offence Against Person	326	16%	253	78%
Offences Against Property	389	18%	315	81%
Offences Against the Administration of Justice	260	12%	176	68%
Other Criminal Code Offences	105	5%	61	58%
Traffic Offences	759	36%	253	33%
Other Federal Statute Offences	275	13%	183	67%
Total	2114	100%	1241	59%
Wynyard				
Offence Against Person	285	15%	209	73%
Offences Against Property	265	14%	205	77%
Offences Against the Administration of Justice	367	20%	287	78%
Other Criminal Code Offences	89	5%	62	70%
Traffic Offences	724	39%	410	57%
Other Federal Statute Offences	134	7%	89	66%
Total	1864	100%	1262	68%

Table 3: Federal Victim Surcharge waiver rates by location and most serious offence, 2002/03-2006/07

	Total # Sentenced	% of Location Total	Total FVS Waived	FVS Waiver Rate
Yorkton				
Offence Against Person	679	16%	481	71%
Offences Against Property	865	20%	660	76%
Offences Against the Administration of Justice	717	16%	369	51%
Other Criminal Code Offences	264	6%	149	56%
Traffic Offences	1511	34%	449	30%
Other Federal Statute Offences	349	8%	174	50%
Total	4385	100%	2282	52%

Source: Canadian Centre for Justice Statistics, 2002/03-2006/07

Table 4: Federal Victim Surcharge waiver rates by specific offence, Estevan, 2002/03-2006/07

	Total # Sentenced	% of Total	Total FVS Waived	FVS Waiver Rate
Estevan				
Homicide	0	0%	0	0%
Attempted Murder	0	0%	0	0%
Robbery	0	0%	0	0%
Sexual Assault	7	.4%	6	86%
Other Sexual Offences	3	.1%	3	100%
Major Assault	59	3%	49	83%
Common Assault	105	6%	60	57%
Uttering Threats	32	2%	23	72%
Criminal Harassment	3	.1%	2	67%
Other Crimes Against the Person	6	.3%	5	83%
Theft	46	3%	31	67%
Break and Enter	49	3%	35	71%
Fraud	35	2%	25	49%
Mischief	39	2%	19	49%
Possession of Stolen Property	29	2%	21	72%
Other Property Crimes	2	.1%	2	100%
Failure to Appear	20	1%	11	55%
Breach of Probation	143	8%	85	59%
Unlawfully at Large	5	.2%	3	60%
Failure to Comply with Order	100	6%	46	46%
Other Administration of Justice Offences	7	.4%	3	43%
Weapons	47	3%	28	60%
Prostitution	0	0%	0	0%
Disturbing the Peace	7	.4%	6	85%
Residual Criminal Code	54	3%	25	46%
Impaired Driving	607	35%	129	21%
Other Criminal Code Traffic	169	10%	90	53%
Drug Possession	78	5%	38	49%
Drug Trafficking	20	1%	14	70%
Youth Criminal Justice Act	1	.1%	1	100%
Residual Federal Offences	52	3%	39	75%
Total	1725	100%	799	46%

Source: Canadian Centre for Justice Statistics, 2002/03-2006/07

Table 5: Federal Victim Surcharge waiver rates by specific offence, La Ronge, 2002/03-2006/07

	Total # Sentenced	% of Total	Total FVS Waived	FVS Waiver Rate
La Ronge				
Homicide	0	0%	0	0%
Attempted Murder	0	0%	0	0%
Robbery	6	.2%	6	100%
Sexual Assault	50	1%	45	90%
Other Sexual Offences	4	.2%	4	100%
Major Assault	321	9%	295	92%
Common Assault	476	13%	402	84%
Uttering Threats	75	2%	65	87%
Criminal Harassment	0	0%	0	0%
Other Crimes Against the Person	9	.3%	9	100%
Theft	96	3%	88	92%
Break and Enter	166	4%	156	94%
Fraud	14	.4%	13	93%
Mischief	157	4%	143	91%
Possession of Stolen Property	50	1%	47	94%
Other Property Crimes	3	.1%	2	67%
Failure to Appear	53	1%	38	72%
Breach of Probation	446	12%	403	90%
Unlawfully at Large	23	.6%	23	100%
Failure to Comply with Order	307	8%	275	90%
Other Administration of Justice Offences	23	.6%	22	96%
Weapons	68	2%	58	85%
Prostitution	0	0%	0	0%
Disturbing the Peace	10	.4%	7	70%
Residual Criminal Code	115	3%	98	85%
Impaired Driving	535	14%	377	70%
Other Criminal Code Traffic	118	3%	92	77%
Drug Possession	105	3%	74	70%
Drug Trafficking	44	1%	36	82%
Youth Criminal Justice Act	6	.2%	6	100%
Residual Federal Offences	506	13%	500	99%
Total	3787	100%	3284	87%

Source: Canadian Centre for Justice Statistics, 2002/03-2006/07

Table 6: Federal Victim Surcharge waiver rates by specific offence, Lloydminster, 2002/03-2006/07

	Total # Sentenced	% of Total	Total FVS Waived	FVS Waiver Rate
Lloydminster				
Homicide	3	.1%	3	100%
Attempted Murder	0	0%	0	0%
Robbery	9	.3%	9	100%
Sexual Assault	12	.4%	11	92%
Other Sexual Offences	6	.2%	6	100%
Major Assault	78	3%	73	94%
Common Assault	156	6%	132	94%
Uttering Threats	26	1%	22	85%
Criminal Harassment	2	.1%	2	100%
Other Crimes Against the Person	3	.1%	3	100%
Theft	56	2%	42	75%
Break and Enter	49	2%	46	94%
Fraud	35	1%	29	83%
Mischief	59	2%	47	80%
Possession of Stolen Property	54	2%	47	87%
Other Property Crimes	3	.1%	3	100%
Failure to Appear	78	3%	42	54%
Breach of Probation	150	6%	101	67%
Unlawfully at Large	5	.2%	5	100%
Failure to Comply with Order	237	10%	120	51%
Other Administration of Justice Offences	23	1%	14	61%
Weapons	28	1%	23	82%
Prostitution	1	.1%	1	100%
Disturbing the Peace	5	.2%	3	60%
Residual Criminal Code	74	3%	38	51%
Impaired Driving	523	21%	103	20%
Other Criminal Code Traffic	201	8%	119	59%
Drug Possession	121	5%	47	39%
Drug Trafficking	33	2%	20	61%
Youth Criminal Justice Act	6	.2%	6	100%
Residual Federal Offences	475	19%	472	99%
Total	2511	100%	1589	63%

Source: Canadian Centre for Justice Statistics, 2002/03-2006/07

Table 7: Federal Victim Surcharge waiver rates by specific offence, Meadow Lake, 2002/03-2006/07

	Total # Sentenced	% of Total	Total FVS Waived	FVS Waiver Rate
Meadow Lake				
Homicide	1	.1%	1	100%
Attempted Murder	1	.1%	1	100%
Robbery	11	.3%	10	91%
Sexual Assault	70	1%	64	91%
Other Sexual Offences	12	.3%	10	83%
Major Assault	372	7%	333	90%
Common Assault	561	11%	440	78%
Uttering Threats	144	3%	120	83%
Criminal Harassment	3	.1%	3	100%
Other Crimes Against the Person	16	.4%	15	94%
Theft	209	4%	186	89%
Break and Enter	254	5%	244	96%
Fraud	65	1%	58	89%
Mischief	251	5%	213	85%
Possession of Stolen Property	117	2%	109	93%
Other Property Crimes	6	.1%	6	100%
Failure to Appear	121	2%	104	86%
Breach of Probation	507	10%	432	85%
Unlawfully at Large	51	1%	50	98%
Failure to Comply with Order	518	10%	432	83%
Other Administration of Justice Offences	35	1%	32	91%
Weapons	92	2%	82	89%
Prostitution	2	.1%	2	100%
Disturbing the Peace	32	.6%	25	78%
Residual Criminal Code	304	6%	250	82%
Impaired Driving	674	13%	444	66%
Other Criminal Code Traffic	491	9%	387	79%
Drug Possession	120	2%	76	63%
Drug Trafficking	73	1%	59	81%
Youth Criminal Justice Act	25	1%	24	96%
Residual Federal Offences	70	1%	96	67%
Total	5208	100%	4279	82%

Source: Canadian Centre for Justice Statistics, 2002/03-2006/07

Table 8: Federal Victim Surcharge waiver rates by specific offence, Melfort, 2002/03-2006/07

	Total # Sentenced	% of Total	Total FVS Waived	FVS Waiver Rate
Melfort				
Homicide	0	0%	0	0%
Attempted Murder	0	0%	0	0%
Robbery	7	.2%	7	100%
Sexual Assault	32	1%	25	78%
Other Sexual Offences	3	.1%	2	67%
Major Assault	215	7%	176	82%
Common Assault	343	12%	229	67%
Uttering Threats	77	3%	60	78%
Criminal Harassment	6	.2%	4	67%
Other Crimes Against the Person	9	.3%	7	78%
Theft	129	4%	97	75%
Break and Enter	117	4%	106	91%
Fraud	64	2%	55	86%
Mischief	130	4%	88	68%
Possession of Stolen Property	55	2%	47	85%
Other Property Crimes	5	.2%	5	100%
Failure to Appear	53	2%	38	72%
Breach of Probation	354	11%	276	78%
Unlawfully at Large	10	.3%.	9	90%
Failure to Comply with Order	139	5%	93	67%
Other Administration of Justice Offences	23	.8%	13	57%
Weapons	51	2%	40	78%
Prostitution	1	.1%	0	0%
Disturbing the Peace	17	.6%	7	41%
Residual Criminal Code	112	4%	78	70%
Impaired Driving	634	21%	275	43%
Other Criminal Code Traffic	192	7%	137	71%
Drug Possession	91	3%	42	46%
Drug Trafficking	31	1%	19	61%
Youth Criminal Justice Act	6	.2%	6	100%
Residual Federal Offences	49	2%	38	78%
Total	2955	100%	1979	67%

Source: Canadian Centre for Justice Statistics, 2002/03-2006/07

Table 9: Federal Victim Surcharge waiver rates by specific offence, Moose Jaw, 2002/03-2006/07

	Total # Sentenced	% of Total	Total FVS Waived	FVS Waiver Rate
Moose Jaw				
Homicide	3	.2%	3	100%
Attempted Murder	0	0%	0	0%
Robbery	13	.5%	13	100%
Sexual Assault	11	.5%	10	91%
Other Sexual Offences	7	.3%	7	100%
Major Assault	90	3%	81	90%
Common Assault	127	5%	109	86%
Uttering Threats	44	2%	40	91%
Criminal Harassment	3	.2%	3	100%
Other Crimes Against the Person	7	.3%	7	100%
Theft	141	5%	130	92%
Break and Enter	103	4%	100	97%
Fraud	75	3%	71	95%
Mischief	62	2%	49	79%
Possession of Stolen Property	52	2%	45	87%
Other Property Crimes	5	.3%	5	100%
Failure to Appear	58	2%	33	57%
Breach of Probation	126	5%	94	75%
Unlawfully at Large	7	.3%	4	57%
Failure to Comply with Order	139	5%	105	76%
Other Administration of Justice Offences	26	1%	20	77%
Weapons	34	1%	30	88%
Prostitution	0	0%	0	0%
Disturbing the Peace	26	1%	11	42%
Residual Criminal Code	72	3%	58	81%
Impaired Driving	888	34%	234	26%
Other Criminal Code Traffic	125	5%	80	64%
Drug Possession	197	8%	136	69%
Drug Trafficking	56	2%	45	80%
Youth Criminal Justice Act	10	.4%.	10	100%
Residual Federal Offences	95	4%	86	91%
Total	2602	100%	1619	62%

Source: Canadian Centre for Justice Statistics, 2002/03-2006/07

Table 10: Federal Victim Surcharge waiver rates by specific offence, North Battleford, 2002/03-2006/07

	Total # Sentenced	% of Total	Total FVS Waived	FVS Waiver Rate
North Battleford				
Homicide	2	.04%	2	100%
Attempted Murder	0	0%	0	0%
Robbery	22	.4%	21	95%
Sexual Assault	28	.6%	15	93%
Other Sexual Offences	10	.2%	7	70%
Major Assault	222	5%	185	83%
Common Assault	405	9%	302	75%
Uttering Threats	110	2%	91	83%
Criminal Harassment	2	.04%	1	50%
Other Crimes Against the Person	10	.2%	9	90%
Theft	267	6%	220	82%
Break and Enter	169	3%	146	86%
Fraud	125	3%	98	78%
Mischief	145	3%	109	75%
Possession of Stolen Property	120	3%	96	80%
Other Property Crimes	9	.2%	9	100%
Failure to Appear	233	5%	150	64%
Breach of Probation	514	11%	433	84%
Unlawfully at Large	55	1%	54	98%
Failure to Comply with Order	382	8%	304	80%
Other Administration of Justice Offences	40	1%	35	88%
Weapons	62	1%	50	81%
Prostitution	1	.02%	0	0%
Disturbing the Peace	18	1%	14	78%
Residual Criminal Code	137	3%	93	68%
Impaired Driving	904	20%	441	49%
Other Criminal Code Traffic	375	8%	268	71%
Drug Possession	78	2%	40	51%
Drug Trafficking	46	1%	37	80%
Youth Criminal Justice Act	15	.3%	14	93%
Residual Federal Offences	72	2%	63	88%
Total	4578	100%	3318	72%

Source: Canadian Centre for Justice Statistics, 2002/03-2006/07

Table 11: Federal Victim Surcharge waiver rates by specific offence, Prince Albert, 2002/03-2006/07

	Total # Sentenced	% of Total	Total FVS Waived	FVS Waiver Rate
Prince Albert				
Homicide	7	.1%	7	100%
Attempted Murder	1	.1%	1	100%
Robbery	71	.7%	59	83%
Sexual Assault	70	.7%	55	79%
Other Sexual Offences	9	.1%	8	89%
Major Assault	664	7%	532	80%
Common Assault	642	6%	433	67%
Uttering Threats	171	2%	133	78%
Criminal Harassment	4	.1%	4	100%
Other Crimes Against the Person	14	.1%	14	100%
Theft	1195	12%	943	79%
Break and Enter	318	3%	268	84%
Fraud	234	2%	180	77%
Mischief	337	3%	260	77%
Possession of Stolen Property	245	2%	198	80%
Other Property Crimes	12	.1%	11	92%
Failure to Appear	159	2%	106	67%
Breach of Probation	1897	19%	1434	76%
Unlawfully at Large	254	3%	209	82%
Failure to Comply with Order	700	7%	513	73%
Other Administration of Justice Offences	36	.3%	24	67%
Weapons	181	2%	142	78%
Prostitution	24	.1%	21	88%
Disturbing the Peace	26	.2%	22	85%
Residual Criminal Code	381	4%	289	76%
Impaired Driving	1178	12%	620	53%
Other Criminal Code Traffic	523	5%	361	69%
Drug Possession	191	2%	105	55%
Drug Trafficking	133	1%	90	68%
Youth Criminal Justice Act	45	.4%	40	89%
Residual Federal Offences	262	3%	242	92%
Total	9984	100%	7321	73%

Source: Canadian Centre for Justice Statistics, 2002/03-2006/07

Table 12: Federal Victim Surcharge waiver rates by specific offence, Regina, 2002/03-2006/07

	Total # Sentenced	% of Total	Total FVS Waived	FVS Waiver Rate
Regina				
Homicide	4	.1%	4	100%
Attempted Murder	1	.1%	1	100%
Robbery	202	1%	187	93%
Sexual Assault	72	.5%	55	76%
Other Sexual Offences	15	.1%	11	73%
Major Assault	787	6%	611	78%
Common Assault	1257	9%	855	68%
Uttering Threats	295	2%	215	73%
Criminal Harassment	18	.1%	13	72%
Other Crimes Against the Person	37	.2%	23	62%
Theft	1460	11%	1232	84%
Break and Enter	534	4%	475	89%
Fraud	617	4%	514	83%
Mischief	457	3%	334	73%
Possession of Stolen Property	511	4%	448	88%
Other Property Crimes	30	.2%	23	77%
Failure to Appear	261	2%	211	81%
Breach of Probation	1197	8%	940	79%
Unlawfully at Large	115	1%	106	92%
Failure to Comply with Order	779	6%	608	78%
Other Administration of Justice Offences	86	.7%	62	72%
Weapons	220	2%	182	83%
Prostitution	71	.5%	48	68%
Disturbing the Peace	37	.3%	32	86%
Residual Criminal Code	389	3%	311	80%
Impaired Driving	2534	18%	1269	50%
Other Criminal Code Traffic	904	7%	620	69%
Drug Possession	298	2%	178	60%
Drug Trafficking	274	2%	209	76%
Youth Criminal Justice Act	31	.2%	30	97%
Residual Federal Offences	252	2%	212	84%
Total	13,745	100%	10,019	73%

Source: Canadian Centre for Justice Statistics, 2002/03-2006/07

Table 13: Federal Victim Surcharge waiver rates by specific offence, Saskatoon, 2002/03-2006/07

	Total # Sentenced	% of Total	Total FVS Waived	FVS Waiver Rate
Saskatoon				
Homicide	4	.2%	4	100%
Attempted Murder	2	.1%	2	100%
Robbery	200	1%	197	99%
Sexual Assault	78	.4%	61	78%
Other Sexual Offences	12	.1%	10	83%
Major Assault	781	4%	666	85%
Common Assault	1344	8%	1062	79%
Uttering Threats	403	2%	347	86%
Criminal Harassment	27	.2%	21	78%
Other Crimes Against the Person	42	.2%	36	86%
Theft	1795	10%	1679	94%
Break and Enter	573	3%	548	96%
Fraud	871	5%	816	94%
Mischief	601	3%	508	85%
Possession of Stolen Property	672	4%	622	93%
Other Property Crimes	36	.2%	32	89%
Failure to Appear	448	3%	398	89%
Breach of Probation	1728	10%	1516	88%
Unlawfully at Large	264	2%	261	99%
Failure to Comply with Order	1696	10%	1509	89%
Other Administration of Justice Offences	106	1%	87	82%
Weapons	422	2%	386	81%
Prostitution	24	.1%	13	54%
Disturbing the Peace	89	.5%	79	89%
Residual Criminal Code	839	5%	731	87%
Impaired Driving	2269	13%	1093	48%
Other Criminal Code Traffic	686	4%	491	72%
Drug Possession	688	4%	484	70%
Drug Trafficking	380	2%	341	90%
Youth Criminal Justice Act	31	.2%	28	90%
Residual Federal Offences	346	2%	298	86%
Total	17,457	100%	14,326	82%

Source: Canadian Centre for Justice Statistics, 2002/03-2006/07

Table 14: Federal Victim Surcharge waiver rates by specific offence, Swift Current, 2002/03-2006/07

	Total # Sentenced	% of Total	Total FVS Waived	FVS Waiver Rate
Swift Current				
Homicide	0	0%	0	0%
Attempted Murder	0	0%	0	0%
Robbery	1	.1%	1	100%
Sexual Assault	17	.8%	13	76%
Other Sexual Offences	10	.6%	7	70%
Major Assault	67	3%	50	75%
Common Assault	162	8%	123	76%
Uttering Threats	55	3%	47	76%
Criminal Harassment	8	.5%	7	88%
Other Crimes Against the Person	6	.3%	5	83%
Theft	94	4%	77	82%
Break and Enter	69	3%	64	93%
Fraud	92	4%	78	85%
Mischief	68	3%	40	59%
Possession of Stolen Property	65	3%	55	85%
Other Property Crimes	1	.1%	1	100%
Failure to Appear	13	.6%	7	54%
Breach of Probation	146	7%	103	71%
Unlawfully at Large	4	.2%	4	4%
Failure to Comply with Order	80	4%	48	60%
Other Administration of Justice Offences	17	.8%	14	82%
Weapons	29	1%	19	66%
Prostitution	0	0%	0	0%
Disturbing the Peace	37	2%	19	51%
Residual Criminal Code	39	2%	23	59%
Impaired Driving	654	31%	195	30%
Other Criminal Code Traffic	105	5%	58	55%
Drug Possession	187	9%	120	64%
Drug Trafficking	43	2%	30	70%
Youth Criminal Justice Act	0	0%	0	0%
Residual Federal Offences	45	2%	33	73%
Total	2114	100%	1241	59%

Source: Canadian Centre for Justice Statistics, 2002/03-2006/07

Table 15: Federal Victim Surcharge waiver rates by specific offence, Wynyard, 2002/03-2006/07

	Total # Sentenced	% of Total	Total FVS Waived	FVS Waiver Rate
Wynyard				
Homicide	0	0%	0	0%
Attempted Murder	1	.1%	1	100%
Robbery	6	.3%	6	100%
Sexual Assault	8	.5%	7	88%
Other Sexual Offences	2	.1%	1	50%
Major Assault	94	5%	76	81%
Common Assault	135	7%	92	68%
Uttering Threats	34	2%	21	62%
Criminal Harassment	1	.1%	1	100%
Other Crimes Against the Person	4	.2%	4	100%
Theft	66	4%	51	77%
Break and Enter	58	3%	50	86%
Fraud	26	1%	17	65%
Mischief	56	3%	40	71%
Possession of Stolen Property	57	3%	45	79%
Other Property Crimes	2	.1%	2	100%
Failure to Appear	54	3%	46	85%
Breach of Probation	119	7%	89	75%
Unlawfully at Large	2	.1%	2	100%
Failure to Comply with Order	175	9%	135	77%
Other Administration of Justice Offences	17	1%	15	88%
Weapons	26	1%	17	65%
Prostitution	0	0%	0	0%
Disturbing the Peace	2	.1%	1	50%
Residual Criminal Code	61	3%	44	72%
Impaired Driving	466	25%	225	48%
Other Criminal Code Traffic	258	14%	185	72%
Drug Possession	67	4%	38	57%
Drug Trafficking	33	2%	23	70%
Youth Criminal Justice Act	8	.4%	6	75%
Residual Federal Offences	26	1%	22	85%
Total	1864	100%	1262	68%

Source: Canadian Centre for Justice Statistics, 2002/03-2006/07

Table 16: Federal Victim Surcharge waiver rates by specific offence, Yorkton, 2002/03-2006/07

	Total # Sentenced	% of Total	Total FVS Waived	FVS Waiver Rate
Yorkton				
Homicide	1	.1%	1	100%
Attempted Murder	0	0%	0	0%
Robbery	27	.7%	26	96%
Sexual Assault	19	.5%	14	74%
Other Sexual Offences	7	.2%	5	71%
Major Assault	170	4%	140	82%
Common Assault	333	7%	205	62%
Uttering Threats	107	2%	79	74%
Criminal Harassment	5	.1%	3	60%
Other Crimes Against the Person	10	.2%	8	80%
Theft	285	6%	205	72%
Break and Enter	190	4%	174	92%
Fraud	117	3%	94	80%
Mischief	117	3%	68	58%
Possession of Stolen Property	151	3%	114	76%
Other Property Crimes	5	.1%	5	100%
Failure to Appear	122	3%	43	32%
Breach of Probation	264	6%	154	58%
Unlawfully at Large	13	.3%	12	92%
Failure to Comply with Order	282	6%	139	49%
Other Administration of Justice Offences	36	.8%	21	58%
Weapons	69	2%	49	71%
Prostitution	1	.1%	1	100%
Disturbing the Peace	30	.7%	13	43%
Residual *Criminal Code*	164	4%	86	52%
Impaired Driving	1076	25%	221	21%
Other *Criminal Code* Traffic	435	10%	228	52%
Drug Possession	183	4%	46	25%
Drug Trafficking	72	2%	57	79%
Youth Criminal Justice Act	9	.2%	7	78%
Residual Federal Offences	85	2%	64	75%
Total	4385	100%	2282	52%

Source: Canadian Centre for Justice Statistics, 2002/03-2006/07

Table 17: Federal Victim Surcharge waiver rates by summary and indictable offence, 2002/03-2006/07

	Total # Sentenced	% of Total	Total FVS Waived	FVS Waiver Rate
Estevan				
Summary	1574	91%	677	43%
Indictable	151	9%	122	81%
Total	1725	100%	799	46%
La Ronge				
Summary	3451	91%	2975	86%
Indictable	336	9%	309	92%
Total	3787	100%	3284	87%
Lloydminster				
Summary	2212	88%	1329	60%
Indictable	299	12%	260	87%
Total	2511	100%	1589	63%
Meadow Lake				
Summary	3996	77%	3175	79%
Indictable	1212	23%	1104	91%
Total	5208	100%	4279	82%
Melfort				
Summary	2636	89%	1704	65%
Indictable	319	11%	275	86%
Total	2955	100%	1979	67%
Moose Jaw				
Summary	2355	91%	1385	59%
Indictable	247	9%	234	95%
Total	2602	100%	1619	62%
North Battleford				
Summary	3434	75%	2341	68%
Indictable	1144	25%	977	85%
Total	4578	100%	3318	72%
Prince Albert				
Summary	8064	75%	5751	71%
Indictable	1920	25%	1570	82%
Total	9984	100%	7321	73%
Regina				
Summary	11237	82%	7889	70%
Indictable	2508	18%	2130	85%
Total	13,745	100%	10,019	73%
Saskatoon				
Summary	13331	76%	10485	79%
Indictable	4126	24%	3841	93%
Total	17,457	100%	14,326	82%
Swift Current				
Summary	1860	88%	1015	55%
Indictable	254	12%	226	89%
Total	2114	100%	1241	59%

Table 17: Federal Victim Surcharge waiver rates by summary and indictable offence, 2002/03-2006/07

	Total # Sentenced	% of Total	Total FVS Waived	FVS Waiver Rate
Wynyard				
Summary	1574	84%	1026	65%
Indictable	290	16%	236	81%
Total	1864	100%	1262	68%
Yorkton				
Summary	3790	86%	1763	47%
Indictable	595	14%	519	87%
Total	4385	100%	2282	52%

Source: Canadian Centre for Justice Statistics, 2002/03-2006/07

Appendix B

Interview

Guide for Crown/Defence – Restitution - Surcharge

Restitution

1. What do you see as being the prime purpose of restitution?

2. Do you think restitution should be a priority of the criminal justice system?

3. What are the factors you consider when determining whether or not to request/contest/agree to restitution?

4. How do these factors differ when you are considering restitution as a stand-alone order or as a condition of Probation or a Conditional Sentence?

5. What are the challenges with restitution? (Provide prompt if necessary: for example quantifying damages? Enforcement/collection? Lack of supervision for stand alones? Time limitations?)

6. How well do you think victims/offenders understand restitution in terms of what can be expected (victims)/what is their responsibility (offenders)?

7. Are there any other comments/observations you would like to make about restitution?

Surcharge

1. Can you tell me what your understanding of the federal victim surcharge is? What is its purpose, and how is it applied?

2. Do you fundamentally agree with the philosophy behind the surcharge? In your opinion is the federal victim surcharge a meaningful consequence?

3. What is your perception regarding the usage of funds received from the federal victim surcharge? For instance, what do you think happens to the money collected?

4. Do you feel the % presently being imposed / collected is satisfactory?

5. What has SK done to improve the awareness of the federal victim surcharge for all parties involved, e.g., crowns, defence, judges and offenders? How were you made aware of surcharge provisions? Has SK done anything to make professionals and offenders aware of the surcharge provisions? Can you give examples?

6. In your recollection, how often is the federal victim surcharge discussed in court (i.e. by Crown, defence, judge)? Who typically raises the issue, and why?

7. In practice, does the Court assume automatic imposition of the federal victim surcharge? If not, what practices or "understandings" have evolved at your local level?

8. When the federal victim surcharge is waived, is a reason typically stated? If yes, what is the reason typically given?

9. The Criminal Code provides for means tests to prove undue hardship. In your experience have you seen or heard such evidence in your area? In your recollection, what is the typical evidence used to prove "undue hardship"?

10. Is default time a meaningful consequence for non-payment of the surcharge? Besides incarceration, what other remedies for non-payment could be considered?

11. In 1999 when the federal government amended the surcharge provisions in the Code they anticipated increased revenues. In many jurisdictions these increased revenues have not materialized. In your opinion, why has the anticipated revenue not been realized?

12. Are there any issues which we haven't covered that you would like to comment on?

Interview

Guide for Programs/Policy – Restitution and Surcharge

Restitution

1. Can you describe the different programs that have been in place in Saskatchewan for restitution enforcement in the past number of years? *(NB: Timeframe will depend on the corporate history of those being interviewed. For example, it could be the past 4 years or past 8-10 years. It will be important to capture the shift in program structure in 05/06 from Corrections to Victims.)*

2. What are the benefits of the current program and its structure?

3. What are some of the remaining challenges or limitations of the program? Do you have any ideas on how to address those challenges/limitations?

4. Can you describe some of your successful interventions? Why were these successful?

5. How well do you think victims understand the restitution process? Explain.

6. How well do you think offenders understand the restitution process? Explain.

7. Are there any other comments/observations you would like to make about restitution?

Surcharge

1. Can you tell me what your understanding of the federal victim surcharge is? What is its purpose, and how is it applied?

2. Do you fundamentally agree with the philosophy behind the surcharge? In your opinion is the federal victim surcharge a meaningful consequence?

3. What is your perception regarding the usage of funds received from the federal victim surcharge? For instance, what do you think happens to the money collected?

4. Do you feel the % presently being imposed / collected is satisfactory?

5. What has SK done to improve the awareness of the federal victim surcharge for all parties involved, e.g., crowns, defence, judges and offenders? How were you made aware of surcharge provisions? Has SK done anything to make professionals and offenders aware of the surcharge provisions? Can you give examples?

6. In your recollection, how often is the federal victim surcharge discussed in court (i.e. by Crown, defence, judge)? Who typically raises the issue, and why?

7. In practice, does court assume automatic imposition of the federal victim surcharge? If not, what practices or "understandings" have evolved at your local level?

8. When the federal victim surcharge is waived, is a reason typically stated? If yes, what is the reason typically given?

9. The Criminal Code provides for means tests to prove undue hardship. In your experience have you seen or heard such evidence in your area? In your recollection, what is the typical evidence used to prove "undue hardship"?

10. Is default time a meaningful consequence for non-payment of the surcharge? Besides incarceration, what other remedies for non-payment could be considered?

11. In 1999 when the federal government amended the surcharge provisions in the Code they anticipated increased revenues. In many jurisdictions these increased revenues have not materialized. In your opinion, why has the anticipated revenue not been realized?

12. Saskatchewan has entered into Canada Revenue Agency's Refund Set-Off Program, which allows the province to recover an individual's unpaid fines from his/her income tax refund or GST credit. From your perspective what impact has/will the program have on the collection of federal victim surcharge revenues?

13. Are there any issues which we haven't covered that you would like to comment on?

Interview
Guide for Probation – Restitution

1. What is your role in the restitution process?

2. Would you say that restitution enforcement is a priority for probation officers in general? For you?

3. How do you ensure compliance with restitution? What do you/can you do to encourage compliance?

4. What is the most effective form of a restitution order as part of probation/ (e.g. monthly payments compared to pay by end of probation)

5. Do you ever see stand-alone orders, be it separate from the community-based sentences or where restitution has been divided with a portion on the community based-sentence and a portion through stand-along?

6. Would you recommend any changes to the restitution process to improve enforcement of restitution orders for victims? Please explain.

7. How do you find the relationship/set-up between Victim Services Restitution Program and Probation Services?

8. Are there any other comments/observations you would like to make about restitution?

Interview

Guide for Courts – Restitution and Surcharge

Restitution

1. How is restitution orders registered and enforced? Is this consistent across the province?

2. What is your role in the restitution process?

3. What are the barriers in enforcing restitution orders?

4. What could be done to improve restitution processes for victims of crime?

5. Is it possible to determine the numbers of restitution orders registered with the Registry (Queen's Bench Court)?

Surcharge

1. Can you tell me what your understanding of the federal victim surcharge is? What is its purpose, and how is it applied?

2. Do you fundamentally agree with the philosophy behind the surcharge? In your opinion is the federal victim surcharge a meaningful consequence?

3. What is your perception regarding the usage of funds received from the federal victim surcharge? For instance, what do you think happens to the money collected?

4. Do you feel the % presently being imposed / collected is satisfactory?

5. What has SK done to improve the awareness of the federal victim surcharge for all parties involved, e.g., crowns, defence, judges and offenders? How were you made aware of surcharge provisions? Has SK done anything to make professionals and offenders aware of the surcharge provisions? Can you give examples?

6. In your recollection, how often is the federal victim surcharge discussed in court (i.e. by Crown, defence, judge)? Who typically raises the issue, and why?

7. In practice, does court assume automatic imposition of the federal victim surcharge? If not, what practices or "understandings" have evolved at your local level?

8. When the federal victim surcharge is waived, is a reason typically stated? If yes, what is the reason typically given?

9. The *Criminal Code* provides for means tests to prove undue hardship. In your experience have you seen or heard such evidence in your area? In your recollection, what is the typical evidence used to prove "undue hardship"?

10. Is default time a meaningful consequence for non-payment of the surcharge? Besides incarceration, what other remedies for non-payment could be considered?

11. In 1999 when the federal government amended the surcharge provisions in the Code they anticipated increased revenues. In many jurisdictions these increased revenues have not materialized. In your opinion, why has the anticipated revenue not been realized?

12. Are there any issues which we haven't covered that you would like to comment on?