



Victims Bill of Rights On-line Consultations Summary Report

**Policy Centre for Victim Issues
Department of Justice Canada**

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Introduction

On February 4, 2013, the Minister of Justice announced the Government of Canada's intention to enhance the rights of victims by bringing forward legislation to create a Victims Bill of Rights (VBR). In order to inform the development of this legislation, the Government launched a public on-line consultation on May 1st, 2013, to seek the views of various stakeholders within the criminal justice system, members of the civil society and the general public. The on-line consultation closed on September 27th, 2013.

Methodology

A discussion paper (available at <http://www.justice.gc.ca/eng/cj-jp/victims-victimes/vrights-droitsv/>) was developed in order to provide stakeholders and the general public with an overview of the Canadian context with regards to victims of crime as well as recent efforts to improve responses to victims of crime and to seek views on a Victims Bill of Rights through a set of specific questions to consider:

- 1) What is the purpose of a Victims Bill of Rights? What should be its relationship with other federal laws?
- 2) What are the most important elements that could be recognized as rights in relation to:
 - a. information for victims;
 - b. participation by victims in the criminal justice system;
 - c. redress for victims from offenders; and
 - d. protection for victims.
- 3) Are there particular points in the criminal justice process when these victim rights should be recognized (e.g. upon release of the offender, at trial, at sentencing)?
- 4) Should any limitations be attached to the rights included within a Victims Bill of Rights (e.g. availability of resources, the best information available at the time, etc?) What should these limitations be?
- 5) Should victims of crime have the right to have legal counsel appear on their behalf to assert their rights in criminal proceedings?
- 6) What remedies could be available for a victim following a breach of their right? What should be the impact of a remedy on a validity of a decision or proceedings?

In addition to this on-line consultation paper, these questions were shared via the Department of Justice Canada's Facebook and Twitter accounts. Responses to the questions via these social media sites were negligible, with the majority of responses received via the Department of

Justice's website (<http://www.justice.gc.ca/eng/cj-jp/victims-victimes/vrights-droitsv/>), or sent to an e-mail address created for this purpose (victimrights@justice.gc.ca). Some submissions were sent to the Department of Justice by regular post.

A total of 319 submissions from a variety of stakeholders, including victims of crime, victim advocacy organizations, provincial and territorial officials or organizations, criminal justice associations, and criminal justice system stakeholders were received: 313 submissions were received during the on-line consultation (May 1st to September 27th, 2013) and six (6) submissions were received shortly after the end of the consultation period, but were included in this analysis. Submissions included personal stories of victimization, individual or organizations' opinion or commentary to specific issues, including the questions posed in the discussion paper, as well as positions on the Victims Bill of Rights or components it should include.

Every submission received was read and analyzed by the Policy Centre for Victim Issues. A total of 41 submissions were excluded from the analysis due to lack of relevancy to the VBR, or the questions posed, or undecipherable content. Weekly summaries were prepared to keep abreast of themes and recurring issues.

There are several considerations to keep in mind when reviewing the summary of submissions. First, victim legislation, victim services, and the role of victims in the criminal justice system are grounded in a complex legal system and constitutional framework that many may not fully understand or may have misconceptions about; these misconceptions may have guided some responses. Secondly, many respondents expressed the firm view that the system does not need to be altered, advocating instead for the *status quo*. Finally, victimization is an inherently emotional and often traumatic experience, and many of the submissions shared by victims of crime reflected the impact of the experience on their personal lives.

Results – Top Issues

All submissions that were received, including those that specifically responded to the six discussion questions contained in the consultation paper, and those that did not explicitly address them, were analyzed and the top issues are identified below.

Importance of Information

Numerous submissions from a variety of stakeholders, including victims and victim services organizations, expressed the importance of information for victims of crime. The provision of information was often expressed as a possible function of the proposed VBR, with some respondents suggesting that the VBR should explicitly task specific professionals with the provision of certain information to victims of crime. This includes case-specific information about the offender who harmed them as well as general information about the justice system, its processes and the opportunities to participate in the process.

Financial Considerations

Numerous submissions addressed the financial impact of victimization on victims, including concerns about loss of income as a result of the crime and inability to work, out of pocket expenses related to criminal proceedings, and additional costs that were borne by victims. In some cases, these expenses placed people in situations of serious financial hardship.

Financial compensation was also a key issue raised frequently in the submissions. Victims and victim advocates called for greater access to compensation to help victims recover from the victimization and to defray the financial burden the victimization created for them. Concerns were raised about the inconsistency between victims' injury compensation programs across Canada, and it was suggested a number of times that the federal government should take a leadership role on the issue of compensation, by exploring the possibility of cost-sharing agreements with provinces and territories.

Protection

Victim safety generally, including the enhancement of protection measures for victims, was mentioned in many submissions. Victim protection was expressed as a possible function of the proposed VBR. It was also noted by respondents that the protection of victims should be a key consideration of criminal justice professionals including to keep a victim safe from the offender, facilitating their participation in the criminal justice system process, and preventing re-victimization.

A number of submissions noted that particular victims require specific protection throughout the criminal justice process, including children, victims of spousal violence or sexual violence, Aboriginal victims, victims of human trafficking, victims with disabilities and seniors. Respondents also expressed the need for specific protection measures for vulnerable victims/witnesses when testifying in the form of more easily accessible testimonial aids.

Many respondents noted that the VBR should not only protect victims, but also reflect the need to protect and serve vulnerable victims of crime, such as children, women, the elderly and those with disabilities. In addition, there was concern that Aboriginal victims have specific needs and concerns that should be advanced through the VBR.

Secondary victimization

Numerous submissions addressed the issue of secondary victimization, that is, cases where the victim is "re-victimized" by his/her experience in the criminal justice system. Examples cited included: not being provided with information about court dates, not being invited to participate in plea negotiations, or even not being told when they have taken place, and general feelings of the justice system favouring the accused/offender and providing greater protections to them throughout the criminal justice process.

Restorative justice

A number of respondents made reference to the benefits of restorative justice for victims who choose to participate. A restorative process can be used pre or post sentence, and generally involves the victim, offender (and sometimes other individuals that have been impacted by the crime) meeting to develop ways to address the harm that has been done.

Respondents noted that in some cases, restorative justice processes can provide the victim with information that they would not otherwise be able to access, and that this was a fully participatory process for victims. Many submissions made note of the existing research into the high success rate of repayment of restitution orders by offenders that participate in a restorative process.

Participation and Consideration

In the submissions received, many respondents indicated that the purpose of the VBR should be to provide victims with respect, compassion, dignity, and to provide them with an opportunity to participate in the system and have their views inform decision makers. Specific interest was expressed in victims being able to provide input on the sentence and being involved in plea negotiations

Needs of Victims of Specific Crimes

Several submissions indicated that victims of particular crimes (e.g. homicide, impaired driving, financial crimes, domestic violence, sexual violence, etc.) have specific needs/vulnerabilities that should be considered in the criminal justice system.

Victim services and programs

Victim services were identified as very important in meeting the needs of victims. Respondents also noted the importance of counselling and other “healing strategies” for victims. Many respondents called for increased funding for services and expressed the need for adequate referral practices.

Remedies and Enforceability

A number of submissions expressed the need for the VBR to be enforceable and to be directive, avoiding words such as “should”. Similarly, numerous suggestions for remedies for breaches of rights guaranteed under the VBR were made, ranging from curative measures, such as an apology, to more punitive ones, such as civil suits against the State.

Results – Top Issues with Divergent Perspectives

Many of the issues raised in the submissions were seen in a very different light by different respondents and these issues lack a consistent recommendation. In these cases, while some felt strongly that efforts be focused on moving the issue in one direction, others expressed the view that efforts in that direction would be detrimental.

Definition of “victim”

Many respondents noted that in a criminal trial, there are technically no “victims” until the accused is found guilty by the court. The person to whom harm was allegedly done is a “complainant” throughout the criminal trial process. To use the term “victim” before a finding of guilt negatively impacts the fundamental principle of the accused’s right to be innocent until proven guilty. A number of respondents, who noted the difference between “complainant” and “victim”, advocated a narrower definition of victim for inclusion in the VBR, or one that offered certain rights to “complainants” or “witnesses” during a criminal trial, and other rights to “victims” after a finding of guilt.

On the other hand, many respondents advocated for a very broad definition of victim, to ensure that primary and secondary victims are provided with similar rights throughout the process. Some respondents called for a definition that would provide rights to victims who choose not to report their victimization to the police.

Balancing the rights of the accused and of the victim

The notion of balancing the rights of the accused and the victim was a significant theme. While many respondents indicated that there is a need to give victims more rights to balance the system, others indicated that the balance is as it should be, with the majority of rights for the accused, citing fundamental principles of justice and the threat faced by the accused of a loss of liberty as reasons why the accused is (and should continue to be) provided with such rights in a criminal trial. Some respondents noted that it is a false dichotomy that rights can only be given to one group (victims) at the expense of rights being provided to another group (accused / offenders).

Victim Impact Statements (VIS)

While many respondents noted that the VIS was an appropriate right and forum for victim participation, and that the *status quo* was desirable, others felt that there should be additional points in the system where victims should be able to share their views.

Legal representation / legal standing

While many respondents were supportive of victims having legal counsel, others expressed concern about the impact that this would have on the relationship between the Crown and the victim.

Similarly, many respondents were supportive of providing victims full legal rights to participate in the process, just as many expressed significant concern with victims becoming a party to the criminal proceedings, which would challenge the foundation of the system, negatively impact Crown discretion, and foster an adversarial relationship between the Crown and the victim.

Results – Top Cautions

Cautions or concerns about the development of a VBR were also expressed during this consultation, mostly from criminal justice stakeholders and provincial/territorial government officials.

Presumption of innocence

Many respondents spoke of the impact a VBR may have on the presumption of innocence if rights were extended prior to a finding of guilt. As discussed previously in this report under the “definition of victim” heading, many submissions articulated that to acknowledge a person as a “victim” before a finding of guilt in a criminal trial negatively impacts the fundamental principle of the accused’s right to be innocent until proven guilty. The presumption of innocence is a right provided to the accused in order to counteract the immense power of the state, and in order to avoid the potential imprisonment and loss of liberty of innocent individuals.

Justice Efficiencies

Concern was expressed with regards to the potential impact of the VBR on the functioning of the justice system: for many, increased involvement of victims in the system through the VBR will lead to increases in court process delays, which may lead to stays of proceedings or dismissals of charges. Many noted that this would result in negative consequences for the victim, which would be contrary to the intent of the VBR.

Cost

Concern has also been expressed vis-à-vis the potential cost of the VBR. Some have expressed the need for increased funding to provinces/territories and services providers, while others are concerned that existing funds may be redirected away from successful existing programs, which could be detrimental to victims. As well, many have suggested that the VBR should include federal funding for victim services. Some have called for a cost-sharing plan to implement the VBR across the country.

Crown discretion

Concern was expressed with regards to the potential negative impact the VBR would have on the fundamental principle of Crown discretion, integrity and independence. Some respondents expressed concerns that if a Crown prosecutor had to consult and consider a victim's wishes in every decision they make, or face a punitive remedy, the discretion provided to them to make objective decisions would be eroded.

Constitutional division of powers

Many submissions noted concerns about the federal government's jurisdiction under the *Constitution Act of 1867* to enact a VBR that would directly impact the provincial responsibility of the administration of justice. Some submissions suggested that the development of such legislation is beyond the jurisdiction of Parliament, and that the existing provincial / territorial victims' legislation should be respected.

Resources better used to prevent victimization

Crime prevention, and its role in addressing victimization, was often mentioned as an important consideration. In particular, a number of submissions suggested that the funds and other resources that will be utilized to develop and implement the VBR would be better used to address the root causes of crime and thus, prevent victimization. Some of these submissions noted the close link found by research between victimization and offending behaviour, and noted the increasing criminalization of low-income women and Aboriginal people as creating criminals out of victims. Many of these submissions recommend that resources be spent on programs to address homelessness, poverty, addiction, literacy and increased access to health care.

Conclusion

The on-line consultation was an important step in the development of the Victims Bill of Rights. A variety of key stakeholders, including victims, victims' advocates, federal/provincial/territorial officials and organizations and members of the general public, were provided an opportunity to provide views on this important next step for victims of crime. Submissions gave them a voice in improving the justice system for victims of crime.