



## **The Federal Victim Surcharge in the Northwest Territories**



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# The Federal Victim Surcharge in the Northwest Territories

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## Executive Summary

A victim surcharge is an additional penalty automatically imposed on offenders at the time of sentencing unless the accused seeks waiver due to undue hardship. There is a federal and in most jurisdictions, a provincial/territorial surcharge that is collected and retained by the provincial and territorial governments, and used to help fund programs, services and assistance to victims of crime within the provinces and territories.

The federal victim surcharge (FVS) was first enacted in 1988 and proclaimed in 1989. Further amendments were enacted in 1999. The original provision required the judge to order the surcharge, while the 1999 amendments made the surcharge automatic (although judges retain discretion to waive the surcharge for reasons of hardship). Currently the federal surcharge is 15% of any fine imposed on the offender; or if no fine is imposed \$50 in the case of an offence punishable by summary conviction and \$100 in the case of an offence punishable by indictment; or an increased surcharge, at the discretion of the judge, in appropriate circumstances.

Challenges with imposition and enforcement have resulted in lower than expected revenues. These low revenues led the Attorney General of Manitoba to propose in January 2005 that the amount of the victim surcharge in the *Criminal Code* be increased from 15% on fines to 20%. Federal, provincial and territorial (FPT) officials agreed that research on the surcharge should be conducted to determine how the surcharge is being applied in different jurisdictions, and to understand why the expected revenues from the 1999 amendments are not being realized.

To date a similar study has been conducted in New Brunswick<sup>1</sup>, however, up until these recent studies no comprehensive research has been done on the federal victim surcharge in Canada.

The current project seeks to answer the following key questions:

- 1) Does the Northwest Territories (NWT) assume automatic imposition unless waived by the judge and if so, are court forms developed in this way?
- 2) Are policy directives in place related to Court administration of automatic imposition and are those directives being followed?
- 3) What are the enforcement strategies in place in the NWT and what if any are the consequences of non compliance?
- 4) Is the default formula in the *Criminal Code* meaningful for collection and is it a meaningful consequence?
- 5) What other options could be considered for collection and what if any impediments would need to be overcome jurisdictionally to implement options other than default time as a penalty?
- 6) What are the rates of waiver? What are the rates of compliance in the NWT?
- 7) Why has the anticipated revenue from the 1999 amendments to the *Criminal Code* provisions related to surcharge not been realized?

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<sup>1</sup> Law, M.A. and S.M. Sullivan. *Federal Victim Surcharge in New Brunswick: An Operational Review* (Ottawa: Department of Justice Canada, 2006).

The study adopts quantitative and qualitative methods, using data from three sources in the analysis. Quantitative data was obtained from the FACTS database, which contains administrative data from the Government of the NWT Courts, and through a manual file review of 523 court files. In addition, qualitative data was obtained through 17 semi-structured interviews with personnel in the NWT justice system.

## **Key Findings**

Overall, analysis of the FACTS data indicates that revenue shortfalls are due more to high waiver rates than low collection.

Analysis of the FACTS data revealed a total of 7,319, or 70% of 10,534 convictions had the federal victim surcharge waived in the 2000-2005 time period. By region, Yellowknife had the highest waiver rate at 73%, followed by Inuvik, at 68% and Hay River at 66%.

Custodial sentences, such as intermittent jail and incarceration had very high waiver rates at 83% and 94% respectively, territory-wide. In contrast, fines had the lowest rate of waiver at 30% at the territorial level.

The data indicates that driving while impaired offences have a significantly lower waiver rate, at 40% territory-wide, and as low as 33% in Inuvik. To a lesser extent drug offences also have lower waiver rates at 56% territory-wide, and in Hay River sex offences have a lower than average waiver rate at 57%.

At the territorial level, the waiver rates for offences against the person, excluding sex offences, are the highest of all offence types at 77%. This high waiver rate is notable given that the intent of the victim surcharge legislation is to increase accountability of the offender towards the victim.

While waiver rates remain high regardless of whether or not a victim was identified, all three regions had higher waiver rates for cases that had identifiable victims than for those that did not (e.g. driving while impaired, bail violations). This is particularly true in Yellowknife, where 80% of cases where a victim was identified had the federal victim surcharge waived, which is 13% higher than cases with no victim.

A multivariate analysis of factors influencing FVS waiver revealed that offences against property, offences against justice, and drug offences were all strong predictors of FVS waiver. In contrast, fines and probation were significantly less likely to have the surcharge waived.

The data also shows a relatively high proportion of the surcharges imposed by judges were collected (83.5% at the territorial level), indicating that when the surcharge is imposed by judges, a high majority of offenders do eventually pay. Incarceration is the disposition type with the lowest proportion collected. However, with collection as high as 83.2% in Yellowknife (and a territorial average of 73%), it appears that the assumption that offenders in custody are unable to afford a surcharge is not substantiated.

The manual file review of a random sample of 523 court files sought to reveal the documentation practices in the three court registries. However, due to data quality issues, the data is not reported quantitatively. A qualitative review of the coding sheets revealed that the NWT has proper documentation policies in place in the Territorial courts. However in many cases these practices are not being followed because the surcharge is not always addressed in court.

The key informant interviews further illuminated the federal victim surcharge regime in the NWT. A majority of informants (71%), including the judges, had a positive view of the federal victim surcharge. While some informants praised the surcharge for its focus on victims, others cautioned that although it is a good idea in theory its potential is not being realized due to low enforcement. There was divergence among informants when asked if the FVS was a meaningful consequence. Many of those who felt the surcharge was not a meaningful consequence (n=9) felt that this is due to the lack of connection made by the offender to the victim; and a general lack of awareness of the purpose of the surcharge on the part of the offender.

While all informants were aware of the surcharge, there was generally a sense that the Government of the NWT had done little to increase knowledge among professionals and offenders of the surcharge provisions. There was also some uncertainty about where the money from the FVS goes, although for the most part people either knew, or guessed correctly that the money goes towards victims programs. Perhaps due to this lack of awareness a majority of informants expressed an interest in obtaining more information about the FVS and about how the revenue is used.

Eight respondents agreed with a symbolic increase in the amount of the FVS (while 6 disagreed); although most respondents, both those who felt the surcharge should be increased and those who felt it should not, felt the focus should be on imposition and enforcement at the current rate rather than increasing the monetary amount of the surcharge.

When asked about the automatic nature of the surcharge 10 out of the 17 informants felt that the surcharge was not being applied automatically. In fact, the perception is that the tendency is towards an automatic waiver for custodial sentences and an automatic imposition for fines.

According to key informants, a new NWT policy directive which emerged out of recent case law has made default time as a penalty for non-payment more difficult for the courts to impose.

Only one informant agreed that default time is a meaningful consequence for non-payment of the surcharge; the remainder either thought it was not a meaningful consequence, or felt that it was only meaningful in certain circumstances. Most believe that community service orders, license restrictions, and fine option programs are more suitable enforcement measures.





# 1. Introduction

Section 737 of the *Criminal Code* pertains to the federal victim surcharge. The federal victim surcharge is a monetary penalty imposed on offenders convicted or discharged of a *Criminal Code* offence or an offence under the *Controlled Drugs and Substances Act*. There is a federal and in most jurisdictions a provincial or territorial victim surcharge collected and used by provincial and territorial governments as one source of revenue for programs, services, and assistance to victims of crime within their jurisdictions. This research was undertaken to better understand the application of victim surcharge legislation in one jurisdiction, the Northwest Territories.

## 1.1 History of Victim Services in Canada

In Canada, government assistance to victims of crime first emerged in the late sixties with the development of the first provincial victim compensation programs. This later grew into formal cost-sharing agreements between the federal government and the provinces/territories for victim compensation programs. In 1988, the *Canadian Statement of Basic Principles of Justice for Victims of Crime* was endorsed by Federal-Provincial-Territorial Ministers Responsible for Justice. The Canadian Statement, which was based on the 1985 United Nations Declaration of Basic Principles of Justice for Victims of Crime, represented a uniform policy statement which would guide the development of victim-related policies, legislation and practices in the provinces and territories and in areas where the federal government has jurisdiction.

Also in 1988 Bill C-89 was passed, which allowed for amendments to the *Criminal Code*, including the introduction of victim fine surcharges (s.737). The original provisions allowed the judge discretion on whether or not to impose any surcharge. In terms of amount, the *Code* and the regulations set a maximum with offenders required to pay an amount up to 15% of fines and up to \$35 for other dispositions, with judges having discretion to impose a lower amount.

Federal funding for victim compensation programs was withdrawn in 1992 due to the forthcoming revenues that were expected from the federal victim surcharge. However, it was apparent early on that the surcharge was not raising the amount of revenue that was initially predicted. There were several reasons for this. First, many judges were waiving its imposition due to perceived hardship on an offender, and second, in some jurisdictions collection of the surcharge was not consistently enforced. These issues were apparent across the country, and while some jurisdictions did better than others in meeting expectations, generally the amount collected fell short.<sup>2</sup>

As a result of these issues, amendments were made to the surcharge provisions in 1999. Under these amendments the surcharge is imposed automatically; however, judges maintain discretion

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<sup>2</sup> <http://cmte.parl.gc.ca/Content/HOC/committee/361/juri/evidence/ev1038754/juriev72-e.htm> (1105)

to waive the surcharge where the offender is able to establish undue hardship. The new provisions allow for the surcharge to be waived if the offender can establish undue hardship to either her/himself or his/her dependants as a result of the imposition of the surcharge. When the surcharge is waived by the judge, the legislation requires that the reasons be stated in the record of proceedings (s.737 (6)). Another major change to the provisions included an increase to the monetary amount of the surcharge. Currently, the federal surcharge is 15% of any fine imposed on the offender; or, if no fine is imposed, \$50 in the case of an offence punishable by summary conviction and \$100 in the case of an offence punishable by indictment; or, an increased surcharge at the discretion of the judge.

Other important provisions in the surcharge legislation relate to enforcement measures. The legislation states that the fine option program cannot be used to discharge a surcharge (s. 737(10)). Also, 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, second to the surcharge and then to the fine.

## 1.2 Victim Services in the Northwest Territories

The Northwest Territories (NWT) is the largest of the three territories with a population of 41,861 (as of July 2006), almost half of whom live in Yellowknife. In addition, the NWT has a large Aboriginal population, with roughly half the inhabitants being of Aboriginal ancestry.<sup>3</sup> Despite their small population, the territories have historically had some of the highest crime rates in Canada.<sup>4</sup>

In terms of the organization of the justice system in the NWT, the territorial court system is structured in the same way as the provincial courts. This includes a Supreme Court (known as Superior Courts in some jurisdictions), and a Territorial Court, in addition to an Appeal Court, a Youth Justice Court, and Justices of the Peace. In all three territories, the Public Prosecution Service of Canada is responsible for prosecuting all *Criminal Code* offences and offences under other federal statutes. The court system in the NWT is organized into three registries which deal with the administration of the NWT courts. The court registries are situated in Yellowknife, Hay River, and Inuvik.

In 1988, the Northwest Territories passed one of the first *Victims of Crime Acts* in Canada. This Act established the Victims Assistance Fund (VAF), and provides for the appointment of a Victims Assistance Committee. The VAF is a special-purpose fund maintained with revenue from victim fine surcharges, while the Victims Assistance Committee makes recommendations to the territorial Minister of Justice on policies regarding the needs and concerns of victims of crime and on distribution of the VAF. The VAF is funded solely by the revenue from the federal and territorial victim fine surcharges. In the NWT, the territorial victim fine surcharge is outlined in section 12.1 of the *Victims of Crime Act*. The Act specifies that the territorial surcharge is to be 20% of fines and \$25 for other dispositions. Like the federal surcharge, the territorial surcharge can be waived, and as well, it can be reduced at the discretion of the judge.

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<sup>3</sup> <http://www.gov.nt.ca/research/facts/index.html>

<sup>4</sup> <http://www.statcan.ca/english/research/85-561-MIE/2005005/findings/trends.htm>

The VAF does not provide direct financial compensation to individuals but supports community-based projects and activities that provide services and assistance to victims of crime. The Victims Assistance Committee releases an annual report which details the disbursements from the VAF and reports on the nature of activities supported by fund disbursements.

There were two key reports that set the direction for the community-based model of victim service delivery that the Government of the NWT adopted and continues to support to this day.<sup>5</sup> As a result of the recommendations made in these reports, the Government of the NWT Department of Justice (GNWT Justice) established the position of the Victims Coordinator in the late eighties. The role of the coordinator is to support the work of the Victims Assistance Committee and to develop and support community-based victim services programs in the NWT. Shortly thereafter, the first victim services program was established in Yellowknife. Currently, GNWT Justice provides funding support to agencies in six NWT communities to deliver victim services: Inuvik, Fort Good Hope, Yellowknife, Hay River, Fort Simpson, and Fort Smith.

### **1.3 Purpose**

Since the 1999 amendments to the federal victim surcharge provisions, challenges with imposition and enforcement continue to result in lower than expected revenues in most jurisdictions. In January 2005, the Attorney General of Manitoba proposed that the amount of the federal victim surcharge be increased from 15% on fines to 20%. It was agreed by federal, provincial and territorial (FPT) officials that more research was needed to understand how the surcharge was working in different jurisdictions and what the challenges were to increasing its potential for the generation of revenue.

To date, this is the second project to result from these discussions; the first was conducted in 2006 in New Brunswick. Until these recent studies, there has been no comprehensive research on the federal victim surcharge in Canada.

This research seeks to describe the federal victim surcharge regime in the NWT. The study examines the way the surcharge is being applied in the NWT to determine strategies to increase its utility for victim services, and to provide information to FPT officials in order for them to determine whether a monetary increase to the surcharge is appropriate.

Specifically, the research seeks to answer the following key questions:

- Does the Northwest Territories (NWT) assume automatic imposition unless waived by the judge and if so, are court forms developed in this way?
- Are policies or directives in place related to court administration of automatic imposition and are those directives being followed?
- What are the enforcement strategies in place in the NWT and what if any are the consequences of non compliance?

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<sup>5</sup> An Analysis of Victims Needs in the NWT: Victims' Needs Assessment Study (1983), and An Assessment of the Needs of Victims of Crime in the Northwest Territories (1991)

- Is the default formula in the *Criminal Code* meaningful for collection and is it a meaningful consequence?
- What other options could be considered for collection and what if any impediments would need to be overcome jurisdictionally to implement options other than default time as a penalty?
- What are the rates of waiver? What are the rates of compliance in the NWT?
- Why has the anticipated revenue to be generated in the NWT from the 1999 amendments to the *Criminal Code* provisions related to surcharge not been realized?

## 2. Methodology

The study uses both quantitative and qualitative methods, using data from three sources in the analysis. Quantitative data was obtained from the FACTS database, which contains administrative data from the Government of the NWT Courts. A second dataset was obtained through a manual file review of 523 court files. In addition, qualitative data was obtained through 17 semi-structured interviews.

The quantitative analysis is based on a sample of 10,534 convictions from the FACTS database which includes an extract of a selection of variables taken from all convictions with disposition dates over a 5 year time period (2000 – 2005). These data were used to generate general statistics on the implementation and collection rates of the FVS in the NWT Courts.

The manual file review was conducted by NWT court staff who participated in a short training session conducted by the Department of Justice researcher. The review involved a random sample of 523 court files from the 2005-2006 fiscal year. The aim of the file review was to examine the documentation practices for the surcharge at the three court registries (Yellowknife, Inuvik, and Hay River).

The semi-structured interviews were conducted by a contractor selected by the Department of Justice through an informal competitive process. A total of 17 interviews were conducted with criminal justice professionals involved in the NWT justice system. The aim was to determine awareness of and attitudes towards the federal victim surcharge, and to gain insight into the practices surrounding the surcharge in the NWT Courts.

## 3. Findings

The results of the analysis of the FACTS data are presented first, followed by the results of the manual file review and finally the key informant interviews are discussed.

### 3.1 Quantitative Analysis: FACTS data

Data from court proceedings in the Northwest Territories are stored in the FACTS database. As part of this research, a set of variables was identified which would allow for an analysis of the

federal victim surcharge regime in the NWT. To begin the project, research agreements were signed with stakeholders at the GNWT Department of Justice, and an extract of data was taken from the FACTS database.

In some instances a single offender was convicted of multiple offences on the same day. According to the surcharge legislation, in these cases the surcharge should be imposed on each conviction. However for the purposes of this analysis, in cases with more than one conviction the most significant conviction given to the offender was selected to represent the case. “Most significant” was defined as the offence that received the most serious sentence. The most serious sentence was based on sentence type, and sentence length. The rank order of sentence seriousness follows: absolute discharge, conditional discharge, suspended sentence, fine, community service, probation, conditional sentence, intermittent custody, and incarceration. Where there was more than one conviction in a case with the same sentence type, then the conviction with the greater sentence length or amount (depending on sentence type) was selected as the most serious offence.

A total of 10,534 convictions with disposition dates between 2000 and 2005 (fiscal years) are used in this analysis. Due to some missing values in the FACTS database, in some instances the total number of convictions is less than 10,534. However, in all cases the number of missing values remained low enough so as not to interfere with the statistical validity of the results.

Section 3.1.1 explores the waiver rates of the federal victim surcharge, and section 3.1.2 explores the collection rates.

### **3.1.1 Federal Victim Surcharge Waiver Rates**

In order to determine the waiver rate for the entire territory, the base of 10,534 convictions was used. Analysis of the data indicates a total of 7,319, or 70% of convictions had the federal victim surcharge waived in the 2000-2005 time period. When broken down into regions<sup>6</sup>, the waiver rate varies somewhat, with the highest rate being found in Yellowknife at 73%. In Inuvik the waiver rate is slightly lower, at 68% and Hay River has the lowest waiver rate at 66%.

In the following tables, the waiver rates are further explored, using disposition type, offence type, gender, and presence or absence of a victim to examine the trends on a regional basis. First, the data was examined to determine the waiver rates for the surcharge based on disposition type (Table 1).

Custodial sentences, such as intermittent jail and incarceration had very high waiver rates at 83% and 94% respectively, territory-wide. This is consistent with information provided by key informants, which suggests that judges tend to waive the surcharge for individuals who are serving a custodial sentence, due to the perception that an individual in custody cannot afford to pay a surcharge. In contrast, fines had the lowest rate of waiver, at 29% across the territory. Again, this is in keeping with the key informant data, which suggests that the imposition of the surcharge is much more automatic for fines than for any other type of sentence.

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<sup>6</sup> See Appendix I for a description of the different regions

**Table 1.**  
**Federal Victim Surcharge Waiver Rates by Region and Disposition**

	<b>Total # Sentenced</b>	<b>% of Regional Total</b>	<b>Total FVS Waived</b>	<b>FVS Waiver Rate</b>
<b>Yellowknife</b>				
Conditional Discharge	110	2%	98	89%
Fine	1561	33%	538	34%
Probation	355	7%	181	51%
Conditional Sentence	26	1%	20	77%
Intermittent Jail	327	7%	269	82%
Incarceration	2355	50%	2234	95%
<b>TOTAL</b>	<b>4734</b>	<b>100%</b>	<b>3340</b>	<b>71%</b>
<b>Hay River</b>				
Conditional Discharge	55	2%	55	100%
Fine	1053	37%	287	27%
Community Service	1	0%	0	0%
Probation	252	9%	116	46%
Conditional Sentence	43	2%	40	93%
Intermittent Jail	193	7%	157	81%
Incarceration	1207	43%	1131	94%
<b>TOTAL</b>	<b>2804</b>	<b>100%</b>	<b>1786</b>	<b>64%</b>
<b>Inuvik</b>				
Conditional Discharge	25	1%	23	92%
Fine	779	34%	187	24%
Probation	112	5%	48	43%
Conditional Sentence	21	1%	13	62%
Intermittent Jail	83	4%	74	89%
Incarceration	1231	54%	1151	94%
<b>TOTAL</b>	<b>2251</b>	<b>100%</b>	<b>1496</b>	<b>67%</b>
<b>All Regions</b>				
Conditional Discharge	190	2%	176	93%
Fine	3393	34%	1012	30%
Community Service	1	0%	0	0%
Probation	719	7%	345	48%
Conditional Sentence	90	1%	73	81%
Intermittent Jail	603	6%	500	83%
Incarceration	4793	49%	4516	94%
<b>TOTAL</b>	<b>9844</b>	<b>100%</b>	<b>6677</b>	<b>68%</b>

An examination of waiver rates must also include a look at different offence types to determine if the surcharge is being waived more or less often for particular categories of crimes. As Table 2 indicates, the waiver rates for most offence types hovers around the territorial average of 70%. However, looking at driving while impaired (DWI) offences, drug offences, and to a lesser extent, sex offences, a different pattern emerges. The data indicates that driving while impaired offences have a significantly lower waiver rate, at 40% territory-wide, and as low as 33% in Inuvik. To a lesser extent drug offences also have lower waiver rates at 56% territory-wide, and in Hay River sex offences have a lower than average waiver rate at 57%.



**Table 2.**  
**Federal Victim Surcharge Waiver Rates by Region and Most Serious Offence<sup>7</sup>**

	<b>Total # Sentenced</b>	<b>% of Regional Total</b>	<b>Total FVS Waived</b>	<b>FVS Waiver Rate</b>
<b>Yellowknife</b>				
Offences Against Justice	1047	20%	824	79%
Offence Against Person	1414	27%	1106	78%
Offences Against Property	973	19%	789	81%
Sex Offences	104	2%	74	71%
DWI Offences	662	13%	281	42%
Drug Offences	338	7%	221	65%
Other Offences	618	12%	445	72%
<b>TOTAL</b>	<b>5156</b>	<b>100%</b>	<b>3740</b>	<b>73%</b>
<b>Hay River</b>				
Offences Against Justice	576	19%	416	72%
Offence Against Person	776	26%	582	75%
Offences Against Property	512	17%	381	74%
Sex Offences	69	2%	39	57%
DWI Offences	313	10%	128	41%
Drug Offences	157	5%	67	43%
Other Offences	608	20%	365	60%
<b>TOTAL</b>	<b>3011</b>	<b>100%</b>	<b>1978</b>	<b>66%</b>
<b>Inuvik</b>				
Offences Against Justice	522	22%	382	73%
Offence Against Person	867	37%	669	77%
Offences Against Property	407	17%	258	63%
Sex Offences	24	1%	14	58%
DWI Offences	220	9%	72	33%
Drug Offences	93	4%	40	43%
Other Offences	228	10%	164	72%
<b>TOTAL</b>	<b>2361</b>	<b>100%</b>	<b>1599</b>	<b>68%</b>
<b>Regional Totals</b>				
Offences Against Justice	2145	20%	1622	76%
Offence Against Person	3057	29%	2357	77%
Offences Against Property	1892	18%	1428	75%
Sex Offences	197	2%	127	64%
DWI Offences	1195	11%	481	40%
Drug Offences	588	6%	328	56%
Other Offences	1454	14%	974	67%
<b>TOTAL</b>	<b>10528</b>	<b>100%</b>	<b>7317</b>	<b>70%</b>

<sup>7</sup> Note: See Appendix II for description of offence categories.



At the territorial level, the waiver rates for offences against the person, excluding sex offences, are the highest of all offence types at 77%. This high waiver rate is notable given that the intent of the victim surcharge legislation is to increase accountability of the offender towards the victim. It is counter-intuitive that offences against the person have the highest waiver rate, as these are the offences most likely to involve a victim. Table 3 specifically examines cases where a victim was involved. While waiver rates remain high regardless of whether or not a victim was identified, all three regions had higher waiver rates for cases that had victims than for those that did not. This is particularly true in Yellowknife, where 80% of cases where a victim was identified had the federal victim surcharge waived, which is 13% higher than cases with no victim.

**Table 3.**  
**Victims, Federal Victim Surcharge Waiver Rates by Region**

<b>Yellowknife</b>	<i>Victim</i>	<i>No Victim</i>
Total # Sentenced	2089	3068
% of Regional Total	41%	59%
Total FVS Waived	1671	2070
FVS Waiver Rate	80%	67%
<b>Hay River</b>	<i>Victim</i>	<i>No Victim</i>
Total # Sentenced	1208	1803
% of Regional Total	40%	60%
Total FVS Waived	904	1074
FVS Waiver Rate	75%	60%
<b>Inuvik</b>	<i>Victim</i>	<i>No Victim</i>
Total # Sentenced	4586	5944
% of Regional Total	44%	56%
Total FVS Waived	3513	3806
FVS Waiver Rate	77%	64%

Table 4 depicts federal victim surcharge waiver rates by gender of the offender. Upon examination of the waiver rates in the three regions it was clear that there was little variation between regions, therefore only the aggregate territorial total is presented.

While males far outweigh females in total number of convictions, the waiver rates are almost identical, at 69% for males and 71% for females. This suggests that, while judges are using discretion when waiving the surcharge based on a variety of factors, such as type of offence, and type of disposition, there does not appear to be any consideration of gender when deciding whether or not to waive the surcharge.

**Table 4.****Gender of Accused, Federal Victim Surcharge Waiver Rates**

	<b>Total # Sentenced</b>	<b>% of Regional Total</b>	<b>Total FVS Waived</b>	<b>FVS Waiver Rate</b>
<b>All Regions</b>				
Male	7613	84%	5218	69%
Female	1503	16%	1071	71%
<b>Total</b>	<b>9116</b>	<b>100%</b>	<b>6289</b>	<b>69%</b>

**3.1.2 Multivariate Analysis – Factors Influencing FVS waiver**

Table 5 presents logistic regression coefficients for variables influencing FVS waiver as well as odds-ratio results. That is, the odds of a FVS occurring with one group compared to the odds of it occurring with another. The model predicted FVS waiver better than the null model,  $X^2$  (N=10530,  $DF=12$ ) =3065.82,  $p < .001$ .

The results of the logistic regression show that the strongest predictor of FVS waiver was offences against property, meaning that offenders who were convicted of an offence against property were more likely to have the FVS waived. Drug offences and offences against justice were also significant predictors of FVS waiver. In contrast, imposition of a fine and a sentence of probation were both weak predictors of FVS waiver, meaning offenders with those dispositions were much less likely to have the federal victim surcharge waived.

**Table 5.****Logistic Regression for Factors Influencing FVS Waiver**

	$\beta$	$\chi^2$	Odds Ratio
Gender	-0.62	97.27	0.54***
Fine	-3.70	2581.23	0.03***
Intermittent custody	-1.33	113.98	0.26***
Conditional Sentence	-1.44	26.78	0.24**
DWI	-0.44	20.09	0.66***
Drugs	0.21	3.40	1.24*
Offences against property	0.51	40.75	1.67***
Sex offences	0.21	0.79	1.19
Offences against justice	0.14	3.12	1.15*
Conditional Discharge	-0.47	2.67	0.63
Probation	-3.07	970.52	0.05***
Region - Inuvik	-0.27	15.20	0.77**

Note: \* $p < .1$  \*\* $p < .001$  \*\*\* $p < .0001$

### **3.1.3 Federal Victim Surcharge Collection Rates**

An examination of the data on the amount of surcharge revenue collected is important. This is because there is some question as to whether revenue shortfalls are due more to high waiver rates, low collection rates, or a combination of both. The following section examines the proportion of surcharge revenue collected out of the amount that was imposed, comparing the amount of surcharge that was imposed on offenders by the judge to the amount of surcharge offenders actually paid. To begin, the territory-wide collection data is presented, followed by a breakdown of the surcharge collection data by disposition and offence categories.

At the territorial level, the total amount of federal victim surcharges imposed on offenders in the 2000-2005 time period was \$237,330.50. Examination of the data on collection of the surcharge indicates that the actual amount of surcharge revenue received in this time period was \$198,189.07, a deficit of \$39,141.43, meaning that 85% of what was imposed was collected. These data show a relatively high amount of collection, indicating that when the surcharge is not waived by judges the majority of offenders eventually pay.

Table 6 begins with an examination of the collection data broken down by disposition. There are very high collection rates for most dispositions, with rates consistently in the 85-95% range. Incarceration is the disposition type with the lowest collection. Yet, with a proportion collected as high as 83.2% in Yellowknife (and a territorial average of 73%), it appears that the widespread assumption that offenders in custody are unable to afford a surcharge is not substantiated.

The average amount of surcharge imposed per offender is relatively high for all disposition types. At the territorial level, conditional discharges have the lowest average surcharges (\$57.14) and incarceration the highest average (\$86.55).

**Table 6.****Disposition, Federal Victim Surcharge Collection Rates by Region**

	# Convictions FVS Imposed	Aggregate Amount of FVS Imposed	Aggregate Amount of Surcharge Collected	Average FVS per Conviction (\$)	% Collected of Imposed
<b>Yellowknife</b>					
Fine	1021	\$ 74,883.00	\$62,290.00	\$73.34	83%
Conditional Discharge	12	\$ 700.00	\$700.00	\$58.33	100%
Probation	174	\$ 9,592.00	\$8,162.50	\$55.13	85%
Conditional Sentence	6	\$ 385.00	\$285.00	\$64.17	74%
Intermittent Jail	58	\$ 4,587.00	\$4,222.00	\$79.09	92%
Incarceration	121	\$ 11,680.00	\$9,157.42	\$96.53	78%
<i>Total</i>	<i>1392</i>	<i>\$101,827.00</i>	<i>\$84,816.92</i>	<i>\$73.15</i>	<i>83%</i>
<b>Hay River</b>					
Fine	766	\$50,284.00	\$42,404.75	\$65.64	84%
Community Service	1	\$37.00	\$37.00	\$37.00	100%
Probation	136	\$9,264.50	\$8,274.50	\$68.12	89%
Conditional Sentence	3	\$250.00	\$250.00	\$83.33	100%
Intermittent Jail	36	\$2,132.00	\$2,011.90	\$59.22	94%
Incarceration	76	\$6,114.50	\$4,614.50	\$80.45	75%
<i>Total</i>	<i>1018</i>	<i>\$68,262.00</i>	<i>\$57,592.65</i>	<i>\$66.88</i>	<i>85%</i>
<b>Inuvik</b>					
Fine	592	\$52,448.00	\$45,278.00	\$88.59	86%
Conditional Discharge	2	\$100.00	\$100.00	\$50.00	100%
Probation	64	\$4,895.00	\$3,685.00	\$76.48	75%
Conditional Sentence	8	\$635.00	\$535.00	\$79.38	84%
Intermittent Jail	9	\$785.00	\$785.00	\$87.22	100%
Incarceration	80	\$6,180.00	\$3,673.00	\$77.25	59%
<i>Total</i>	<i>755</i>	<i>\$65,043.00</i>	<i>\$54,056.00</i>	<i>\$86.15</i>	<i>83%</i>
<b>Region Totals</b>					
Fine	2379	\$177,615.00	\$149,972.75	\$74.66	84%
Conditional Discharge	14	\$800.00	\$800.00	\$57.14	100%
Community Service	1	\$37.00	\$37.00	\$37.00	100%
Probation	374	\$23,751.50	\$20,122.00	\$63.51	85%
Conditional Sentence	17	\$1,270.00	\$1,070.00	\$74.71	84%
Intermittent Jail	103	\$7,504.00	\$7,018.90	\$72.85	94%
Incarceration	277	\$23,974.50	\$17,444.92	\$86.55	73%
<i>Total</i>	<i>3165</i>	<i>\$234,952.00</i>	<i>\$196,465.57</i>	<i>\$74.23</i>	<i>84%</i>

Table 7 looks at FVS collection data by category of offence. Again, a relatively high proportion of surcharge revenue was collected, with sex offences having the lowest proportion (74%) and offences against person having the highest (88%). While both offence categories usually involve a victim, the proportion of surcharge revenue collected is higher for offences against the person (which includes one of the most common offences, assault).

Examining the average surcharge imposed by category of offence finds driving while impaired (DWI) offences with the highest surcharge amounts (\$112.10 at the territorial level). In contrast, sex offences have the lowest average surcharge imposed (\$40.39 at the territorial level). This finding is notable given that most DWI offences in this sample did not involve an identifiable victim<sup>8</sup>, while sex offenders inflict some of the most harmful consequences on victims. This is in opposition to the intent of the surcharge legislation, which aims to increase offender accountability to the victim and to help ameliorate harm to the victim.

**Table 7.**  
**Federal Victim Surcharge Collection Rates by Region and Offence Category<sup>9</sup>**

	# Convictions FVS Imposed	Aggregate Amt of FVS Imposed	Aggregate Amt of FVS Collected	Average FVS per Conviction (\$)	% Collected of Imposed
<b>Yellowknife</b>					
Offences Against Justice	227	\$13,220.75	\$10,828.75	\$58.24	82%
Offence Against Person	307	\$22,572.50	\$19,567.63	\$73.53	87%
Offences Against Property	184	\$9,065.50	\$7,563.00	\$49.27	83%
Drug Offences	117	\$7,461.00	\$5,843.00	\$63.77	78%
DWI Offences	383	\$40,807.50	\$34,762.50	\$106.55	85%
Sex Offences	30	\$982.00	\$719.50	\$32.73	73%
Other Offences	168	\$8,852.75	\$7,756.54	\$52.69	88%
<b>Total</b>	<b>1416</b>	<b>\$102,962.00</b>	<b>\$87,040.92</b>	<b>\$72.71</b>	<b>85%</b>
<b>Hay River</b>					
Offences Against Justice	158	\$6,693.25	\$4,884.25	\$42.36	73%
Offence Against Person	193	\$15,167.50	\$13,342.50	\$78.59	88%
Offences Against Property	132	\$7,469.00	\$6,406.15	\$56.58	86%
Drug Offences	90	\$5,891.50	\$5,447.50	\$65.46	92%
DWI Offences	184	\$22,261.25	\$19,133.75	\$120.99	86%
Sex Offences	30	\$1,481.00	\$1,036.00	\$49.37	70%
Other Offences	246	\$9,883.50	\$8,678.00	\$40.18	88%
<b>Total</b>	<b>1033</b>	<b>\$68,847.00</b>	<b>\$58,928.15</b>	<b>\$66.65</b>	<b>86%</b>
<b>Inuvik</b>					
Offences Against Justice	140	\$7,767.00	\$6,104.00	\$55.48	79%
Offence Against Person	202	\$23,949.50	\$21,484.50	\$118.56	90%
Offences Against Property	147	\$8,576.50	\$6,808.50	\$58.34	79%
Drug Offences	53	\$3,559.00	\$2,884.00	\$67.15	81%

<sup>8</sup> In this study most DWI offences did not involve a victim. Less than 1% of convictions fell under *Criminal Code* s.255(2) and s.255(3) (impaired driving causing bodily harm and impaired driving causing death.)

<sup>9</sup> See Appendix II for description of Offence Categories



**Table 7.**

**Federal Victim Surcharge Collection Rates by Region and Offence Category<sup>9</sup>**

DWI Offences	145	\$16,747.00	\$14,555.00	\$115.50	87%
Sex Offences	11	\$405.00	\$ 375.00	\$36.82	93%
Other Offences	64	\$4,409.00	\$3,662.00	\$68.89	83%
<b>Total</b>	<b>762</b>	<b>\$65,413.00</b>	<b>\$55,873.00</b>	<b>\$85.84</b>	<b>85%</b>
<b>Regional Totals</b>					
Offences Against Justice	525	\$27,681.00	\$21,817.00	\$52.73	79%
Offence Against Person	702	\$61,689.50	\$54,394.63	\$87.88	88%
Offences Against Property	463	\$25,111.00	\$20,777.65	\$54.24	83%
Drug Offences	260	\$16,911.50	\$14,174.50	\$65.04	84%
DWI Offences	712	\$79,815.75	\$68,451.25	\$112.10	86%
Sex Offences	71	\$2,868.00	\$2,130.50	\$40.39	74%
Other Offences	478	\$23,145.25	\$20,096.54	\$48.42	87%
<b>Total</b>	<b>3211</b>	<b>\$237,222.00</b>	<b>\$201,842.07</b>	<b>\$73.88</b>	<b>85%</b>

The data were also examined to determine any trends in relation to collection and gender and whether or not there was a victim identified in the case. At the territorial level, the data found identical collection proportions between males and females (85%), while females had lower average surcharge amounts than males (\$62 versus \$76 respectively). For those cases where a victim was identified, the collection rate was slightly higher than for those where there was no identifiable victim (88% versus 84% respectively), although the average surcharge amounts were similar (\$74 victim versus \$73 no victim).

### 3.2 Manual File Review

The manual file review was undertaken to understand the specific documentation practices that have been adopted in the three court registries. According to s.737 (5) of the *Criminal Code* the default is for the surcharge to be imposed in all cases, unless the judge decides to waive it based on an application of hardship by the offender. In such cases, the reason for waiver is to be recorded on the file. The relevant sections state:

737 (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).

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

The manual file review examined a random sample of 523 court files from the three court registries. A one-page coding sheet was developed to be used by the court staff who conducted the review. The coding sheet included questions pertaining to the process by which a surcharge is either imposed or waived, and how waivers and impositions are recorded on file.

The review of files revealed that the practices taking place in the different court registries were not consistent. In the NWT Territorial Courts, there is a place on the front of the information

where clerks are supposed to enter a surcharge imposition (and amount) or waiver (and reason for waiver). The coding sheets and discussions with court staff revealed that in many cases, this process is not being followed.

There were three distinct patterns that emerged from the data. The first two are in keeping with the surcharge provisions in the *Criminal Code*, whereas the third appears to be based on local practices which have developed in the three court registries. In keeping with the legislation, in cases where the surcharge is imposed it is recorded on the information, the fine order, and where applicable, on the probation order. When the surcharge is waived, it is recorded on the information, and most often the reason recorded is “hardship”.

The third pattern which emerged from the data was less clear. Due to confusion with the data, some discussions with court staff were necessary to determine the nature of this third pattern. Based on these discussions it became apparent that the surcharge is not always addressed in court. In some cases this could be a judge telling a court clerk at the beginning of the day not to ask about the surcharge, because it will not be imposed today; and in other cases it is a matter of the judge failing to address it. In the latter case the default tends to be a waiver, rather than an automatic imposition.

In the NWT Supreme Court a different pattern emerged. Of the 29 Supreme Court files that were reviewed, the surcharge was waived in all cases. After discussions with court staff, it was determined that the Supreme Court has different practices when it comes to documenting the surcharge. The practice is to only document fines and surcharges when they are imposed, which means a waiver of the federal victim surcharge would never be noted on file. The fact that waivers are not being documented means that the file review could not identify if the surcharge had been addressed and waived in court, or if it was not addressed in court and waived as a default by court staff.

### **3.3 Qualitative Analysis: Semi-Structured Interviews**

The interview phase of the project was undertaken by a contractor selected by the Department of Justice Canada (DOJ) through an informal competitive process. A total of 17 key informants participated in the research. The informants included: a Supreme Court judge and a retired Territorial Court judge, one Justice of the Peace, three Crown attorneys, two defence attorneys, four court staff, and five victim services workers. The majority of interviews were conducted in person (n= 9) and the remainder were conducted via telephone (n=7) and in writing (n=1). Among informants, the amount of experience in the NWT justice system varied, from as little as 3 months, to as much as 26 years; however, the majority of informants were somewhere in the middle, having been involved in the NWT justice system for around 5-10 years.

The interviewer contracted by DOJ was provided with the interview guide, which was developed for use in a New Brunswick study on the federal victim surcharge and adapted for use in the NWT. The intent of the key informant interviews was to obtain the expertise and experiences of key informants. No attempt was made by the interviewer to intervene in cases where the responses provided by informants were inaccurate or factually incorrect. Also, due to the small

sample size the information provided by key informants is not intended to be generalizable beyond the sample.

The following analysis breaks down the interview guide section by section, highlighting the themes that emerged from the interview transcripts.

### **3.3.1 Information/Perceptions/Attitudes**

All informants were aware of the federal victim surcharge, and the majority had a reasonably accurate understanding of the purpose of the surcharge, how it is applied, and where the money goes.

When asked about their feelings towards the surcharge, the majority of informants had a positive response. Of these, many feel the surcharge is a great idea, and praise the fact that its goal is to aid victims. Even so, many respondents who had a positive view of the surcharge also cautioned that there needs to be more enforcement (i.e. it needs to be imposed more often) to make the surcharge worthwhile. Comments to this effect include:

- Anything to assist someone who has been a victim of crime is, of course, praiseworthy.
- I think it's a good idea. Focusing on the victim is important.
- I'm a believer that all too often in the criminal justice system we've forgotten about the victims... [the FVS] is great.
- I think it's a good idea... but they should enforce it more.
- I don't think it's being collected as it could or should.

Defence attorneys had a more negative view of the surcharge, arguing that it is more like a tax on the offender than a meaningful consequence, and suggesting that the money goes more to help prosecutors than victims (e.g. for such things as victim witness assistants).

When asked if they felt the surcharge was a meaningful consequence, only four respondents agreed. Another four either did not know or had no opinion, and the remaining nine felt the surcharge was not a meaningful consequence. Some of the reasons cited for this were the fact that offenders fail to make a connection between the surcharge and the victim, and a general lack of understanding on the part of the offender about the surcharge. Comments from informants on this issue include:

- I think when they find out there is a victims' (sic) surcharge, do they really know what it is. I'm not sure it's that meaningful for the offender.
- I think [offenders] just see it as an additional fine... I wouldn't say the surcharge on its own is a meaningful consequence for the offender... I don't think offenders understand what it is.
- I don't think the offender has any idea where the money is going... I don't think it's terribly well explained to the offender.
- I think [offenders] see it as a tax. I've heard offenders say that it's a tax. I've tried to explain what it's for, but they don't understand it.



One of the most interesting findings from the semi-structured interviews concerned perceptions regarding the usage of victim surcharge funds. There was considerable uncertainty among informants when asked if they knew how the surcharge funds were used, yet the majority of interviewees were correct in their responses. Many respondents answered that they were not sure where the money went exactly, but they thought it went to programs for victims. This uncertainty is evidenced in the following comments:

- The money goes to the Government of the NWT. I assume it all goes to the victims' programs.
- I don't know how it's divvied up and the programs, but I would think that the largest chunk would go to community programs.
- I believe it's collected and then given to programs such as the Victims Assistance Fund.
- I think the money is collected and put towards programs relevant to victims of crimes.

Only one respondent reported being aware of and reading the Annual Reports of the Victims Assistance Committee, which outline exactly where all the funding goes. Defence attorneys were the least knowledgeable about the usage of the funds, commenting that there was "no reporting" and "no tangible benefits". Perhaps due to this lack of awareness a majority of informants expressed an interest in obtaining more information about the FVS and about how the revenue is used.

When asked if the percentage currently being imposed on offenders is sufficient, five informants felt the amount should be higher and seven felt that the status quo is sufficient (the remaining five had no opinion). Overall, many respondents, both those who felt the amount is sufficient and those who felt it should be higher, agree that the surcharge is being waived too often. Similarly, slightly more than half of those who provided a response agreed that a symbolic increase in the amount of the surcharge would be appropriate to emphasize an offender's accountability to the victim (n=8, versus n=6 who disagreed). Again, within these responses the same sentiment emerged -- that the more pressing issue is the lack of enforcement of the existing surcharge provisions.

Respondents were asked how they were made aware of the surcharge provisions, and if they were aware of any efforts made by the Territorial government to improve awareness of the surcharge. According to many informants, it seems that there has been little effort made to increase awareness of the surcharge outside of a few posters and brochures. In fact, outside of those key informants involved in victim services, very few people were able to provide examples of initiatives to make people more aware of the surcharge. Although, judging from comments made by some informants, perhaps a part of this lack of awareness stems from a lack of interest in becoming more informed about the surcharge. As one informant commented, "I don't ever remember seeing any publications; maybe it's so dry I just dismissed it."

When asked how they personally became aware of the surcharge, some of the responses included:

- Judges'/Justices of the Peace education programs

- Crown attorney education programs
- Crown attorney “idiot sheets” reminding Crowns what to address in court
- College/University courses
- On-the-job training
- Media releases
- FPT Working Group on Victims of Crime
- Victims Assistance Committee orientation package
- Court directive to court clerks advising that the surcharge is mandatory
- Reading the *Criminal Code*

### 3.3.2 Imposition

Most informants reported being aware of the 1999 amendments to the surcharge provisions which made imposition of the surcharge automatic. Informants were asked about the practices in the NWT Courts around the application of the surcharge, specifically its automatic imposition. When asked this question many informants touched on the issue uncovered by the manual file review, that in many cases the surcharge is not even being addressed. The *Criminal Code* provisions state that the surcharge is automatic, meaning that when the surcharge is not addressed the default should be for the surcharge to be imposed. However, when this issue was brought up with key informants, there were varying perceptions of the automatic nature of the surcharge.

Some think that the surcharge is always being addressed and is automatically applied, while others believe it is being addressed inconsistently, and that it is certainly not being applied automatically. Regardless of their perceptions about how often the surcharge is being addressed, the majority of informants indicated that there is a high rate of waiver, and that this is particularly evident for custodial dispositions. Yet when asked about the practices that have evolved at the local level, the majority of informants (n=10) felt that the automatic nature of the surcharge was not apparent, particularly in cases where a custodial sentence is ordered. In fact, it seems the tendency is towards an automatic waiver of the surcharge in these cases. This is evidenced by the following comments made by informants:

- If it's a fine, it seems to be automatic... It doesn't seem to be automatic if they get a sentence other than a fine.
- In some cases they do, if they were given a fine.... In some cases, you don't even hear mention of it. It's not always automatic.
- When someone gets a fine, it's pretty much automatic. But when someone doesn't get a fine, particularly if they get jail... it seems like it's not.

The informants were also asked about the offender's onus to prove undue hardship. When asked if they were aware of the *Criminal Code* means tests for undue hardship and whether or not they had seen this used in court, the vast majority said they had never seen this test used. Most respondents reported no specific discussion or submissions being made in regards to undue hardship. Rather, the typical scenario seems to be that the defence makes general statements about the offender's socio-economic status, and perhaps makes a general statement about the

offender's ability to pay a fine. Based on information from the key informants, there is rarely specific mention of the offender's ability to pay a victim surcharge. To paraphrase one informant, the decision to waive the surcharge is often not based on formal evidence, but more on common sense inferences; for example, if the offender has been unemployed for the past five years the judge will likely presume that he/she is unable to afford a surcharge.

Almost all informants agreed (n=14) that the reason cited for waiver of the surcharge is hardship. Of the three who stated otherwise, one said they did not know and two stated that there was not usually a reason provided.

### 3.3.3 Collection/Enforcement

The only enforcement measure provided under the federal victim surcharge legislation is the default formula in the *Criminal Code* (s.734).<sup>10</sup> This formula allows an offender to be incarcerated for non-payment of a fine. The formula states that an amount equal to eight times the territorial minimum wage can be satisfied for each day spent in jail. The key informant interviews revealed a couple of reasons why default time as a penalty for non-payment of the federal victim surcharge is likely not being used very often in the NWT. First, the default formula as applied in the NWT is \$66 a day; therefore for many victim surcharges (which are often \$50 or less) the default time provisions cannot be used. As one informant explained, "(o)ur problem right now is that with our minimum wage, if it's less than \$66, he doesn't spend a single day in jail, because they're not rounding it up, they're rounding it down."

The other issue is that in the Northwest Territories there was recent caselaw which resulted in a change to the way non-payment of fines is handled by the NWT courts. This case (and/or resulting policy shift) was only mentioned by four of the informants. The case, *Boulet v. RCMP et al* (2005 NWTSC 90), was provided to the interviewer by one of the informants. The resulting policy change, which came into effect within the past year, has meant that default time as an option for non-payment of fines is, in practice, rarely if ever used. However, as one informant commented, it remains to be seen how the policy will play out in the long term as it is still relatively new.

Essentially, the ruling in *Boulet v. RCMP et al* stated that a genuine inability to pay a fine should not be grounds for committal. An offender should be allowed the opportunity to be heard by the courts before a warrant of committal can be issued. In the NWT, the resulting policy change means that the courts must send a letter to the offender indicating that they are overdue in their payment, and six months later a summons to court is sent for the offender to appear in court to explain why they have not paid their fine. Based on the responses of those informants who referenced the case, it appeared that there was some scepticism as to whether or not this process was a valuable use of time and resources.

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<sup>10</sup> Note the research did not take into account Sections 734.3 and 734.5 (a) & (b) that address the first steps that are supposed to be taken towards victim fine surcharge enforcement, even before considering default time for non-payment. Section 734.3 says that a court designated person can change the terms of the order including the time to pay as well as the manner in which the surcharge can be paid. Section 734.5 (a) & (b) say that officials can refuse to issue, renew or may even suspend license, permits, etc. until payment is made.

All key informants were asked to provide their opinion on whether incarceration was a meaningful consequence for non-payment of a federal victim surcharge. Of those who had an opinion, only one informant felt that it was a meaningful consequence, whereas eight thought it was not, and the remainder thought it was only meaningful in certain circumstances. For instance, one respondent commented, “it’s only meaningful if the [offender] has the ability to pay.”

When asked about other remedies that could be used to encourage payment, a variety of responses were given. The most common was community service (n=4), followed by fine options programs (n=3). Other responses included licence renewal restrictions, increasing default time, civil recovery programs, and adding it to income tax owing.

Most respondents declined to comment or did not know of any operational issues that had arisen out of the use of default time as a penalty. Of the few who did comment, most mentioned that jails are already overcrowded, and that it does not make sense to use up government time and resources to enforce the default provisions for non-payment of a small surcharge.

When asked if there are any jurisdictional issues that would need to be overcome to implement other remedies for non-payment of the surcharge, most informants could not think of any. Of the people who commented, some suggested that implementing licence restrictions may not be a good idea because, for one thing, many people who cannot afford to pay the surcharge would not have a licence or a car anyway. Also, there was some uncertainty about using licence restrictions as a penalty because it involves combining a territorial issue with a federal issue. Another informant wondered about the issues around using community service as a penalty for default, suggesting that it would be difficult to calculate how much community service would be required because often the surcharge amounts are so small. This person also suggested that it may be difficult to find organizations willing to participate given the types of criminals who tend to get the federal victim surcharge.

### **3.3.4 Implementation Issues**

When asked to speculate why the expected revenues from the 1999 amendments to the surcharge legislation have not been realized, eleven respondents provided their views, while six informants had no opinion. Of those who provided a response, many cited the high waiver and low enforcement rates as a reason for the lower than expected revenues, and the fact that, contrary to the legislation, the surcharge is not being applied automatically. Others mentioned lack of staff and other resources for collection as a major hindrance to meeting revenue expectations. One person mentioned the socio-economic conditions in the North, suggesting that the high number of Aboriginal offenders lack the resources to pay. Two informants (who were not judges) brought up the issue of judicial independence, suggesting that the judges may be reacting against a perceived interference by Parliament on their judicial independence.

## 4. Conclusions

The intent of the research into the federal victim surcharge in the Northwest Territories was to learn how the surcharge legislation is being interpreted and applied in the NWT, and to understand why the anticipated revenues from the 1999 amendments are not being realized. The goal is that these findings may generate possible solutions to the problems that have been identified in jurisdictions across the country since the 1999 amendments came into effect.

The FACTS data revealed high waiver rates (69.5%), particularly for those cases where a custodial sentence was issued (94%). This is consistent with the key informant interviews which suggest that the surcharge is often waived or not addressed in court, and that surcharge waivers are virtually automatic in cases where a custodial sentence is imposed. In contrast, offences with the lowest rate of waiver are those that are less likely to involve a victim (i.e. driving while impaired, 41% waiver rate).

The FACTS data also indicate that revenue shortfalls are due more to high waiver rates, than low rates of collection. At the territorial level the collection rate is relatively high, at 85%. And, this rate remains fairly high even for offenders who are incarcerated (75%). This goes against the prevailing attitude among judges, who argue that offenders in custody lack the means to pay a surcharge.

The data also indicates that the intent of the surcharge legislation, to increase offender accountability to the victim, is not being realized in the NWT. In fact, cases where there is a victim identified have higher waiver rates than those where there is no victim (77% versus 64%). Also, offences that typically do not involve a victim are receiving significantly higher surcharge amounts on average than those crimes that are associated with severe trauma to the victim (i.e. DWI average surcharge amount is \$112.10 versus sex offences \$40.39).

The manual file review and key informant interviews showed that the NWT Territorial Courts have proper documentation practices in place to record surcharge waivers. However, it is clear that automatic imposition of the surcharge is not the default. In many cases court clerks are unable to follow the directives because the surcharge is not always addressed in court. In contrast, the NWT Supreme Court has a different documentation system, which does not follow the surcharge provision requiring waivers to be documented on file.

The key informant interviews revealed that while informants were aware of the surcharge, most were unsure about what the surcharge revenues are used for. In addition, many informants expressed concern that offenders are unaware of the purpose of the surcharge, which defeats the intent of the legislation (making the offender more accountable to the victim). And, while many informants expressed an interest in increased education and awareness about the surcharge, based on the low rates of imposition, it is questionable as to whether this would be a valuable use of time and resources.

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Many informants felt incarceration was not a meaningful consequence for non-payment of a federal victim surcharge. And, according to some key informants, default time as a penalty for non-payment of a surcharge is not being applied in the NWT due to a recent policy directive. When asked about other remedies that could be used to encourage payment, a variety of responses were given. The most common was community service (n=4), followed by fine options programs (n=3). Other responses included licence renewal restrictions, increasing default time, civil recovery programs, and adding it to income tax owing.

The results of this research suggest that more focus should be placed on reducing waiver rates and challenging the assumption that offenders in custody are unable to afford a surcharge. In addition, while the findings indicate that more education and awareness about the surcharge is needed, perhaps this can be done in a targeted way. For instance, educating offenders about the purpose of the surcharge could be a means to increasing their awareness of and accountability to victims. While there are no simple answers to increasing federal victim surcharge revenues, further research in other jurisdictions may highlight best practices or new ideas about how to make the surcharge more effective.

# Appendix I

## Regional Breakdowns for FACTS Data Analysis

### Yellowknife

FORT SMITH  
FORT RESOLUTION  
LUTSELK'E  
DETAH  
YELLOWKNIFE  
BECHOKO  
ENTERPRISE  
FORT PROVIDENCE  
WHA TI  
EDZO  
RAE LAKES  
WEKWETI

### Hay River

HAY RIVER  
HAY RIVER RESERVE  
FORT SIMPSON  
JEAN MARIE RIVER  
NAHANNI BUTTE  
FORT LIARD  
WRIGLEY  
TUNGSTEN  
TROUT LAKE  
KAKISA  
NORMAN WELLS  
TULITA  
FORT GOOD HOPE  
DELINE  
COLVILLE LAKE

### Inuvik

INUVIK  
AKLAVIK  
FORT MCPHERSON  
TSIIGHETCHIC  
TUKTOYAKTUK  
SACHS HARBOUR  
ULUKHAKTOK  
PAULATUK



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## Appendix II

### Description of Offence Categories

Offences against justice

- Includes: contempt, failure to appear, bail violation, parole violation, escape at large

Offences against person

- Includes: assault, homicide, kidnapping, criminal negligence

Offences against property

- Includes: theft, robbery, breaking and entering,

Sex offences

- All *Criminal Code* Part V offences

DWI offences

- All *Criminal Code* s.253-s.255

Drug offences

- All offences under the *Controlled Drugs and Substances Act*

Other offences

- All other offences not included in the above categories



## Appendix III

### Key Informant Interview Guidelines

**Key Informant:**

**Agency:**

**Position:**

**Date:**

Y    M    D

**Interviewer:**

#### 2.1 Credentials and Experience

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##### 2.1.1 Academic discipline

Law    Psychology    Social Work    Other

##### 2.1.2 Number of months with Supreme Court

##### 2.1.3 Current work experience/position(s)

#### 2.2 Federal victim surcharge: Information/Perceptions/Attitudes

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2.2.1 Can you tell me what your understanding of the federal victim surcharge is? How is it applied?

2.2.2 How do you feel about the federal victim surcharge?

2.2.3 Firstly, what is your understanding of the purpose the federal victim surcharge and secondly in your opinion is the federal victim surcharge a meaningful consequence (for the offender)? Do you fundamentally agree with the philosophy behind the surcharge?

2.2.4 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?

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

2.2.6 Would a symbolic increase in the monetary amount of the federal victim surcharge be appropriate to emphasize offenders' accountability to the victim?

2.2.7 What has NWT 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



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of surcharge provisions? Has NWT done anything to make professionals and offenders aware of the surcharge provisions? Can you give examples?

## 2.3 Federal victim surcharge: Imposition

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- 2.3.1 In practice, does your court assume automatic imposition of the federal victim surcharge? Are you aware that the offender shall pay a surcharge unless waived by the court? How is the automatic nature of the imposition of the federal victim surcharge reflected in court documentation/proceedings? For instance, is the imposition/waiving of the surcharge noted on the back of the information?
- 2.3.2 Are you aware that in 1999 the law was changed to ensure that the imposition of the surcharge was automatic? In your recollection – is the surcharge being imposed in every case? If not, what practices or “understandings” have evolved at your local level?
- 2.3.3 The Criminal Code provides for means tests to prove undue hardship. In your experiences have you seen or heard such evidence in your area? In your recollection, what is the typical evidence used to prove “undue hardship”?
- 2.3.4 From your recollection...when the federal victim surcharge is waived, is a reason typically stated? Is this reason recorded as part of the endorsement on the back of the Information?
- 2.3.5 From your recollection, what is the typical reason(s) given for non-imposition?
- 2.3.6 In your recollection, how often (never/seldom/frequently/very frequently) have the defence directly spoken to an offender’s ability to pay?
- 2.3.7 Do you believe the federal surcharge should be mandatory as is the provincial...If so, why? If not, why not?
- 2.3.8 Are there any other thoughts you have on the imposition of the FVS that you would like to speak to?

## 2.4 Federal victim surcharge: Collection/Enforcement

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- 2.4.1 As you may know, if an offender fails to pay the federal victim surcharge, (s)he may be incarcerated for non-payment based on the default formula whereby an amount equal to eight times the territorial minimum wage can be satisfied for each day spent in jail. If, for example, an offender failed to pay a \$50 surcharge, this would only result in a single day's incarceration. At present, incarceration is the only enforcement remedy in use. What other remedies could be used to encourage payment?

- 2.4.2 Is default time a meaningful consequence for non-payment of surcharge? Besides incarceration, what other remedies for non-payment could be considered?
- 2.4.3 What if any operational issues have the use of default time as a penalty imposed on your department i.e., shortfall in monies collected, overcrowding in correctional facilities?
- 2.4.4 How could this be changed for the better?
- 2.4.5 What if any impediments would need to be overcome jurisdictionally to implement options other than default time as a penalty?? For instance, the Code provides options such as license sanctions, filing civil judgments however this would necessitate the need to address insurance issues or costs to implement such options.
- 2.4.6 Are there any other thoughts you have on the collection of the federal victim surcharge that you would like to speak to?

## 2.5 Federal victim surcharge: Implementation Issues

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- 2.5.1 In 1999 when the federal government amended the surcharge provisions for the Code they anticipated increased revenues. In many jurisdictions these increased revenues have not been realized. In your opinion, why has the anticipated revenue expected to be generated in NWT not been realized?

## 2.6 Other Concerns

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